



# FEDERAL REGISTER

---

Vol. 82

Friday,

No. 240

December 15, 2017

Pages 59503–59946

OFFICE OF THE FEDERAL REGISTER



The **FEDERAL REGISTER** (ISSN 0097-6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

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

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see [www.ofr.gov](http://www.ofr.gov).

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

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at [www.fdsys.gov](http://www.fdsys.gov), a service of the U.S. Government Publishing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, 1 (January 2, 1994) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Publishing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, [gpocusthelp.com](mailto:gpocusthelp.com).

The annual subscription price for the **Federal Register** paper edition is \$749 plus postage, or \$808, plus postage, for a combined **Federal Register**, **Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is \$165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register**, including postage, is based on the number of pages: \$11 for an issue containing less than 200 pages; \$22 for an issue containing 200 to 400 pages; and \$33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for \$3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Publishing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see [bookstore.gpo.gov](http://bookstore.gpo.gov).

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

**How To Cite This Publication:** Use the volume number and the page number. Example: 82 FR 12345.

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

## SUBSCRIPTIONS AND COPIES

### PUBLIC

#### Subscriptions:

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

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

#### Single copies/back copies:

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

### FEDERAL AGENCIES

#### Subscriptions:

Assistance with Federal agency subscriptions:

Email [FRSubscriptions@nara.gov](mailto:FRSubscriptions@nara.gov)  
Phone 202-741-6000



# Contents

Federal Register

Vol. 82, No. 240

Friday, December 15, 2017

## Agricultural Marketing Service

### NOTICES

Designations:  
Aberdeen, SD, Hastings, NE, and Missouri Areas, 59575

## Agricultural Research Service

### NOTICES

Exclusive Licenses; Approvals, 59575–59576

## Agriculture Department

See Agricultural Marketing Service

See Agricultural Research Service

See Food Safety and Inspection Service

See Forest Service

See National Agricultural Statistics Service

## Centers for Disease Control and Prevention

### NOTICES

Designation of a Class of Employees for Addition to the  
Special Exposure Cohort, 59621

## Centers for Medicare & Medicaid Services

### NOTICES

Agency Information Collection Activities; Proposals,  
Submissions, and Approvals, 59622

## Civil Rights Commission

### NOTICES

Meetings:

Delaware Advisory Committee, 59581

District of Columbia Advisory Committee, 59582

Meetings; Sunshine Act, 59581–59582

## Coast Guard

### RULES

Drawbridge Operations:

Ashley River, Charleston, SC, 59517–59519

Special Local Regulations:

Southern California Annual Marine Events for the San  
Diego Captain of the Port Zone—San Diego Parade of  
Lights, 59517

### PROPOSED RULES

Drawbridge Operations:

Atlantic Intracoastal Waterway, Wappoo Creek,  
Charleston, SC, 59562–59564

## Commerce Department

See International Trade Administration

See National Oceanic and Atmospheric Administration

## Committee for Purchase From People Who Are Blind or Severely Disabled

### NOTICES

Procurement List; Additions and Deletions, 59585–59586

## Commodity Futures Trading Commission

### NOTICES

Proposed Orders and Requests for Comments:

Application for Exemption from Certain Provisions of the  
Commodity Exchange Act Regarding Investment of  
Customer Funds and from Certain Related  
Commission Regulations, 59586–59591

## Consumer Product Safety Commission

### RULES

Safety Standard for Children's Folding Chairs and Stools,  
59505–59511

## Copyright Office, Library of Congress

### NOTICES

Scope of Preexisting Subscription Services, 59652–59660

## Corporation for National and Community Service

### NOTICES

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

Application Package for Social Innovation Fund

Performance Progress Report, 59591

Generic Clearance for the Collection of Pilot and Test  
Data, 59591–59592

## Defense Department

### NOTICES

Agency Information Collection Activities; Proposals,  
Submissions, and Approvals, 59592–59593

## Education Department

### NOTICES

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

Study of ESEA Title VI Indian Education LEA Grants

Program; Correction, 59593

## Employment and Training Administration

### NOTICES

Meetings:

Workforce Information Advisory Council, 59650–59652

## Energy Department

See Energy Efficiency and Renewable Energy Office

### NOTICES

Charter Renewals:

Biological and Environmental Research Advisory  
Committee, 59593–59594

Nuclear Energy Advisory Committee, 59594

## Energy Efficiency and Renewable Energy Office

### NOTICES

Meetings:

Appliance Standards and Rulemaking Federal Advisory  
Committee, 59595–59596

Wind Industry Partnership Summit, 59594–59595

## Environmental Protection Agency

### RULES

Air Quality State Implementation Plans; Approvals and  
Promulgations:

Arizona; San Manuel, Arizona; Second 10-Year Sulfur  
Dioxide Maintenance Plan, 59521–59523

Connecticut; Decommissioning of Stage II Vapor  
Recovery Systems, 59519–59521

### NOTICES

Adequacy Determinations:

Alabama's Financial Assurance Regulations for the State's  
Municipal Solid Waste Landfill Permit Program,  
59601

Allocations of Cross-State Air Pollution Rule Allowances from New Unit Set-Asides for 2017 Control Periods, 59603–59604

Environmental Impact Statements; Availability, etc.: Weekly Receipts, 59597–59598

Interim Registration Review Decisions and Case Closures: Several Pesticides, 59606–59607

Pesticide Petitions:

Chemicals in or on Various Commodities, 59604–59606

Pesticide Product Registrations:

Cancellations, 59598–59599

New Uses, 59602–59603

Registration Reviews:

Draft Human Health and/or Ecological Risk Assessments for Several Pesticides, 59596–59597

Proposed Interim Decisions for Several Pesticides, 59599–59600

### Export-Import Bank

#### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59607–59608

### Federal Aviation Administration

#### PROPOSED RULES

Airworthiness Directives:

Pacific Aerospace Limited Airplanes, 59555–59557

Pratt and Whitney Division Turbofan Engines, 59557–59559

Rolls-Royce plc Turbojet Engines, 59560–59562

#### NOTICES

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

Generic Clearance for the Collection of Qualitative

Feedback on Agency Service Delivery, 59944–59945

Meetings:

Thirteenth RTCA SC–230 Airborne Weather Detection Systems Plenary, 59945

### Federal Highway Administration

#### NOTICES

Federal Agency Actions:

Idaho; Proposed Highway, 59945–59946

### Federal Reserve System

#### PROPOSED RULES

Enhanced Disclosure of the Models Used in the Federal Reserve's Supervisory Stress Test, 59547–59555

Policy Statement on the Scenario Design Framework for Stress Testing, 59533–59547

Stress Testing Policy Statement, 59528–59533

#### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59608–59619

### Fish and Wildlife Service

#### PROPOSED RULES

Financial Assistance:

Wildlife Restoration, Sport Fish Restoration, Hunter Education and Safety, 59564–59574

#### NOTICES

Endangered and Threatened Species:

Permit Applications, 59642–59643

### Food and Drug Administration

#### NOTICES

Guidance:

The Least Burdensome Provisions; Concept and Principles, 59623–59625

Priority Review Vouchers; Issuances:

Rare Pediatric Disease Product, 59622–59623

### Food Safety and Inspection Service

#### NOTICES

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

Marking, Labeling and Packaging, 59577–59579

Meetings:

Codex Committee on Food Additives, 59576–59577

### Forest Service

#### NOTICES

Land Management Plans; Revisions and Amendments:

Flathead National Forest; Land Management Plans of the Helena-Lewis and Clark, Kootenai, and Lolo National Forests, 59579–59580

### General Services Administration

#### NOTICES

Meetings:

Procurement through Commercial e-Commerce Portals, 59619–59621

### Health and Human Services Department

*See* Centers for Disease Control and Prevention

*See* Centers for Medicare & Medicaid Services

*See* Food and Drug Administration

*See* Health Resources and Services Administration

*See* National Institutes of Health

#### NOTICES

Findings of Research Misconduct, 59626–59627

Petitions to Add a Class of Employees to the Special Exposure Cohort, 59626–59627

### Health Resources and Services Administration

#### NOTICES

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

Rural Health Opioid Program Grant Performance Measures, 59625–59626

### Homeland Security Department

*See* Coast Guard

*See* U.S. Citizenship and Immigration Services

*See* U.S. Customs and Border Protection

### Interior Department

*See* Fish and Wildlife Service

*See* Land Management Bureau

*See* National Park Service

*See* Ocean Energy Management Bureau

### International Trade Administration

#### NOTICES

Antidumping or Countervailing Duty Investigations, Orders, or Reviews:

Forged Steel Fittings from the People's Republic of China, 59584

Determinations in Less-Than-Fair-Value Investigations:

Monosodium Glutamate from the People's Republic of China, 59582–59583

Limitation of Duty-Free Imports of Apparel Articles

Assembled in Haiti under the Caribbean Basin Economic Recovery Act, as Amended by the Haitian Hemispheric Opportunity through Partnership Encouragement Act, 59583–59584

**International Trade Commission****NOTICES**

Investigations; Determinations, Modifications, and Rulings, etc.:

Certain Personal Transporters, Components Thereof, and Packaging and Manuals Therefor and Certain Personal Transporters and Components Thereof, 59649–59650

**Labor Department**

See Employment and Training Administration  
See Wage and Hour Division

**Land Management Bureau****NOTICES**

Plats of Survey:  
New Mexico, 59643

**Library of Congress**

See Copyright Office, Library of Congress

**National Agricultural Statistics Service****NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59580–59581

**National Institutes of Health****NOTICES**

Meetings:

Center for Scientific Review, 59627  
Council of Councils, 59627–59628  
National Cancer Institute, 59629  
National Institute on Aging, 59628  
National Institute on Alcohol Abuse and Alcoholism, 59628–59630  
National Institute on Deafness and Other Communication Disorders, 59630

**National Oceanic and Atmospheric Administration****RULES**

Fisheries of the Northeastern United States:  
Northeast Skate Complex; Adjustment to the Skate Wing Inseason Possession Limit, 59526–59527

Reef Fish Fishery of the Gulf of Mexico:  
Gray Triggerfish Management Measures; Amendment 46, 59523–59526

**National Park Service****NOTICES**

National Register of Historic Places:  
Pending Nominations and Related Actions, 59644

**Nuclear Regulatory Commission****NOTICES**

Environmental Assessments; Availability, etc.:

Crow Butte Resources, Inc.; Marsland Expansion Area, 59665–59666

License Applications:  
Johns Hopkins Applied Physics Laboratory, 59660–59664

Meetings; Sunshine Act, 59664

**Ocean Energy Management Bureau****NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59645–59649

Environmental Impact Statements; Availability, etc.:

Gulf of Mexico Outer Continental Shelf Lease Sale 2018, 59644–59645

**Pension Benefit Guaranty Corporation****RULES**

Benefits Payable in Terminated Single-Employer Plans: Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits, 59515–59517

**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:  
Annual Reporting, 59666–59667

**Personnel Management Office****NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:  
Annuity Supplement Earnings Report, 59669  
Application for Refund of Retirement Deductions and Current/Former Spouse's Notification of Application for Refund of Retirement Deductions under the Civil Service Retirement System, 59668–59669  
Application for Refund of Retirement Deductions and Current/Former Spouse's Notification of Application for Refund of Retirement Deductions under the Federal Employees Retirement System, 59667–59668  
Reinstatement of Disability Annuity Previously Terminated Because of Restoration to Earning Capacity, 59677  
Excepted Service, 59669–59677

**Presidential Documents****ADMINISTRATIVE ORDERS**

Defense and National Security:  
National Defense Authorization Act for Fiscal Year 2012 (Presidential Determination No. 2018–1 of November 15, 2017), 59503

**Securities and Exchange Commission****NOTICES**

Self-Regulatory Organizations; Proposed Rule Changes:  
BOX Options Exchange LLC, 59680–59682, 59779–59805  
Cboe BYX Exchange, Inc., 59721–59723  
Cboe BZX Exchange, Inc., 59726–59753, 59900–59902  
Cboe C2 Exchange, Inc., 59805–59835  
Cboe EDGA Exchange, Inc., 59902–59905  
Cboe EDGX Exchange, Inc., 59753–59778, 59905–59907  
Cboe Exchange Inc., 59871–59897  
Cboe Exchange, Inc., 59683–59685  
Investors Exchange LLC, 59933–59936  
Miami International Securities Exchange LLC, 59835–59838  
MIAX PEARL, LLC, 59841–59844  
Nasdaq ISE, LLC, 59694–59721  
Nasdaq MRX, LLC, 59844–59871  
New York Stock Exchange LLC, 59897–59900, 59907–59933  
NYSE Arca, Inc., 59677–59680, 59723–59726  
NYSE MKT LLC, 59838–59841  
Options Clearing Corp., 59685–59687  
The Nasdaq Stock Market LLC, 59687–59694

**Small Business Administration****NOTICES**

Disaster Declarations:  
US Virgin Islands; Amendment 4, 59936–59937

**Social Security Administration****RULES**

Extension of Expiration Dates for Four Body System Listings, 59514–59515

**NOTICES**

Cost-of-Living Increase and Other Determinations for 2018,  
59937–59942

**State Department****NOTICES**

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

Generic Clearance for the Collection of Qualitative  
Feedback on Agency Service Delivery, 59943

Charter Renewals:

Advisory Committee on International Postal and Delivery  
Services, 59942–59943

Culturally Significant Objects Imported for Exhibition:

Ten Americans—After Paul Klee Exhibition, 59943

**Surface Transportation Board****NOTICES**

Abandonment and Discontinuance of Service Exemptions:

ABE Fairmont, LLC in Fillmore County, NE; BNSF  
Railway Co. in Fillmore County, NE, 59944

**Transportation Department**

*See* Federal Aviation Administration

*See* Federal Highway Administration

**Treasury Department****RULES**

Donations of Technology and Related Support Services to  
Enforce Intellectual Property Rights, 59511–59514

**U.S. Citizenship and Immigration Services****NOTICES**

Temporary Protected Status; Extensions and Designations:

Honduras, 59630–59636

Nicaragua, 59636–59642

**U.S. Customs and Border Protection****RULES**

Donations of Technology and Related Support Services to

Enforce Intellectual Property Rights, 59511–59514

**Wage and Hour Division****PROPOSED RULES**

Tip Regulations Under the Fair Labor Standards Act, 59562

---

**Reader Aids**

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

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

**CFR PARTS AFFECTED IN THIS ISSUE**

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

**3 CFR****Administrative Orders:**

Presidential

Determinations:

No. 2018-1 of

November 15,

2017 .....59503

**12 CFR****Proposed Rules:**

Ch. II .....59547

252 (2 documents) .....59528,

59533

**14 CFR****Proposed Rules:**

39 (3 documents) .....59555,

59557, 59560

**16 CFR**

1112 .....59505

1130 .....59505

1232 .....59505

**19 CFR**

133 (2 documents) .....59511

**20 CFR**

404 .....59514

**29 CFR**

4022 .....59515

4044 .....59515

**Proposed Rules:**

531 .....59562

**33 CFR**

100 .....59517

117 .....59517

**Proposed Rules:**

117 .....59562

**40 CFR**

52 (2 documents) .....59519,

59521

**50 CFR**

622 .....59523

648 .....59526

**Proposed Rules:**

80 .....59564

---

**Presidential Documents**

---

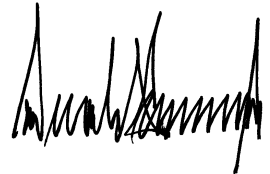
Title 3—

**Presidential Determination No. 2018–1 of November 15, 2017****The President****Presidential Determination Pursuant to Section 1245(d)(4)(B) and (C) of the National Defense Authorization Act for Fiscal Year 2012****Memorandum for the Secretary of State[,] the Secretary of the Treasury[, and] the Secretary of Energy**

By the authority vested in me as President by the Constitution and the laws of the United States, after carefully considering the reports submitted to the Congress by the Energy Information Administration, including the report submitted September 12, 2017, and other relevant factors such as global economic conditions, increased oil production by certain countries, the global level of spare petroleum production capacity, and the availability of strategic reserves, I determine, pursuant to section 1245(d)(4)(B) and (C) of the National Defense Authorization Act for Fiscal Year 2012, Public Law 112–81, and consistent with prior determinations, that there is a sufficient supply of petroleum and petroleum products from countries other than Iran to permit a significant reduction in the volume of petroleum and petroleum products purchased from Iran by or through foreign financial institutions.

I will continue to monitor this situation closely.

The Secretary of State is authorized and directed to publish this determination in the *Federal Register*.



THE WHITE HOUSE,  
*Washington, November 15, 2017*



# Rules and Regulations

Federal Register

Vol. 82, No. 240

Friday, December 15, 2017

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

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

## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Parts 1112, 1130, and 1232

[Docket No. CPSC–2015–0029]

### Safety Standard for Children's Folding Chairs and Stools

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Final rule.

**SUMMARY:** The Danny Keysar Child Product Safety Notification Act, section 104 of the Consumer Product Safety Improvement Act of 2008 (CPSIA), requires the United States Consumer Product Safety Commission (Commission or CPSC) to promulgate consumer product safety standards for durable infant or toddler products. These standards are to be “substantially the same as” applicable voluntary standards, or more stringent than the voluntary standard if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product. The Commission is issuing a safety standard for children's folding chairs and stools in response to the direction under Section 104(b) of the CPSIA. In addition, the Commission is amending its regulations regarding third party conformity assessment bodies to include the safety standard for children's folding chairs and stools in the list of Notices of Requirements (NORs) issued by the Commission. Finally, the Commission is amending its regulations establishing requirements for consumer registration of durable infant or toddler products to identify children's folding stools as a durable infant or toddler product.

**DATES:** This rule will become effective June 15, 2018. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of June 15, 2018.

**FOR FURTHER INFORMATION CONTACT:** Keysha Walker, Office of Compliance

and Field Operations, U.S. Consumer Product Safety Commission; 4330 East West Highway, Bethesda, MD 20814; email: [kwalker@cpsc.gov](mailto:kwalker@cpsc.gov); telephone: (301) 504–6820.

#### SUPPLEMENTARY INFORMATION:

#### I. Background and Statutory Authority

The CPSIA was enacted on August 14, 2008. Section 104(b) of the CPSIA, part of the Danny Keysar Child Product Safety Notification Act, requires the Commission to: (1) Examine and assess the effectiveness of voluntary consumer product safety standards for durable infant or toddler products, in consultation with representatives of consumer groups, juvenile product manufacturers, and independent child product engineers and experts; and (2) promulgate consumer product safety standards for durable infant or toddler products. Standards issued under section 104 are to be “substantially the same as” the applicable voluntary standards or more stringent than the voluntary standard if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product.

On October 19, 2015, the Commission issued a notice of proposed rulemaking (NPR) for children's folding chairs and stools. 80 FR 63155. The NPR proposed to incorporate by reference the voluntary standard that was in effect at that time, ASTM F2613–14, *Standard Consumer Safety Specification for Children's Chairs and Stools*. ASTM F2613–14 contained testing and performance requirements for any chair or stool used by a single child who can get in and get out of the product unassisted and with a seat height 15 inches or less with or without a rocking base. The NPR proposed to limit the scope of the mandatory standard to folding chairs and stools because the hazards presented by folding chairs and stools are different from non-folding chairs and stools. In addition, the NPR proposed to change the stability test method to add a new performance requirement and test method to address sideways stability incidents in addition to rearwards stability incidents, and to revise the marking and labeling sections. Since the NPR was issued, ASTM has revised ASTM F2613–14 several times, as discussed in section V

of this preamble. The current version of the standard is ASTM F2613–17a.

In this document, the Commission is issuing a mandatory safety standard that incorporates by reference the most recent voluntary standard, developed by ASTM International, ASTM F2613–17a, for children's folding chairs and stools. The mandatory standard does not include non-folding chairs and stools. The Commission is not making any other modifications to the ASTM standard. As required by section 104(b)(1)(A), the Commission consulted with manufacturers, retailers, trade organizations, laboratories, consumer advocacy groups, consultants, and the public to develop the standard, largely through the ASTM process. In addition, as required by section 14 of the Consumer Product Safety Act (CPSA), the final rule amends the list of NORs issued by the Commission in 16 CFR part 1112 to include the standard for children's folding chairs and stools. The final rule also amends the product registration rule in 16 CFR part 1130 to identify children's folding stools, in addition to children's folding chairs, as a durable infant or toddler product for purposes of consumer product registration requirements.

#### II. Product Description

The current voluntary standard, ASTM F2613–17a, describes a children's folding chair or stool as seating furniture with a seat height of 15 inches or less with a rigid frame that is intended to be used as a support for the body, limbs, or feet of a child when sitting or resting in an upright or reclining position, can be folded for transport or storage, and may include a rocking base. The product is intended to be used by a single child who can get out of the chair unassisted.

ASTM F2613–17a also includes a definition for “chairs with side containment” to describe “a children's chair or folding chair with armrests or otherwise designed in a shape which provides barriers in the vertical direction above the seating surface to the occupant's left and right which can act like arms or other side structures.” Other definitions remain unchanged from ASTM F2613–14. A “children's chair” is defined as “seating furniture with a rigid frame that is intended to be used as a support for the body, limbs, or feet of a child when sitting or resting

in an upright or reclining position.” A “children’s stool” is defined as a “children’s chair without back, or armrest.” A “folding chair” and “folding stool” is defined as “a children’s chair or stool which can be folded for transport or storage.” In the NPR, the Commission proposed to limit the scope of the mandatory standard to folding chairs and stools because the hazards presented by folding chairs and folding stools are different from non-folding chairs and stools. In this document, the Commission incorporates by reference ASTM F2613–17a, but continues to limit the scope of the mandatory standard to folding chairs and stools.

### III. Market Description

CPSC staff’s review of the market shows that there are currently 13 domestic firms, rather than 14 domestic firms identified in the NPR, supplying children’s folding chairs and/or folding stools to the U.S. market. Three firms are large and ten firms are considered small according to the Small Business Administration (SBA) criteria.<sup>1</sup> The Juvenile Products Manufacturers Association (JPMA) maintains a certification program for children’s folding chairs and folding stools, and there is one active participant at this time. Other than this certification program, compliance with the ASTM standard is self-reported. Two additional children’s folding chair suppliers claim compliance with the voluntary standard.

### IV. Incident Data

The preamble to the NPR summarized the incident data covering the period from January 2003 through December 31, 2014. CPSC staff identified a total of 98 incidents, including 45 nonfatal injuries, related to children’s folding chairs or stools that were reported to have occurred. Since the publication of the NPR, CPSC staff has received ten new reports of incidents. Two of the incidents occurred in July and December of 2014, but were not fully investigated or reported until 2015. Of the other eight incidents, two occurred in 2015, three in 2016, and three in 2017. All ten incidents involved folding chairs intended for children under age 5. They were reported under CPSC’s Consumer Product Safety Risk Management System (CPSRMS). Seven indicated some form of injury, including amputation or fracture of a finger,

bruising (petechiae) of an arm, and head injuries due to falls.

Additionally, since December 31, 2014, CPSC staff’s review of the National Electronic Injury Surveillance System (NEISS) included several reports of folding chair incidents, but there was insufficient information to determine which, if any, of the NEISS cases involved folding chairs intended for children under the age of 5. Most of the hazards identified in the new incidents are consistent with the hazard patterns identified among the incidents presented in the NPR briefing package, with pinch/shear hazards the most common hazard category.

### V. Overview of ASTM F2613

The voluntary standard, ASTM F2613, *Standard Consumer Safety Specification for Children’s Chairs and Stools*, was first approved and published in 2007. The scope of products covered by the original version, F2613–07, was limited to “children’s folding chairs” with a seat height of 15 inches or less. Significant revisions were made in 2013, in ASTM F2613–13, that were designed to expand the scope of the voluntary standard to all children’s chairs and stools. On October 19, 2015, the Commission proposed to incorporate by reference ASTM F2613–14, with modifications. 80 FR 63155. Since the publication of the NPR, the standard has been revised four additional times, as discussed below. The current voluntary standard for children’s chairs and stools is ASTM F2613–17a.

#### A. ASTM F2613–16

ASTM F2613–16 was published in May 2016. The changes adopted in ASTM F2613–16 included the following revisions:

- Added a definition for *chairs with side containment* (a children’s chair or folding chair with armrests or otherwise designed in a shape which provides barriers in the vertical direction above the seating surface to the occupant’s left and right, which can act like arms or side structures);
- Added a test requirement and test method for sideways stability for chairs with side containment;
- Added a diagram for measuring seat surface height;
- Added a diagram for side stability test.

#### B. ASTM F2613–16<sup>e1</sup>

ASTM F2613–16<sup>e1</sup> was published in June 2016. ASTM published an editorial revision, which corrected a printing error which had distorted the diagram in Figure 4, and a typographical error in

paragraph 6.8.1.1, revising the test surface angle tolerance from  $\pm 5$  degree to  $\pm 0.5$  degree.

#### C. ASTM F2613–17

ASTM F2613–17 was published in August 2017 with the following revisions:

- Modifications to the marking and labeling section of ASTM F2613–16<sup>e1</sup> to address the changes proposed in the NPR.
- Modifications to the stability test performed on chairs with non-rigid seats to clarify the placement of the test cylinder during the stability test.
- Modifications to the folding mechanisms and hinges section of F2613–16<sup>e1</sup> to clarify that chairs that fold are required to either have a locking mechanism to prevent folding of the chair by the child, or have adequate hinge-line clearance to prevent pinching and lacerations during folding.
- Modification of the standard’s scope to exempt children’s potties.

#### D. ASTM F2613–17a

The current version, ASTM F2613–17a, was published in October 2017. The revision makes minor editorial changes including the removal of side stability testing for stools because chairs and stools without side containment are exempt from side stability testing, and stools, by definition, do not have side containment. In addition, an incorrect reference to Fig.1 (Tension test Adaptor/Clamp) is removed.

ASTM F2613–17a addresses the issues raised in the NPR by strengthening the provisions of the voluntary standard. The current standard clarifies in section 5.8 (Products that Fold) that chairs that fold are required to either have a latching or locking mechanism to prevent folding of the chair by the child, or have adequate hinge-line clearance to prevent pinching and lacerations during folding. These requirements are intended to eliminate possible crushing, laceration, or pinching hazards that might occur in folding latching or locking mechanisms and hinges. In addition, the current standard now includes, under section 6.8 (Stability Test Method), a sideways stability test, in addition to a rearward stability test. The standard also clarifies proper cylinder positioning for chairs and stools for stability testing. The addition of the sideways stability test, in addition to the rearwards stability test will help address incidents that involve children’s chairs with side containment tipping sideways or rearwards.

ASTM F2613–17a also incorporates the recommendations developed by the ASTM Ad Hoc Committee on

<sup>1</sup> The Small Business Administration categorizes manufacturers as “small” if they have fewer than 500 employees and importers or wholesalers as small if they have fewer than 100 employees.

Standardized Wording for Juvenile Product Standards (ASTM Ad Hoc Task Group), and the proposed language in the NPR. The current standard specifies that each folding chair and folding stool that does not meet the hinge line clearance requirements must have a warning label that contains statements consistent with the proposed language in the NPR. Specifically, the warning label shall contain the words "Amputation Hazard" and address the following:

- Chair can fold or collapse if lock not fully engaged. Moving parts can amputate child's fingers.
- Keep fingers away from moving parts.
- Completely unfold chair and fully engage locks before allowing child to sit in a chair.
- Never allow child to fold or unfold chair.

The Commission believes that ASTM F2613–17a provides clarifications to the standard and addresses the issues raised in the NPR for children's folding chairs and stools by adopting more stringent requirements than those in the ASTM version referenced in the NPR. Accordingly, the Commission incorporates ASTM F2613–17a, by reference, in the final rule for the CPSC's safety standard for children's folding chairs and stools.

## VI. Response to Comments

The Commission received nine comments in response to the NPR. A summary of each comment and a response is provided below.

### A. Scope of the Rule

*Comment:* One commenter stated that the scope of the mandatory standard should not be limited to just folding chairs and stools, and that the CPSC should include all non-folding chairs and stools in the standard.

*Response:* As we stated in the NPR, CPSC staff conducted a preliminary review of the incident data involving all children's chairs and stools. Some hazards are common among both folding and non-folding products such as tip overs, falling out of the chair, loose parts, staples or, other protruding objects with the potential for lacerations requiring sutures. However, the staff's review showed that the hazard associated with the folding mechanism in folding chairs and stools could result in the most serious injury, including pinching/scissoring, finger amputations, degloving or compound fracture, which could be addressed in a mandatory standard. Due to the variety of non-folding children's chair products in the market, including certain infant chairs/

seats, the Commission concludes that additional study and testing regarding any potential hazards associated with non-folding chairs/stools will need to be conducted before the CPSC could propose performance requirements in a standard. To that end, CPSC staff will continue to evaluate incident data regarding non-folding chairs and stools and will make a recommendation to the Commission, if further action is required.

*Comment:* One commenter requested that the Commission clarify that the mandatory standard excludes toy seats.

*Response:* ASTM F963–17, Standard Consumer Safety Specification for Toy Safety (which is a CPSC mandatory standard, 16 CFR part 1250) specifically covers toy seats that have play features. Section 3.1.93 of ASTM F963–17 provides that a "toy seat" is a stationary toy product with a seat where the amusement of the child is a primary function of the product and the play pattern intends that the child be in a seated position. Section 3.1.93.1 further explains that play features may include, but are not limited to, sliding or rotating features, learning toys, manually actuated music, with which the seated child may interact. Children's furniture products without any interactive play features such as stools, chairs, patio sets, rocking chairs, picnic tables, storage units, are not considered toy seats. In addition, section 3.1.93.1 provides that juvenile products such as bouncers, infant seats, and stationary activity centers are not considered toy seats. Accordingly, toy seats are adequately addressed in ASTM F963–17, and the Commission does not believe that further clarification is necessary.

### B. Stability Test Method

*Comment:* One commenter noted that the original stability test requirement in ASTM F2613–14, for chairs with soft seating surfaces, specified that the test cylinder should be replaced with a weighted bag filled with steel shot. However, the commenter questioned why the provision for soft seating surfaces was deleted.

*Response:* During the development of the proposed modification to address sideways stability incidents, CPSC staff determined that all chairs should be tested with the same test cylinder for consistency and the option for testing with a weighted bag was removed. After publication of the NPR, ASTM balloted and approved a modification which is consistent with proposed NPR. ASTM F2613–16 included a sideways stability test and removed the option to conduct stability testing with a weighted bag.

This stability requirement has not been changed in the current version, ASTM F2613–17a. Accordingly, this issue has been adequately addressed.

*Comment:* Two commenters stated that during development of requirements for sideways stability, a review of CPSC incident data indicated that side stability issues were limited to chairs with side containment, such as arms, and did not support a requirement for sideways stability testing for chairs without side containment.

*Response:* Since the NPR was issued, ASTM balloted and approved a modification, first incorporated into ASTM F2613–16, and retained in the current version, ASTM F2613–17a, which excludes chairs without side containment from the sideways stability testing. Although CPSC's rule does not apply to non-folding chairs, the ASTM standard applies to both folding and non-folding chairs. Because incident data does not show problems with the sideways stability of chairs without arms, the Commission agrees that folding chairs and stools without side containment also should be excluded from the sideways stability testing requirement.

*Comment:* One commenter stated that the proposed requirement for rearward stability is flawed because it specifies that the test cylinder be allowed to "come to rest," but then requires further adjustment to its position to complete the testing.

*Response:* Since the publication of the NPR, ASTM balloted and approved a modification, first incorporated into ASTM F2613–16, and retained in the current version, ASTM F2613–17a, which revised the test language to delete the words "come to rest." The Commission agrees that the revised language, specified in ASTM F2613–17a removes inconsistent language regarding the rearward and side stability requirement. Accordingly, the Commission accepts the stability testing requirements as set forth in ASTM F2613–17a.

### C. Warning Label

*Comment:* A number of commenters requested that the Commission delay publishing final warning requirements for children's folding chairs and stools until the ASTM Ad Hoc Task Group's recommendations are developed, balloted, and then incorporated into ASTM F2613.

*Response:* After publication of the NPR, the ASTM Ad Hoc Task Group made its recommendations for warning label formatting across juvenile products. Accordingly, formatting issues including fonts, markings, and colors in

signal word panels addressed by the Ad Hoc Task Group were incorporated in ASTM F2613–17, and retained in ASTM F2613–17a. Therefore, the final rule incorporates by reference ASTM F2613–17a without any modification to the ASTM provisions on warning label format.

*Comment:* One commenter stated that the proposed requirement for the warning label on stools is not clear. The commenter stated that the proposed requirement to place the label in a “visible location” is not defined. The commenter also stated that the proposal requiring that the label not “wrap around the legs” is unclear. Another commenter expressed concern that the requirement to “contain sufficient white space” is unclear and can be potentially misconstrued by laboratories evaluating compliance of a product.

*Response:* Since the publication of the NPR, the labeling requirement was revised in ASTM F2613–17 and retained in the current version, ASTM F2613–17a, to require that all warnings shall be conspicuous and permanent. In addition, for products with limited space, the language “contain sufficient white space” was eliminated and warnings may be placed in two separate locations. Accordingly, this issue has been adequately addressed.

*Comment:* Several commenters recommended that CPSC add pictograms to the warnings to convey the hazard more effectively and avoid language barriers that minimize comprehension of these warnings.

*Response:* Although pictograms can help to convey the hazard that is presented, especially for users with limited or no English literacy, CPSC staff believes that designing effective pictograms for warning labels can present many challenges. The labeling section revised in ASTM F2613–17, and retained in the current version, ASTM F2613–17a, requires that the warnings shall be easy to read and understand and be in the English language at a minimum. Thus, the standard does not preclude the addition of other languages to address those groups who do not read English. However, CPSC staff will continue to review incidents and consider whether additional warning symbols are needed to further reduce the risk of injury associated with these products.

#### D. Effective Date

*Comment:* One commenter stated that small firms should have more time to comply with the rule.

*Response:* The Commission intended that the proposed 6-month effective date would give all firms 6 months to

produce, or find suppliers to produce, compliant products. The Commission believes that most firms should be able to comply within the 6-month time frame and allow ample time for manufacturers and importers to arrange for third party testing, consistent with the timeframe adopted in a number of other section 104 rules. The commenter did not provide any justification to support a longer effective date. Moreover, the Commission did not receive comments from any affected suppliers (manufacturer or importer) that suggested the proposed effective date was too short. Therefore, the Commission requires a 6-month effective date in the final rule.

#### E. Cost Considerations

*Comment:* One commenter stated that the Commission should have considered additional costs for importers, such as negotiation costs with foreign suppliers. The commenter also stated that the Commission should have considered the rule’s potential effect on retail prices and the impact of higher prices on consumers.

*Response:* CPSC staff conducted a regulatory flexibility analysis on the impact of the rule on small firms, including manufacturers, suppliers, and importers, as well as test laboratories, affected by the rulemaking. Staff’s review showed that the rule will not have a significant economic impact on a substantial number of small entities. The Commission recognizes that an increase in costs for children’s folding chair and stool suppliers could increase the retail price of these products; however, the Commission is required to promulgate consumer product safety standards on durable infant or toddler products, including on children’s folding chairs and stools.

### VII. Description of the Final Rule

#### A. Final Rule for Part 1232 and Incorporation by Reference

Section 1232.2(a) of the final rule provides that folding chairs and stools must comply with the applicable sections of ASTM F2613–17a.

The Office of the Federal Register (OFR) has regulations concerning incorporation by reference. 1 CFR part 51. These regulations require that, for a final rule, agencies must discuss in the preamble of the rule the way in which the materials the agency incorporates by reference are reasonably available to interested persons and how interested parties can obtain the materials. In addition, the preamble of the rule must summarize the material. 1 CFR 51.5(b).

In accordance with the OFR’s requirements, the discussion in this section summarizes the provisions of ASTM F2613–17a. Interested persons may purchase a copy of ASTM F2613–17a from ASTM, either through ASTM’s website or by mail at the address provided in the rule. A copy of the standard may also be inspected at the CPSC’s Office of the Secretary, U.S. Consumer Product Safety Commission. We note that the Commission and ASTM arranged for commenters to have “read only” access to ASTM F2613–14 during the NPR’s comment period.

ASTM F2613–17a contains requirements covering children’s folding chairs and stools covering:

- Sharp points;
- Small parts;
- Lead in paint;
- Wood parts;
- Latching and locking mechanisms;
- Scissoring, shearing, and pinching
- Hinge line clearance;
- Circular holes in rigid materials;
- Labeling;
- Protective components;
- Strength requirements; and
- Stability

The standard additionally contains test methods that must be used to assess conformity with these requirements.

#### B. Amendment to 16 CFR Part 1112 To Include NOR for Children’s Folding Chairs and Stools Standard

The final rule amends part 1112 to add a new section 1112.15(b)(43) that lists 16 CFR part 1232, *Safety Consumer Safety Specification for Children’s Folding Chairs and Stools*, as a children’s product safety rule for which the Commission has issued an NOR. Section XIII of the preamble provides additional background information regarding certification of children’s folding chairs and stools and issuance of an NOR.

#### C. Amendment to 16 CFR Part 1130 To Include Children’s Folding Chairs and Stools

The statutory definition of “durable infant or toddler product” in section 104(f) of the CPSIA identified certain product categories as examples of products included under that definition. The Commission identified additional products as “durable infant or toddler products” when the Commission issued its rule requiring that manufacturers of durable infant or toddler products establish a program for consumer registration of those products. 16 CFR part 1130. Among the products the Commission added is “children’s folding chairs.” *Id.* 1130.2(a)(13). As explained in the NPR, based on ASTM’s

definitions, the Commission considers folding stools to be a subset of folding chairs. The configuration of children's folding chairs and folding stools are similar. The same potential hazards are presented in the folding mechanisms. The Commission is amending the definition section in the registration rule to make clear that both children's folding chairs and children's folding stools are considered durable infant or toddler products. Thus, the final rule amends part 1130, *Requirements for Consumer Registration of Durable Infant or Toddler Products*, by revising section 1130.2(a)(13) to add "stools" to the definition of children's folding chairs.

#### VIII. Effective Date

The Administrative Procedure Act (APA) generally requires that the effective date of a rule be at least 30 days after publication of the final rule. 5 U.S.C. 553(d). The safety standard for folding chairs and stools and the corresponding changes to part 1112, regarding requirements for third party conformity assessment bodies, and part 1130, regarding requirements for consumer registration of durable infant or toddler products, will become effective 6 months after publication of the final rule in the **Federal Register**.

Without evidence to the contrary, CPSC generally considers 6 months to be sufficient time for suppliers to come into compliance with a new standard, and a 6-month effective date is typical for other CPSIA section 104 rules. Six months is also the period that JPMA typically allows for products in the JPMA certification program to transition to a new standard once that standard is published. The Commission proposed a 6-month effective date in the NPR for children's folding chairs and stools and we addressed the comment on the proposed effective date. Accordingly, the final rule for children's folding chairs and stools, as well as the amendments to parts 1112 and 1130, have a 6-month effective date.

#### IX. Regulatory Flexibility Act

##### A. Introduction

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires that agencies review a proposed rule and a final rule for the rule's potential economic impact on small entities, including small businesses. Section 604 of the RFA generally requires that agencies prepare a final regulatory flexibility analysis (FRFA) when promulgating final rules, unless the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

##### B. Impact on Small Businesses

Based on the analysis summarized below, the Commission certifies that the rule will not have a significant economic impact on a substantial number of small entities.

CPSC staff's review of the market shows that there are currently 13 domestic firms, rather than the 14 domestic firms identified in the NPR, supplying children's folding chairs and/or folding stools to the U.S. market. Of these, ten firms are considered small. Four of the small firms are manufacturers, five are importers or wholesalers, and the supply source for one firm could not be identified. Most firms only supply one model of chair, but one firm supplies four models and another firm supplies five models. Of the four small manufacturers of children's folding chairs and folding stools, one claims that its products comply with the voluntary standard and participates in the ASTM process. The compliance of the other three firms could not be determined. Of the five small importers/wholesalers, only one claims that its products comply with the ASTM standard. Staff could not determine the compliance status for the other four firms. For the firms currently in compliance with the voluntary standard, there should be minimal burden associated with compliance.

The children's folding chairs from the three small manufacturers whose products that do not meet the voluntary standard may require redesign to comply with the voluntary standard. One manufacturer estimates the cost to completely redesign a chair to be \$10,000, including nine to twelve months of research and development time. It does not appear that the economic impact would be significant for any of the small manufacturers (*i.e.*, the cost would be less than 1 percent of annual revenue). In addition, although staff could not rule out a significant economic impact on one small importer of noncompliant folding chairs, staff does not expect the rule to have a significant economic impact on the three other non-compliant importers.

Under section 14 of the CPSA, once new children's folding chairs and folding stools requirements become effective, all manufacturers will be subject to the third party testing and certification requirements. Third party testing will include any physical and mechanical test requirements specified in the final children's folding chairs and folding stools rule. One firm estimated that chemical and structural testing of one unit of a children's folding chair costs around \$1,000 annually. Estimates

provided by suppliers for other section 104 rulemakings indicate that around 40 to 50 percent of testing costs can be attributed to structural requirements, with the remaining 50 to 60 percent resulting from chemical testing (*e.g.*, lead testing, to which they are already subject). If these percentages are applied to folding stools and chairs, the testing to structural components of the ASTM voluntary standard could cost about \$400 to \$500 per sample tested ( $\$1,000 \times .4$  to  $\$1,000 \times .5$ ), and are consistent with testing cost estimates for products with standards of similar complexity. Based on an examination of each small firm's revenues, staff did not find that testing, in addition to costs of redesign, would be economically significant for the majority of the small firms. For these reasons, the Commission certifies that the rule will not have a significant economic impact on a substantial number of small entities.

#### X. Environmental Considerations

The Commission's regulations address whether the agency is required to prepare an environmental assessment or an environmental impact statement. Under these regulations, a rule that has "little or no potential for affecting the human environment," is categorically exempt from this requirement. 16 CFR 1021.5(c)(1). The final rule falls within the categorical exemption.

#### XI. Paperwork Reduction Act

This rule contains information collection requirements that are subject to public comment and review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The preamble to the proposed rule discussed the information collection burden of the proposed rule. Section 7 of ASTM F2613–17a contains requirements for marking and labeling, that are disclosure requirements, thus falling within the definition of "collections of information" as defined in 44 U.S.C. 3502(3). OMB has assigned control number 3041–0172 to this information collection. The Commission did not receive any comments regarding the information collection burden of this proposal.

Since the publication of the NPR, staff has determined that there are 13 known firms, rather than 14 firms supplying children's folding chairs to the U.S. market. All firms are assumed to use labels on both their products and their packaging already, but they might need to make some modifications to their existing labels. The estimated time required to make these modifications is about 1 hour per model. Each of these

firms supplies an average of 1.5 different models of children’s folding chairs; therefore, the estimated burden hours associated with labels is 1 hour × 13 firms × 1.5 models per firm = 19.5 annual hours.

**XII. Preemption**

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that when a consumer product safety standard is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury unless the state requirement is identical to the federal standard. Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the Commission for an exemption from this preemption under certain circumstances. Section 104(b) of the CPSIA refers to the rules to be issued under that section as “consumer product safety rules.” Therefore, the preemption provision of section 26(a) of the CPSA would apply to a rule issued under section 104.

**XIII. Amendment to 16 CFR Part 1112 To Include Notice of Requirements (NOR) for Children’s Folding Chairs and Stools Standard**

Section 14(a) of the CPSA imposes the requirement that products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other Act enforced by the Commission, must be certified as complying with all applicable CPSC-enforced requirements. 15 U.S.C. 2063(a). Section 14(a)(2) of the CPSA requires that certification of children’s products subject to a children’s product safety rule be based on testing conducted by a CPSC-accepted, third party conformity assessment body. Section 14(a)(3) of the CPSA requires the Commission to publish a NOR for the accreditation of third party conformity assessment bodies (or laboratories) to assess conformity with a children’s product safety rule to which a children’s product is subject. The *Standard Consumer Safety Specification for Children’s Folding Chairs and Stools*, to be codified at 16 CFR 1232, is a children’s product safety rule that requires the issuance of an NOR.

The Commission published a final rule, *Requirements Pertaining to Third-Party Conformity Assessment Bodies*, 78 FR 15836 (March 12, 2013), which is codified at 16 CFR part 1112 (referred to here as part 1112). This rule became effective on June 10, 2013. Part 1112 establishes requirements for

accreditation of third-party conformity assessment bodies (or laboratories) to test for conformance with a children’s product safety rule in accordance with section 14(a)(2) of the CPSA. Part 1112 also codifies a list of all of the NORs that the CPSC had published at the time part 1112 was issued. All NORs issued after the Commission published part 1112, such as the standard for children’s folding chairs and stools, require the Commission to amend part 1112. Accordingly, the Commission is now amending part 1112 to include the standard for children’s folding chairs and stools in the list of other children’s product safety rules for which the CPSC has issued NORs.

Laboratories applying for acceptance as a CPSC-accepted third-party conformity assessment body to test to the new standard for children’s folding chairs and stools would be required to meet the third-party conformity assessment body accreditation requirements in 16 CFR part 1112, *Requirements Pertaining to Third-Party Conformity Assessment Bodies*. When a laboratory meets the requirements as a CPSC-accepted third-party conformity assessment body, the laboratory can apply to the CPSC to have 16 CFR part 1232, *Standard Consumer Safety Specification for Children’s Folding Chairs and Stools*, included in its scope of accreditation of CPSC safety rules listed for the laboratory on the CPSC website at: [www.cpsc.gov/labsearch](http://www.cpsc.gov/labsearch).

As required by the RFA, staff conducted a FRFA when the Commission issued the part 1112 rule (78 FR 15836, 15855–58). Briefly, the FRFA concluded that the accreditation requirements would not have a significant adverse impact on a substantial number of small test laboratories because no requirements were imposed on test laboratories that did not intend to provide third-party testing services. The only test laboratories that were expected to provide such services were those that anticipated receiving sufficient revenue from the mandated testing to justify accepting the requirements as a business decision. Moreover, a test laboratory would only choose to provide such services if it anticipated receiving revenues sufficient to cover the costs of the requirements.

Based on similar reasoning, amending 16 CFR part 1112 to include the NOR for the folding chairs and stools standard will not have a significant adverse impact on small test laboratories. Moreover, based upon the number of test laboratories in the United States that have applied for CPSC acceptance

of accreditation to test for conformance to other mandatory juvenile product standards, we expect that only a few test laboratories will seek CPSC acceptance of their accreditation to test for conformance with the children’s folding chairs and stools standard. Most of these test laboratories will have already been accredited to test for conformity to other mandatory juvenile product standards, and the only costs to them would be the cost of adding the children’s folding chairs and stools standard to their scope of accreditation. For these reasons, the Commission certifies that the NOR amending 16 CFR part 1112 to include the children’s folding chairs and stools standard will not have a significant economic impact on a substantial number of small entities.

**List of Subjects**

*16 CFR Part 1112*

Administrative practice and procedure, Audit, Consumer protection, Reporting and recordkeeping requirements, Third-party conformity assessment body.

*16 CFR Part 1130*

Administrative practice and procedure, Business and industry, Consumer protection, Reporting and recordkeeping requirements.

*16 CFR Part 1232*

Consumer protection, Imports, Incorporation by reference, Infants and children, Labeling, Law enforcement, and Toys.

For the reasons discussed in the preamble, the Commission amends 16 CFR Chapter II as follows:

**PART 1112—REQUIREMENTS PERTAINING TO THIRD PARTY CONFORMITY ASSESSMENT BODIES**

- 1. The authority citation for part 1112 continues to read as follows:

**Authority:** Pub. L. 110–314, section 3, 122 Stat. 3016, 3017 (2008); 15 U.S.C. 2063.

- 2. Amend § 1112.15 by adding paragraph (b)(43) to read as follows:

**§ 1112.15 When can a third party conformity assessment body apply for CPSC acceptance for a particular CPSC rule and/or test method?**

\* \* \* \* \*

(b) \* \* \*

(43) 16 CFR part 1232, Safety Standard for Children’s Folding Chairs and Stools.

\* \* \* \* \*

## PART 1130—REQUIREMENTS FOR CONSUMER REGISTRATION OF DURABLE INFANT OR TODDLER PRODUCTS

■ 3. The authority citation for part 1130 continues to read as follows:

**Authority:** 15 U.S.C. 2056a, 2065(b).

■ 4. Amend § 1130.2 by revising paragraph (a)(13) to read as follows:

### § 1130.2 Definitions.

\* \* \* \* \*

(a) \* \* \*

(13) Children's folding chairs and stools;

\* \* \* \* \*

■ 5. Add part 1232 to read as follows:

## PART 1232—SAFETY STANDARD FOR CHILDREN'S FOLDING CHAIRS AND STOOLS

Sec.

1232.1 Scope.

1232.2 Requirements for children's folding chairs and stools.

**Authority:** Sec. 104, Pub. L. 110–314, 122 Stat. 3016 (August 14, 2008); Pub. L. 112–28, 125 Stat. 273 (August 12, 2011).

### § 1232.1 Scope.

This part establishes a consumer product safety standard for children's folding chairs and stools.

### § 1232.2 Requirements for children's folding chairs and stools.

(a) Each children's folding chair and stool shall comply with all applicable provisions of ASTM F2613–17a, *Standard Consumer Safety Specification for Children's Chairs and Stools*, approved on October 1, 2017. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from ASTM International, 100 Bar Harbor Drive, P.O. Box 0700, West Conshohocken, PA 19428; <http://www.astm.org>. You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(b) [Reserved]

**Alberta E. Mills,**

*Acting Secretary, Consumer Product Safety Commission.*

[FR Doc. 2017–26997 Filed 12–14–17; 8:45 am]

**BILLING CODE 6355–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

## DEPARTMENT OF THE TREASURY

### 19 CFR Part 133

[USCBP–2016–0076; CBP Dec. 17–21]

RIN 1515–AE21

### Donations of Technology and Related Support Services To Enforce Intellectual Property Rights

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document amends the U.S. Customs and Border Protection (CBP) regulations relating to the enforcement of intellectual property rights. This final rule implements section 308(d) of the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA), which requires CBP to prescribe regulatory procedures for the donation of technologies, training, or other related services for the purpose of assisting CBP in intellectual property enforcement.

**DATES:** Effective January 16, 2018.

**FOR FURTHER INFORMATION CONTACT:** Garrett D. Wright, Chief, Donations Acceptance Program, Office of Field Operations, U.S. Customs and Border Protection, telephone (202) 344–2344.

### SUPPLEMENTARY INFORMATION:

#### Background

The Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA), Public Law 114–125, 130 Stat. 122 (19 U.S.C. 4301 note), was enacted on February 24, 2016, and includes several provisions regarding trade facilitation and trade enforcement, some of which deal with improving U.S. Customs and Border Protection's (CBP's) intellectual property rights (IPR) enforcement at the border. Section 308(d) of the TFTEA requires the Commissioner of CBP to prescribe regulations to enable CBP to receive donations of hardware, software, equipment, and similar technologies, and to accept training and other support services, from private sector entities, for the purpose of enforcing IPR.

Acceptance of such donations must also be consistent with either section 482 of the Homeland Security Act of 2002, as amended by section 2 of the Cross-Border Trade Enhancement Act of 2016 (Pub. L. 114–279), or section 507 of the Department of Homeland Security

(DHS) Appropriations Act of 2004 (Pub. L. 108–90).

Section 482 of the Homeland Security Act replaced section 559 of Title V of Division F of the Consolidated Appropriations Act, 2014 (Pub. L. 113–76) and permits CBP, in consultation with the General Services Administration (GSA), to “enter into an agreement with any entity to accept a donation of personal property, money or nonpersonal services” to be used for certain CBP activities at most ports of entry where CBP performs inspection services. Pursuant to section 482(c)(3), CBP in consultation with GSA will establish criteria for evaluating donation proposals under section 482 and make such criteria publicly available.

If donations cannot be accepted under section 482, they may be accepted under section 507 of the DHS Appropriations Act of 2004. Section 507 made the DHS Gifts and Donations account “available to the Department of Homeland Security . . . for the Secretary of Homeland Security to accept, hold, administer and utilize gifts and bequests, including property to facilitate the work of the Department of Homeland Security.” Title V, Public Law 108–90, 117 Stat. 1153–1154. DHS policy on the acceptance of gifts pursuant to section 507 is contained in DHS Directive 112–02 and DHS Instruction 112–02–001. The Secretary of DHS delegated the authority to accept and utilize gifts to the heads of certain DHS components, including the Commissioner of CBP, in DHS Delegation 0006.

This document implements section 308(d) of the TFTEA by promulgating a new subpart H to part 133 of title 19 of the Code of Federal Regulations (CFR) which provides for the receipt and acceptance by CBP of donations of hardware, software, equipment, and similar technologies, as well as training and related support services, for the purpose of assisting CBP in enforcing IPR. New subpart H, as set forth in § 133.61, prescribes the methods by which donations of IPR technology and related support services may be made. Specifically, 19 CFR 133.61(a) sets forth the scope of this section and identifies the authority to accept donations, § 133.61(b) describes the donation process, and § 133.61(c) lays out the elements of the written donation agreement.

On January 17, 2017, CBP published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (82 FR 4800) proposing to amend its regulations pertaining to the enforcement of intellectual property rights in order to enhance CBP's intellectual property rights enforcement



capabilities. The NPRM solicited for public comments on the proposed rulemaking. The public comment period closed on March 3, 2017.

### Discussion of Comments

Three commenters responded to the solicitation of comments to the proposed rule. A description of the comments received, together with CBP's analysis, is set forth below.

*Comment:* One commenter, an association dedicated to serving the needs of the video game industry, commended CBP's efforts to enhance its engagement with intellectual property-intensive industries and border enforcement needs, but also voiced several concerns.

The first concern is related to proposed § 133.61(b). The commenter expressed concern with the procedure laid out in paragraph (b) because this "formalized" process might interrupt the dynamic nature of the relationship between CBP and the video game industry in providing training, as well as the tools CBP needs in order to accurately confirm the illegality of suspected infringing imports.

*CBP Response:* CBP seeks to maintain the dynamic relationship it has with the video game industry and other industries. The donation process that CBP is creating is intended to be streamlined, non-invasive, and flexible. For example, in certain circumstances, CBP and the industry partner may only need to enter into one written partnership agreement whereby any IPR donation proposal made pursuant to that agreement could be evaluated and, if viable, accepted at the local level. In addition, as explained below, the donation process does not apply to "sample" products or stand-alone training or educational seminars.

*Comment:* The commenter asked for clarification on whether a single donation offer, as envisioned by § 133.61(b), would cover a quantity or a range of items, or whether a donation offer must be submitted for each item contemplated for donation.

*CBP Response:* In general, a single donation offer could cover more than one item and/or a range of items assuming such items serve a similar IPR enforcement purpose. Each donation offer and each item, however, will be considered on a case-by-case basis.

*Comment:* The commenter also requested clarification on whether a single, written donation offer would encompass anticipated intermittent donations of samples of infringing products and circumvention devices. The commenter explained that current practice allows for video game

companies to donate hardware, software, samples of infringing products, circumvention devices that violate 17 U.S.C. 1201, and training materials along with a request that CBP seize like goods using a simple transmittal letter to CBP's Office of Trade, Regulations and Rulings, IPR Branch. Typically, these donations comprise numerous identical or comparable items, such as game copiers, other circumvention devices, or memory cards filled with pre-loaded games.

*CBP Response:* The process described in the public comment with regard to submissions of samples of genuine and infringing articles will not be changed with the new regulation. A distinction needs to be made between "donations" covered under section 308(d) of the TFTEA which are provided for the regular use by CBP personnel assisting with the enforcement of IPR, such as an x-ray machine or a high magnification microscope, and "samples" of merchandise provided to the IPR Branch for purposes of determining admissibility. The furnishing of samples of genuine and infringing articles is not covered by the intended scope of the Donations Acceptance Program under § 133.61. Rights owners, including the video game industry, will be able to continue to communicate and provide samples to the IPR Branch and field offices as the need for enforcement arises. Accordingly, based on this comment, CBP has amended the regulatory text in § 133.61(a) to clarify that articles provided to CBP as "samples," as referenced in 19 CFR 151.10 and 177.2, are not included within the scope of this rule.

*Comment:* The commenter also seeks clarification on whether the proposed donation offer requirements and process would hinder the ability of CBP or other DHS personnel, such as those of Immigration and Customs Enforcement (ICE), to request hardware or software samples from private companies for the purpose of conducting investigations.

*CBP Response:* The donation requirements will not hinder the current process of cooperation and information-sharing that regularly occurs between rights holders and DHS personnel. The regulations are not intended to affect the processing of criminal investigations into potential IPR violations within other DHS agencies, such as DHS/Homeland Security Investigations (HSI) under DHS/ICE.

With regard to CBP's civil administrative enforcement authority of IPR, if CBP makes a request to a rights holder for information, software and/or hardware, such request would not fall in the "donation" category as

contemplated by the regulations, but would be considered a request for a "sample" of merchandise to be used by CBP for authentication purposes with regard to a specific matter. The current process with CBP will continue unaffected by the donation regulations put in place.

*Comment:* The commenter is further concerned with regard to the waiver language in proposed § 133.61(c) ("... the service provider expressly waives any future claims against the government."). The commenter stated that the proposed language is overbroad and potentially captures all instances where a donor of technology and services pursues unrelated claims against the U.S. government. The commenter suggested that the waiver be reasonably tailored to the donation in question and not include "any claims against the government." Entering into a donation agreement with CBP should not foreclose any remedies against the government in cases unrelated to the donation agreement.

*CBP Response:* CBP agrees that a clarification is appropriate and has amended the regulatory text in 19 CFR 133.61(c) to address this concern.

*Comment:* Another commenter expressed a concern with the proposed rule. The commenter stated that it appears that the proposed rule would favor companies with more well-known intellectual property and a larger market share, undercutting the fundamental purposes of intellectual property rights, namely those which promote the availability of new technologies and competition in the market. The commenter asked for clarification how the proposed rule would benefit entities other than those with a market incentive to make donations.

*CBP Response:* The intent of the Act is to enhance IPR enforcement. Although enforcement of a particular IPR right clearly benefits the right-holder, other parties also benefit from IPR enforcement, in general.

*Comment:* The third commenter commended CBP for its focus on the implementation of section 308(d) of the TFTEA and appreciated the opportunity for CBP to accept technology to enrich inspection activity at all U.S. ports of entry. The commenter stated that the equipment and technology that may be used by agents will improve CBP's ability to identify counterfeits at even earlier stages in the detection stage process.

The commenter further stated that under the TFTEA, CBP will now be able to provide samples of counterfeits to rights holders, and hopes that CBP will share details, such as container number,



customs broker, freight forwarders, associated telephone numbers and email addresses once the goods have been deemed counterfeit. The sharing of this additional information would enable rights holders to analyze the data and provide CBP with additional information to identify illicit trade patterns.

*CBP Response:* This comment falls outside of the scope of 19 CFR 133.61. The proposed regulation deals with establishing a donation process so CBP can receive donations of technologies, equipment and other support services for the purpose of detecting potentially infringing articles and does not address CBP sharing information or samples to rights holders.

*Other changes:* CBP is adding the word “related” before the words “support services” throughout the regulatory text in order to clarify that only training and support services associated with a donation of hardware, software, equipment or technology fall within the scope of this regulation. Training services that may be donated pursuant to § 133.61 will be in the context of donated technology or equipment, in contrast to training services provided to assist with CBP’s general trade facilitation and trade enforcement pursuant to section 104 of the TFTEA.

CBP is also adding a reference to “hardware, software, equipment, technologies” to § 133.61(c) to clarify that a donation agreement may also cover hardware, software, equipment, and technologies, as well as training and other related support services.

The email address in proposed § 133.61(b) to which donation offers should be submitted has been updated to *dap@cbp.dhs.gov* to reflect the program’s current email address.

### Conclusion

After review of the comments, CBP has decided to adopt as final the proposed rule published in the **Federal Register** on January 17, 2017, with the changes described above.

### Executive Orders 12866, 13563 and 13771

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of

reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (“Reducing Regulation and Controlling Regulatory Costs”) directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

This final rule is not a “significant regulatory action,” under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has not reviewed this regulation. As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See OMB’s Memorandum titled “Guidance Implementing Executive Order 13771, Titled ‘Reducing Regulation and Controlling Regulatory Costs’” (April 5, 2017).

### Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires agencies to assess the impact of regulations on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

This rule will allow private sector entities to voluntarily donate technology, training, and other related support services to improve CBP’s ability to enforce intellectual property rights potentially related to their goods. As any entity with intellectual property could make these donations, this rule affects a substantial number of small entities. However, this rule imposes no new obligations on entities, including those considered small. Any small entity that chooses to make these donations will presumably do so because it believes the benefits of donating exceed the costs. Therefore, this rule will not have a significant economic impact on small entities. Given these reasons, CBP certifies that this rule, will not have a significant economic impact on a substantial number of small entities.

### Paperwork Reduction Act

An agency may not conduct, and a person is not required to respond to, a collection of information unless the

collection of information displays a valid control number assigned by OMB.

OMB approved collection 1651–0123 has been revised to reflect this new collection of information in this final rule for written offers of donations to CBP of technology, training, and other related support services in accordance with 19 CFR 133.61(b). The information collection reflects the additional burden hours for each written offer of donation provided to CBP as follows:

*Estimated number of annual respondents:* 50.

*Estimated number of annual responses:* 50.

*Estimated time burden per response:* 2 hours.

*Estimated total annual time burden:* 100 hours.

### Signing Authority

This document is being issued in accordance with 19 CFR 0.1(a)(1) pertaining to the Secretary of the Treasury’s authority (or that of his delegate) to approve regulations related to certain customs revenue functions.

### List of Subjects in 19 CFR Part 133

Circumvention devices, Copying or simulating trademarks, Copyrights, Counterfeit goods, Customs duties and inspection, Detentions, Donations, Reporting and recordkeeping requirements, Restricted merchandise, Seizures and forfeitures, Technology, Trademarks, Trade names, Support services.

### Amendments to Part 133 of the CBP Regulations

For the reasons set forth above, part 133 of title 19 of the Code of Federal Regulations (19 CFR part 133) is amended as set forth below.

### PART 133—TRADEMARKS, TRADE NAMES, AND COPYRIGHTS

■ 1. The general authority citation for part 133 continues, and the specific authority for new subpart H is added to read as follows:

**Authority:** 15 U.S.C. 1124, 1125, 1127; 17 U.S.C. 101, 601, 602, 603; 19 U.S.C. 66, 1202, 1499, 1526, 1624; 31 U.S.C. 9701.

\* \* \* \* \*

Section 133.61 also issued under Sec. 308(d), Pub. L. 114–125; Sec. 507, Pub. L. 108–90; Sec. 2, Pub. L. 114–279.

### Subpart G—[Reserved]

■ 2. Reserved subpart G is added.  
 ■ 3. Subpart H, consisting of § 133.61, is added to read as follows:

**Subpart H—Donations of Intellectual Property Rights Technology and Related Support Services**

**§ 133.61 Donations of intellectual property rights technology and related support services.**

(a) *Scope.* The Commissioner of U.S. Customs and Border Protection (CBP) is authorized to accept donations of hardware, software, equipment, and similar technologies, as well as related support services and training, from private sector entities, for the purpose of assisting CBP in enforcing intellectual property rights. Such acceptance must be consistent with the conditions set forth in this section and section 308(d) of the Trade Facilitation and Trade Enforcement Act of 2015 (19 U.S.C. 4301 note), as well as either section 482 of the Homeland Security Act of 2002, as amended by section 2 of the Cross-Border Trade Enhancement Act of 2016 (6 U.S.C. 301a), or section 507 of the Department of Homeland Security Appropriations Act of 2004 (Pub. L. 108–90). However, this section does not apply to merchandise provided to CBP as samples, e.g., as referenced in §§ 151.10 and 177.2 of this chapter.

(b) *Donation offer.* A donation offer must be submitted to CBP either via email, to [dap@cbp.dhs.gov](mailto:dap@cbp.dhs.gov), or mailed to the attention of the Executive Assistant Commissioner, Office of Field Operations, or his/her designee. The donation offer must describe the proposed donation in sufficient detail to enable CBP to determine its compatibility with existing CBP technologies, networks, and facilities (e.g. operating system or similar requirements, power supply requirements, item size and weight, etc.). The donation offer must also include information pertaining to the donation's scope, purpose, expected benefits, intended use, costs, and attached conditions, as applicable, that is sufficient to enable CBP to evaluate the donation and make a determination as to whether to accept it. CBP will notify the donor, in writing, if

additional information is requested or if CBP has determined that it will not accept the donation.

(c) *Agreement to accept donation.* If CBP accepts a donation of hardware, software, equipment, technologies, or related support services and training, for the purpose of enforcing intellectual property rights, CBP will enter into a signed, written agreement with an authorized representative of the donor. The agreement must contain all applicable terms and conditions of the donation. An agreement to accept a donation must provide that the hardware, software, equipment, technologies, or related support services and training are offered without the expectation of payment, and that the donor expressly waives any future claims, except those expressly reserved in the agreement, against the government related to the donation.

**Kevin K. McAleenan,**  
*Acting Commissioner, U.S. Customs and Border Protection.*

Approved: December 12, 2017.

**Timothy E. Skud,**  
*Deputy Assistant Secretary of the Treasury.*  
[FR Doc. 2017–27065 Filed 12–14–17; 8:45 am]

**BILLING CODE 9111–14–P**

**SOCIAL SECURITY ADMINISTRATION**

**20 CFR Part 404**

[Docket No. SSA–2017–0055]

RIN 0960–AI17

**Extension of Expiration Dates for Four Body System Listings**

**AGENCY:** Social Security Administration.  
**ACTION:** Final rule.

**SUMMARY:** We are extending the expiration dates of the following body systems in the Listing of Impairments (listings) in our regulations: Musculoskeletal System, Cardiovascular System, Digestive System, and Skin Disorders. We are making no other

revisions to these body systems in this final rule. This extension ensures that we will continue to have the criteria we need to evaluate impairments in the affected body systems at step three of the sequential evaluation processes for initial claims and continuing disability reviews.

**DATES:** This final rule is effective on December 15, 2017.

**FOR FURTHER INFORMATION CONTACT:** Cheryl A. Williams, Director, Office of Medical Policy, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1020. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our internet site, Social Security Online, at <http://www.socialsecurity.gov>.

**SUPPLEMENTARY INFORMATION:**

**Background**

We use the listings in appendix 1 to subpart P of part 404 of 20 CFR at the third step of the sequential evaluation process to evaluate claims filed by adults and children for benefits based on disability under the title II and title XVI programs.<sup>1</sup> 20 CFR 404.1520(d), 416.920(d), 416.924(d). The listings are in two parts: Part A has listings criteria for adults and Part B has listings criteria for children. If you are age 18 or over, we apply the listings criteria in part A when we assess your impairment or combination of impairments. If you are under age 18, we first use the criteria in part B of the listings when we assess your impairment(s). If the criteria in part B do not apply, we may use the criteria in part A when those criteria consider the effects of your impairment(s). 20 CFR 404.1525(b), 416.925(b).

**Explanation of Changes**

In this final rule, we are extending the dates on which the listings for the following four body systems will no longer be effective as set out in the following chart:

Listing	Current expiration date	Extended expiration date
Musculoskeletal System 1.00 and 101.00 .....	January 26, 2018 ...	January 27, 2020.
Cardiovascular System 4.00 and 104.00 .....	January 26, 2018 ...	January 27, 2020.
Digestive System 5.00 and 105.00 .....	January 26, 2018 ...	January 27, 2020.
Skin Disorders 8.00 and 108.00 .....	January 26, 2018 ...	January 27, 2020.

<sup>1</sup> We also use the listings in the sequential evaluation processes we use to determine whether

a beneficiary's disability continues. See 20 CFR 404.1594, 416.994, and 416.994a.

We continue to revise and update the listings on a regular basis, including those body systems not affected by this final rule.<sup>2</sup> We intend to update the four listings affected by this final rule as quickly as possible, but may not be able to publish final rules revising these listings by the current expiration dates. Therefore, we are extending the current expiration dates for the above listed body systems.

## Regulatory Procedures

### Justification for Final Rule

We follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in promulgating regulations. Section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5). Generally, the APA requires that an agency provide prior notice and opportunity for public comment before issuing a final regulation. The APA provides exceptions to the notice-and-comment requirements when an agency finds there is good cause for dispensing with such procedures because they are impracticable, unnecessary, or contrary to the public interest.

We have determined that good cause exists for dispensing with the notice and public comment procedures. 5 U.S.C. 553(b)(B). This final rule only extends the date on which four body system listings will no longer be effective. It makes no substantive changes to our rules. Our current regulations<sup>3</sup> provide that we may extend, revise, or promulgate the body system listings again. Therefore, we have determined that opportunity for prior comment is unnecessary, and we are issuing this regulation as a final rule.

In addition, for the reasons cited above, we find good cause for dispensing with the 30-day delay in the effective date of this final rule. 5 U.S.C. 553(d)(3). We are not making any substantive changes to the listings in these body systems. Without an extension of the expiration dates for these listings, we will not have the criteria we need to assess medical impairments in these four body systems at step three of the sequential evaluation processes. We therefore find it is in the public interest to make this final rule effective on the publication date.

<sup>2</sup> Since we last extended the expiration dates of the listings affected by this rule in August 2016 (81 FR 51101), we have published final rules revising the medical criteria for evaluating mental disorders (81 FR 66137 (2016)) and HIV infection (81 FR 86915 (2016)).

<sup>3</sup> See the first sentence of appendix 1 to subpart P of part 404 of 20 CFR.

### Executive Order 12866, as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that this final rule does not meet the requirements for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, OMB did not review it. We also determined that this final rule meets the plain language requirement of Executive Order 12866.

### Regulatory Flexibility Act

We certify that this final rule does not have a significant economic impact on a substantial number of small entities because it affects only individuals. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

### Paperwork Reduction Act

These rules do not create any new or affect any existing collections and, therefore, do not require Office of Management and Budget approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income)

### List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

**Nancy A. Berryhill,**

*Acting Commissioner of Social Security.*

For the reasons set out in the preamble, we are amending appendix 1 to subpart P of part 404 of chapter III of title 20 of the Code of Federal Regulations as set forth below.

### PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE

(1950— )

#### Subpart P—[Amended]

■ 1. The authority citation for subpart P of part 404 continues to read as follows:

**Authority:** Secs. 202, 205(a)–(b) and (d)–(h), 216(i), 221(a), (i), and (j), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a)–(b) and (d)–(h), 416(i), 421(a), (i), and (j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. Amend appendix 1 to subpart P of part 404 by revising items 2, 5, 6, and 9 of the introductory text before part A to read as follows:

#### Appendix 1 to Subpart P of Part 404—Listing of Impairments

\* \* \* \* \*

2. Musculoskeletal System (1.00 and 101.00): January 27, 2020.

\* \* \* \* \*

5. Cardiovascular System (4.00 and 104.00): January 27, 2020.

6. Digestive System (5.00 and 105.00): January 27, 2020.

\* \* \* \* \*

9. Skin Disorders (8.00 and 108.00): January 27, 2020.

\* \* \* \* \*

[FR Doc. 2017–27086 Filed 12–14–17; 8:45 am]

BILLING CODE 4191–02–P

### PENSION BENEFIT GUARANTY CORPORATION

#### 29 CFR Parts 4022 and 4044

#### Allocation of Assets in Single-Employer Plans; Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans to prescribe interest assumptions under the benefit payments regulation for valuation dates in January 2018 and interest assumptions under the asset allocation regulation for valuation dates in the first quarter of 2018. The interest assumptions are used for valuing and paying benefits under terminating single-employer plans covered by the pension insurance system administered by PBGC.

**DATES:** Effective January 1, 2018.

**FOR FURTHER INFORMATION CONTACT:** Daniel S. Liebman ([Liebman.daniel@PBGC.gov](mailto:Liebman.daniel@PBGC.gov)), Acting Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005, 202–326–4400 ext. 6510. (TTY/TDD users may call the Federal relay service toll free at 1–800–877–8339 and ask to be connected to 202–326–4400 ext. 6510.)

**SUPPLEMENTARY INFORMATION:** PBGC's regulations on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) and Benefits Payable in

Terminated Single-Employer Plans (29 CFR part 4022) prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions in the regulations are also published on PBGC’s website (<http://www.pbgc.gov>).

The interest assumptions in appendix B to part 4044 are used to value benefits for allocation purposes under ERISA section 4044. PBGC uses the interest assumptions in appendix B to part 4022 to determine whether a benefit is payable as a lump sum and to determine the amount to pay. Appendix C to part 4022 contains interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC’s historical methodology. Currently, the rates in appendices B and C of the benefit payment regulation are the same.

The interest assumptions are intended to reflect current conditions in the financial and annuity markets. Assumptions under the asset allocation regulation are updated quarterly; assumptions under the benefit payments regulation are updated monthly. This final rule updates the benefit payments interest assumptions for January 2018, and updates the asset allocation interest assumptions for the first quarter (January through March) of 2018.

The first quarter 2018 interest assumptions under the allocation

regulation will be 2.39 percent for the first 20 years following the valuation date and 2.60 percent thereafter. In comparison with the interest assumptions in effect for the fourth quarter of 2017, this represents no change in the select period (the period during which the select rate, the initial rate, applies), an increase of 0.05 percent in the select rate, and a decrease of 0.03 percent in the ultimate rate, the final rate.

The January 2018 interest assumptions under the benefit payments regulation will be 0.75 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit’s placement in pay status. In comparison with the interest assumptions in effect for December 2017, these assumptions are unchanged.

PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the valuation and payment of benefits under plans with valuation dates during January 2018, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a “significant regulatory action”

under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

**List of Subjects**

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

**PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS**

- 1. The authority citation for part 4022 continues to read as follows:

**Authority:** 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

- 2. In appendix B to part 4022, Rate Set 291 is added at the end of the table to read as follows:

**Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments**

\* \* \* \* \*

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		$i_1$	$i_2$	$i_3$	$n_1$	$n_2$
291	1–1–18	2–1–18	0.75	4.00	4.00	4.00	7	8

- 3. In appendix C to part 4022, Rate Set 291 is added at the end of the table to read as follows:

**Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments**

\* \* \* \* \*

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		$i_1$	$i_2$	$i_3$	$n_1$	$n_2$
291	1–1–18	2–1–18	0.75	4.00	4.00	4.00	7	8

**PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS**

■ 4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, an entry for January–March 2018 is added at the end of the table to read as follows:

**Appendix B to Part 4044—Interest Rates Used to Value Benefits**

\* \* \* \* \*

For valuation dates occurring in the month—	The values of $i_t$ are:					
	$i_t$	for $t =$	$i_t$	for $t =$	$i_t$	for $t =$
January–March 2018 .....	0.0239	1–20	0.0260	>20	N/A	N/A

Issued in Washington, DC.

**Daniel S. Liebman,**

*Acting Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.*

[FR Doc. 2017–26963 Filed 12–14–17; 8:45 am]

**BILLING CODE 7709–02–P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 100**

[Docket No. USCG–2017–0916]

**Special Local Regulation; Southern California Annual Marine Events for the San Diego Captain of the Port Zone—San Diego Parade of Lights**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the San Diego Parade of Lights special local regulations on the waters of San Diego Bay, California on December 17, 2017. These special local regulations are necessary to provide for the safety of the participants, crew, spectators, sponsor vessels, and general users of the waterway. During the enforcement period, persons and vessels are prohibited from anchoring, blocking, loitering, or impeding within this regulated area unless authorized by the Captain of the Port, or his designated representative.

**DATES:** The regulations in 33 CFR 100.1101 will be enforced from 4:30 p.m. through 8:30 p.m. on December 17, 2017 for Item 5 in Table 1 of § 100.1101.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this publication of enforcement, call or email Lieutenant Junior Grade Briana Biagas, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone (619) 278–7656, email [D11MarineEventsSD@uscg.mil](mailto:D11MarineEventsSD@uscg.mil).

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the special local regulations in 33 CFR 100.1101 for the San Diego Parade of Lights in San Diego Bay, CA in 33 CFR 100.1101, Table 1, Item 5 of that section from 4:30 p.m. until 8:30 p.m. on December 17, 2017. This enforcement action is being taken to provide for the safety of life on navigable waterways during the event. The Coast Guard’s regulation for recurring marine events in the San Diego Captain of the Port Zone identifies the regulated entities and area for this event. Under the provisions of 33 CFR 100.1101, persons and vessels are prohibited from anchoring, blocking, loitering, or impeding within this regulated area, unless authorized by the Captain of the Port, or his designated representative. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This document is issued under authority of 5 U.S.C. 552(a) and 33 CFR 100.1101. In addition to this document in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via the Local Notice to Mariners, Broadcast Notice to Mariners, and local advertising by the event sponsor.

If the Captain of the Port Sector San Diego or his designated representative determines that the regulated area need not be enforced for the full duration stated on this document, he or she may use a Broadcast Notice to Mariners or other communications coordinated with the event sponsor to grant general permission to enter the regulated area.

Dated: December 5, 2017.

**J.R. Buzzella,**

*Captain, U.S. Coast Guard, Captain of the Port San Diego.*

[FR Doc. 2017–27111 Filed 12–14–17; 8:45 am]

**BILLING CODE 9110–04–P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

[Docket No. USCG–2016–0776]

**RIN 1625–AA09**

**Drawbridge Operation Regulation; Ashley River, Charleston, SC**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is modifying the operating schedule that governs the US17 Highway Bridges (Ashley River Bridges), across the Ashley River, miles 2.4 and 2.5, in Charleston, SC. This rule requires a bridge tender to be present during daytime hours only from 9 a.m. to 4 p.m. daily for on signal openings. All other times a 12 hour advanced notification is required. This modification provides relief to vehicle traffic congestion with minimal effect on navigation.

**DATES:** This rule is effective January 16, 2018.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>. Type USCG–2016–0776 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rulemaking.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email LT Justin Heck, Coast Guard Sector Charleston, SC, Waterways Management Division; telephone 843–740–3184, email [justin.c.heck@uscg.mil](mailto:justin.c.heck@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR Code of Federal Regulations  
 DHS Department of Homeland Security  
 FR Federal Register  
 OMB Office of Management and Budget  
 NPRM Notice of Proposed Rulemaking  
 (Advance, Supplemental)

## § Section

U.S.C. United States Code

SCDOT South Carolina Department of

Transportation

SC South Carolina

**II. Background Information and Regulatory History**

On April 24, 2017, we published a notice of proposed rulemaking (NPRM) entitled, “Drawbridge Operation Regulation; Ashley River, Charleston, SC” in the **Federal Register** (82 FR 18879). We received no comments on this rule.

**III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 33 U.S.C. 499.

The US17 Highway Bridges (Ashley River Bridges), across the Ashley River, miles 2.4 and 2.5, at Charleston, SC are parallel double leaf bascule bridges. Each bridge has a vertical clearance of 24 feet in the closed position at mean high water and a horizontal clearance of 90 feet. Presently, in accordance with 33 CFR 117.915(a), the US17 Highway Bridges (Ashley River Bridges) are required to open on signal; except that, from 7 a.m. to 9 a.m. Monday through Friday and 4 p.m. to 7 p.m. daily, the draws need to be opened only if at least 12 hours notice is given. The draws of either bridge shall open as soon as possible for the passage of vessels in an emergency involving danger to life or property.

On May 19, 2015, the HDR/ICA contractor for South Carolina Department of Transportation requested that the Coast Guard review the current bridge operating schedule to determine whether a change could be made to improve vehicle traffic flow in the area. The bridge owner, South Carolina Department of Transportation (SCDOT) was consulted on this issue and concurred with the recommendations which would change the current 12 hour advance notice for a bridge opening to include night time hours.

**IV. Discussion of Comments, Changes and the Final Rule**

The Coast Guard provided a comment period of 30 days and no comments were received.

**V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protesters.

**A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget (OMB) and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on: (1) The ability for vessels to transit the bridge given advanced notice, (2) vessels that can transit under the bridge without an opening may do so at anytime, and (3) the draws of either bridge shall open as soon as possible for the passage of vessels in an emergency.

**B. Impact on Small Entities**

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received zero comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine

compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

**C. Collection of Information**

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

**D. Federalism and Indian Tribal Government**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

No comments were received; therefore, no changes were made to the regulatory text.

**E. Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule simply promulgates the operating regulations or procedures for drawbridges. This action is categorically excluded from further review, under figure 2-1, paragraph (32)(e), of the Instruction. A Record of Environmental Consideration and a Memorandum for the Record are not required for this rule.

### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

### List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

### PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 33 CFR 1.05-1; and Department of Homeland Security Delegation No. 0170.1.

■ 2. Amend § 117.915 by revising paragraph (a) to read as follows:

#### § 117.915 Ashley River.

(a) The draws of the US17 Highway Bridges (Ashley River Bridges), mile 2.4 and 2.5 at Charleston, SC shall open on signal; except that, from 4 p.m. to 9 a.m. daily, the draws shall open only if at least 12 hours notice is given. The draws of either bridge shall open as soon as possible for the passage of vessels in an emergency involving danger to life or property.

\* \* \* \* \*

Dated: December 11, 2017.

**Peter J. Brown,**

*Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.*

[FR Doc. 2017-26998 Filed 12-14-17; 8:45 am]

**BILLING CODE 9110-04-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R01-OAR-2015-0654; A-1-FRL-9966-28-Region 1]

### Air Plan Approval; CT; Decommissioning of Stage II Vapor Recovery Systems

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the Connecticut Department of Energy and Environmental Protection (CT DEEP). This revision includes regulatory amendments that require gasoline dispensing facilities (GDFs) to decommission their Stage II vapor recovery systems on or before July 1, 2015, and a demonstration that such removal is consistent with the Clean Air Act and EPA guidance. This revision also includes regulatory amendments that strengthen Connecticut's requirements for Stage I vapor recovery systems at GDFs. The intended effect of this action is to approve Connecticut's revised vapor recovery regulations. This action is being taken under the Clean Air Act.

**DATES:** This rule is effective on January 16, 2018.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2015-0654. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available at <http://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests

that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Eric Rackauskas, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100 [mail code: OPE05-2], Boston, MA 02109-3912, telephone number (617) 918-1628, fax (617) 918-0628, email [rackauskas.eric@epa.gov](mailto:rackauskas.eric@epa.gov).

### SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

### Table of Contents

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

### I. Background and Purpose

On April 10, 2017 (82 FR 17161), EPA published a Notice of Proposed Rulemaking (NPR) proposing approval of a SIP revision submitted by the CT DEEP on September 14, 2015. The SIP revision consists of Connecticut's newly adopted section 22a-174-30a, *Stage I Vapor Recovery*, of the Regulations of Connecticut State Agencies (RCSA) as well as the following revised RCSA sections:

- 22a-174-3a, *Permit to Construct and Operate Stationary Sources*, specifically 22a-174-3a(a);
- 22a-174-20, *Control of Organic Compound Emissions*, specifically 22a-174-20(a), 22a-174-20(b)(1) through (b)(16), and 22a-174-20(ee); and
- 22a-174-32, *Reasonably Available Control Technology (RACT) for Volatile Organic Compounds*, specifically 22a-174-32(b).

In addition, this SIP revision also includes Public Act No. 13-120, *An Act Concerning Gasoline Vapor Recovery Systems*. Connecticut Public Act No. 13-120 revises section 22a-174e of the Connecticut General Statutes (CGS). The regulations and statute require the decommissioning of Stage II vapor recovery systems and strengthen Stage I vapor recovery requirements. The SIP submittal also includes a demonstration that removal of Stage II vapor recovery systems in Connecticut is consistent with the Clean Air Act and EPA guidance. Finally, the SIP revision includes the withdrawal of RCSA section 22a-174-30, *Dispensing of Gasoline/Stage I and Stage II Vapor Recovery*, from the Connecticut SIP.

Connecticut subsequently modified the September 14, 2015 SIP revision via a letter dated January 20, 2017 wherein Connecticut withdrew RCSA 22a-174-3a(a) from consideration as part of this SIP revision.

A detailed discussion of Connecticut's September 14, 2015 SIP revision and EPA's rationale for proposing approval of the SIP revision were provided in the NPR and will not be restated in this notice. No public comments were received on the NPR.

## II. Final Action

EPA is approving Connecticut's September 14, 2015 SIP revision. Specifically, EPA is approving, and incorporating into the Connecticut SIP, the following regulations and statute: Newly adopted RCSA section 22a-174-30a; revised RCSA subsection 22a-174-20(a); revised RCSA subsections 22a-174-20(b)(6) through (b)(16); revised RCSA subsection 22a-174-20(ee), and revised RCSA subsection 22a-174-32(b); as well as Connecticut Public Act No. 13-120. EPA is also approving Connecticut's request to withdraw RCSA section 22a-174-30 from the Connecticut SIP because it has been replaced with RCSA section 22a-174-30a, which is more stringent. EPA is approving this SIP revision because it meets all applicable requirements of the CAA and EPA guidance, and it will not interfere with any applicable requirement concerning attainment or reasonable further progress towards attainment of any NAAQS, or with any other applicable requirement of the Clean Air Act.

## III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Connecticut regulations described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available through <http://www.regulations.gov>.

## IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely

approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the

Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 13, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 24, 2017.

**Deborah A. Szaro,**

*Acting Regional Administrator, EPA New England.*

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

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLAN

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

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

### Subpart H—Connecticut

■ 2. Section 52.370 is amended by adding paragraphs (c)(95)(i)(D) and (c)(117) to read as follows:

#### § 52.370 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(95) \* \* \*

(i) \* \* \*

(D) Regulation 22a-174-30, which was approved in paragraph (c)(95)(i)(A), is removed and replaced by Regulation



22a-174-30a, see paragraph (c)(117)(i)(B).

\* \* \* \* \*

(117) Revisions to the State Implementation Plan submitted by the Connecticut Department of Energy and Environmental Protection on September 14, 2015.

(i) Incorporation by reference

(A) "Control of Organic Compound Emissions," Regulation 22a-174-20, the sections listed below, effective July 8, 2015, as published in the Connecticut Law Journal on November 24, 2015.

(1) Section 20(a)(7);

(2) Section (b)(10);

(3) Sections (b)(12) through (b)(16);

(4) Section (20)(ee)

(B) "Control of Organic Compound Emissions," Regulation 22a-174-30a "Stage I Vapor Recovery," effective July 8, 2015, as published in the Connecticut Law Journal on November 24, 2015.

(C) "Control of Organic Compound Emissions," Regulation 22a-174-32(b)(3), effective July 8, 2015, as published in the Connecticut Law Journal on November 24, 2015.

(D) House Bill No. 6534, Public Act No. 13-120, "An Act Concerning Gasoline Vapor Recovery Systems," approved June 18, 2013.

(ii) Additional materials.

(A) Letter from the Connecticut Department of Energy and

Environmental Protection, dated September 14, 2015, submitting a revision to the Connecticut State Implementation Plan.

■ 3. In § 52.385, Table 52.385 is amended by: Adding entries under existing state citations 22a-174-20 and 22a-174-30; adding an entry for state citation 22a-174-30a; adding an entry under existing state citation 22a-174-32, and adding a new entry for new Connecticut Public Act 13-120 to the end of the table to read as follows:

**§ 52.385 EPA-approved Connecticut regulations.**

\* \* \* \* \*

TABLE 52.385—EPA-APPROVED REGULATIONS

Connecticut State citation	Title/subject	Dates		Federal Register citation	Section 52.370	Comments/description
		Date adopted by State	Date approved by EPA			
22a-174-20	Control of Organic Compound Emissions.	7/8/15	12/15/2017	[Insert <b>Federal Register</b> citation].	(c)117	Removes sections (b)(6)–(b)(9) and (b)(11), Revises sections (a)(7), (b)(10), sections (b)(12)–(b)(16), and section (ee).
22a-174-30	Dispensing of Gasoline/Stage II Vapor Recovery.	7/8/15	12/15/2017	[Insert <b>Federal Register</b> citation].	(c)117	22a-174-30 was repealed by CT and withdrawn from the SIP and replaced by 22a-174-30a.
22a-174-30a	Stage I Vapor Recovery.	7/8/15	12/15/2017	[Insert <b>Federal Register</b> citation].	(c)117	Replaces the repealed section 22a-174-30.
22a-174-32	Reasonably available control technology for volatile organic compounds.	7/8/15	12/15/2017	[Insert <b>Federal Register</b> citation].	(c)117	Revises section (b)(3).
Connecticut Public Act No. 13-120.	An act concerning gasoline Vapor recovery systems.	6/18/13	12/15/2017	[Insert <b>Federal Register</b> citation].	(c)117	Revises section 22a-174e of the Connecticut General Statutes to require decommissioning of Stage II Vapor Recovery Systems.

[FR Doc. 2017-26900 Filed 12-14-17; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R09-OAR-2017-0377; FRL-9972-03-Region 9]

**Approval of Arizona Air Plan Revision; San Manuel, Arizona; Second 10-Year Sulfur Dioxide Maintenance Plan**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final rulemaking action to approve, as part of the State Implementation Plan (SIP) for the State

of Arizona, the second 10-year maintenance plan for the San Manuel area for the 1971 National Ambient Air Quality Standards ("standards") for sulfur dioxide (SO<sub>2</sub>).

**DATES:** This final rule is effective on January 16, 2018.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2017-0377. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are

available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Ashley Graham, EPA Region IX, (415) 972-3877, [graham.ashleyr@epa.gov](mailto:graham.ashleyr@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, the words "we," "us," or "our" refer to the EPA.

**Table of Contents**

- I. Proposed Action
- II. Public Comments and EPA Responses
- III. EPA Action
- IV. Statutory and Executive Order Reviews

**I. Proposed Action**

On October 5, 2017 (82 FR 46444), the EPA proposed to approve the second 10-year maintenance plan for the San

Manuel, Arizona SO<sub>2</sub> maintenance area. Submitted by the Arizona Department of Environmental Quality on April 21, 2017, the San Manuel second 10-year maintenance plan (“plan”) demonstrates maintenance of the 1971 SO<sub>2</sub> standards through the second maintenance period of 2018–2028.

We proposed to approve the plan because we determined that it complied with the relevant Clean Air Act (CAA or “Act”) requirements. Our proposed action contains more information on the plan and our evaluation (82 FR 46444, October 5, 2017).

## II. Public Comments and EPA Responses

The EPA’s proposed action provided a 30-day public comment period. During this period, we received one anonymous comment on October 10, 2017. The comment raised issues that are outside the scope of our proposed approval of the San Manuel second 10-year maintenance plan.

## III. EPA Action

The EPA is taking final rulemaking action to approve the San Manuel second 10-year SO<sub>2</sub> maintenance plan under sections 110 and 175A of the CAA. As authorized in section 110(k)(3) of the Act, the EPA is approving the submitted SIP revision because it fulfills all relevant requirements.

## IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it publishes in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 13, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving the revision to the State of Arizona’s SIP may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2)).

## List of Subjects in 40 CFR Part 52

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

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

Dated: December 5, 2017.

**Alexis Strauss,**

*Acting Regional Administrator, EPA Region IX.*

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

- 1. The authority citation for Part 52 continues to read as follows:

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

### Subpart D—Arizona

- 2. In § 52.120, table 1 in paragraph (e) is amended by adding the entry “San Manuel Sulfur Dioxide Maintenance Plan Renewal, 1971 Sulfur Dioxide National Ambient Air Quality Standards (April 2017)” to read as follows:

#### § 52.120 Identification of plan.

\* \* \* \* \*

(e) \* \* \*

TABLE 1—EPA-APPROVED NON-REGULATORY AND QUASI-REGULATORY MEASURES

[Excluding certain resolutions and statutes, which are listed in tables 2 and 3, respectively]<sup>1</sup>

Name of SIP provision	Applicable geographic or nonattainment area or title/ subject	State submittal date	EPA approval date	Explanation
*	*	*	*	*
<b>Part D Elements and Plans (Other than for the Metropolitan Phoenix or Tucson Areas)</b>				
*	*	*	*	*
San Manuel Sulfur Dioxide Maintenance Plan Renewal, 1971 Sulfur Dioxide National Ambient Air Quality Standards (April 2017).	San Manuel Sulfur Dioxide Air Quality Planning Area.	April 21, 2017 .....	December 15, 2017, [insert <b>Federal Register</b> citation].	Adopted by the Arizona Department of Environmental Quality on April 21, 2017. Fulfills requirements for second 10-year maintenance plan.
*	*	*	*	*

<sup>1</sup> Table 1 is divided into three parts: Clean Air Act Section 110(a)(2) State Implementation Plan Elements (excluding Part D Elements and Plans), Part D Elements and Plans (other than for the Metropolitan Phoenix or Tucson Areas), and Part D Elements and Plans for the Metropolitan Phoenix and Tucson Areas.

\* \* \* \* \*

[FR Doc. 2017-26971 Filed 12-14-17; 8:45 am]  
**BILLING CODE 6560-50-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

[Docket No. 170505465-7999-02]

RIN 0648-BG87

**Reef Fish Fishery of the Gulf of Mexico; Gray Triggerfish Management Measures; Amendment 46**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues regulations to implement management measures described in Amendment 46 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), as prepared by the Gulf of Mexico Fishery Management Council (Council) (Amendment 46). For gray triggerfish, this final rule revises the recreational fixed closed season, recreational bag limit, recreational minimum size limit, and commercial trip limit. Additionally, Amendment 46 establishes a new rebuilding time period for the Gulf of Mexico (Gulf) gray triggerfish stock. The purpose of this final rule is to implement management measures to assist in rebuilding the Gulf

gray triggerfish stock and achieve optimum yield (OY).

**DATES:** This final rule is effective January 16, 2018.

**ADDRESSES:** Electronic copies of Amendment 46, which includes an environmental assessment, a fishery impact statement, a Regulatory Flexibility Act (RFA) analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office website at [http://sero.nmfs.noaa.gov/sustainable\\_fisheries/gulf\\_fisheries/reef\\_fish/2017/am46\\_gray\\_trigger/documents/pdfs/gulf\\_reef\\_am46\\_gray\\_trigg\\_final.pdf](http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/reef_fish/2017/am46_gray_trigger/documents/pdfs/gulf_reef_am46_gray_trigg_final.pdf).

**FOR FURTHER INFORMATION CONTACT:** Lauren Waters, Southeast Regional Office, NMFS, telephone: 727-824-5305; email: [Lauren.Waters@noaa.gov](mailto:Lauren.Waters@noaa.gov).

**SUPPLEMENTARY INFORMATION:** NMFS and the Council manage the Gulf reef fish fishery, which includes gray triggerfish, under the FMP. The Council prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*).

On August 30, 2017, NMFS published a notice of availability for Amendment 46 and requested public comment (82 FR 41205). On September 25, 2017, NMFS published a proposed rule for Amendment 46 and requested public comment (82 FR 44551). The proposed rule and Amendment 46 outline the rationale for the actions contained in this final rule. A summary of the management measures described in

Amendment 46 and implemented by this final rule is provided below.

The most recent Southeast Data, Assessment, and Review (SEDAR) stock assessment for gray triggerfish was completed and reviewed by the Council's Scientific and Statistical Committee (SSC) in October 2015 (SEDAR 43). SEDAR 43 indicated that the gray triggerfish stock was not experiencing overfishing but remained overfished and would not be rebuilt by the end of 2017 as previously projected. On November 2, 2015, NMFS notified the Council that the gray triggerfish stock was not making adequate progress toward rebuilding, and the Council subsequently began development of Amendment 46 to establish a new rebuilding time period and other management measures to achieve OY and rebuild the stock.

**Management Measures Contained in This Final Rule**

For gray triggerfish, this final rule revises the recreational fixed closed season, recreational bag limit, recreational minimum size limit, and commercial trip limit. NMFS and the Council are implementing changes to the recreational management measures to help constrain recreational landings to the recreational annual catch target (ACT) and to avoid triggering accountability measures (AMs) resulting in an in-season closure or post-season payback that would occur if landings exceed the recreational annual catch limit (ACL). The increase in the commercial trip limit will allow those commercial fishermen who encounter gray triggerfish to harvest more fish per trip while continuing to constrain

commercial landings to the commercial ACT.

#### *Recreational Seasonal Closure*

The current recreational seasonal closure for gray triggerfish in the Gulf is from June 1 through July 31, and was established in Amendment 37 to the FMP to protect gray triggerfish during the peak spawning season and help constrain landings to the recreational ACT (78 FR 27084, May 5, 2013). However, recreational landings have exceeded the recreational ACL or adjusted ACL the last 4 years. This final rule establishes an additional recreational fixed closed season for gray triggerfish from January 1 through the end of February, which is expected to reduce recreational landings and help rebuild the stock within the rebuilding time period established in Amendment 46.

#### *Recreational Bag Limit*

The current recreational bag limit was set in Amendment 37 and is 2-fish per person per day within the overall 20-fish aggregate reef fish bag limit. This final rule reduces the recreational gray triggerfish bag limit to 1 fish per person per day within the 20-fish aggregate reef fish bag limit.

As described in Amendment 46, from 2013 through 2015, approximately 10 percent of recreational trips with reef fish landings harvested 2 gray triggerfish within the 20-fish aggregate bag limit. NMFS expects the change to the bag limit to reduce recreational landings by 15 percent, which will help constrain harvest to the recreational ACT and allow the sector to remain open through the end of the fishing year.

#### *Recreational Minimum Size Limit*

The current recreational minimum size limit for gray triggerfish is 14 inches (35.6 cm), fork length (FL), and was established in Amendment 30A to the FMP (73 FR 38139, July 3, 2008). This final rule increases the minimum size limit to 15 inches (38.1 cm), FL. Increasing the recreational minimum size limit will increase the gray triggerfish stock spawning potential by maintaining larger-sized fish, which produce more eggs, and is expected to help slow recreational harvest.

#### *Commercial Trip Limit*

The current commercial trip limit is 12 fish per trip, and was established in Amendment 37 to help constrain commercial harvest to the commercial ACT and avoid an in-season closure as a result of the AMs being triggered (78 FR 27084, May 5, 2013). This final rule

increases the trip limit to 16 fish per trip.

As described in Amendment 46, since implementation of the 12 fish commercial trip limit in 2013, commercial landings have been consistently below the commercial ACT. Analysis of commercial trips demonstrated that 80 percent of trips caught 10 gray triggerfish or less. This indicates that gray triggerfish is primarily a non-target species by the commercial sector and that increasing the commercial trip limit will likely result in only a small change in the weight projected to be landed during a fishing year. However, increasing the commercial trip limit will allow those fishermen who encounter the species the opportunity to harvest more fish. This will help achieve OY for the stock while continuing to constrain commercial landings to the commercial ACT, which is consistent with rebuilding the stock within the rebuilding time period.

#### **Measures in Amendment 46 Not Codified Through This Final Rule**

In addition to the measures implemented and codified by this final rule, Amendment 46 contains actions to establish a rebuilding timeframe and to consider alternatives for the commercial and recreational ACTs and ACLs.

#### *Rebuilding Time Period and Commercial and Recreational ACTs and ACLs*

Amendment 37 established a 5-year rebuilding time period, expiring in 2017, and the current gray triggerfish commercial and recreational ACTs and ACLs. Amendment 46 establishes a new rebuilding time period for the Gulf gray triggerfish stock as a result of the stock status determined through SEDAR 43, and maintains the current commercial and recreational ACLs and ACTs.

In Amendment 46, the Council determined that a 9-year rebuilding time period was as short as possible, taking into account the status and biology of the stock and the needs of the associated fishing communities. Although the acceptable biological catch recommendation by the SSC associated with the 9-year time period allowed for an increase in harvest, the Council chose to adopt a more conservative approach and maintain the current commercial and recreational ACLs and ACTs for gray triggerfish that were set through the final rule for Amendment 37 (78 FR 27084, May 9, 2013).

#### **Comments and Responses**

NMFS received 26 comment submissions from individuals on the

notice of availability and proposed rule for Amendment 46. Eleven of the individual comments agreed with portions of, or the entirety of, the actions in Amendment 46 and proposed rule. Other submissions addressed issues beyond the scope of the actions considered in Amendment 46 and the proposed rule, such as revising the sector allocations, separating the recreational sector into private and charter vessel/headboat components, and starting a tag program. Specific comments related to the actions contained in Amendment 46 and the proposed rule are summarized and responded to below.

*Comment 1:* Increasing the commercial trip limit while implementing further restrictions on the recreational sector is not fair and is not consistent with rebuilding a gray triggerfish stock that is currently determined to be overfished.

*Response:* NMFS disagrees.

Amendment 37 to the FMP set the current sector ACTs and ACLs using an allocation of 79 percent of the stock ACL to the recreational sector and 21 percent of the stock ACL to the commercial sector (78 FR 27084, May 9, 2013). There are in-season AMs that close harvest for the recreational and commercial sectors when they reach or are projected to reach their respective ACT. However, the recreational sector has exceeded both the recreational ACT and ACL each year from 2013 through 2016. The commercial sector has not exceeded the commercial ACT since 2013. Therefore, the Council determined, and NMFS agrees, that it is appropriate to implement additional harvest restrictions for the recreational sector while increasing the trip limit for the commercial sector. The recreational management measures will reduce the risk of the recreational sector exceeding its ACL and provide for a longer recreational season. The increase in the commercial trip limit will help achieve OY while the stock continues to rebuild.

In developing Amendment 46, the Council reviewed five trips limits alternatives and determined that a trip limit of 16 fish per trip best addressed the needs of fishing communities while continuing to constrain commercial landings to the commercial ACL. The trip limit being implemented in this final rule is expected to result in a minor increase in annual commercial landings of 2.79 percent a year over the current level of landings. However, this increase will allow those fishermen who encounter the species the opportunity to harvest more fish.

*Comment 2:* The gray triggerfish stock is the most abundant that it has been in

recent years, and the harvest limits should be increased.

*Response:* NMFS disagrees that harvest limits should be increased. The SEDAR 43 stock assessment for Gulf gray triggerfish was completed in 2015 and indicated that the gray triggerfish stock was improving and was no longer undergoing overfishing, but remained overfished and would not rebuild by the end of the previously specified rebuilding time period. In Amendment 46, the Council considered alternatives to increase the sector ACTs and ACLs. However, the Council determined, and NMFS agrees, it is not appropriate to increase harvest levels given the prior inadequate progress in rebuilding the stock. Further, maintaining the current harvest levels will increase the likelihood that the stock rebuilds by the end of the new 9-year time period.

*Comment 3:* A closure in January and February will negatively impact winter residents and tourists in the region.

*Response:* The Council considered several alternatives for an additional recreational closed season, which is intended to work with the current June and July seasonal closure, the decrease in the recreational bag limit, and the increase in the recreational minimum size limit and are expected to slow the rate of recreational harvest, constrain recreational harvest to the recreational ACL, and reduce the likelihood of an in-season closure. Alternatives for the additional closed season included, the January through February preferred alternative, a more limited closure in January only, an extended summer closure through August, and a closure for the first 7 months of the year. NMFS understands that any closed season may negatively impact those who would like to fish during that time. However, fishing effort and landings are generally lower at the beginning of the year. Therefore, the Council determined, and NMFS agrees, that adding the 2-month closed season at the beginning of the year will help achieve the desired reduction in landings while minimizing, to the extent practicable, the negative impacts on recreational anglers and fishing communities.

*Comment 4:* Several commenters stated that the recreational minimum size limit should not be increased to 15 inches (38.1 cm), FL, and the recreational bag limit should not be decreased to one fish per person per day. One commenter suggested a slot limit of 12 inches to 16 inches (30.5 cm to 40.6 cm) as opposed to an increase in the minimum size limit.

*Response:* NMFS disagrees that the recreational bag limit and size limit should not be modified as implemented

in this final rule. As noted in the response to Comment 3, the closed seasons, bag limit, and size limit are intended to work together to slow recreational harvest, constrain recreational harvest to the recreational ACL, and reduce the likelihood of an in-season closure. In addition, because larger fish are more fertile, the increase in the minimum size limit is expected to benefit the gray triggerfish stock by increasing spawning potential.

With respect to the suggestion to implement a slot limit, this is beyond the scope of what was considered in Amendment 46 and the proposed rule. Further, the suggested slot limit would not likely achieve the desired reduction in recreational harvest or the benefits to the stock associated with allowing the fish additional time to spawn before they are harvested.

*Comment 5:* The methods for verifying commercial catch and the methods for calculating the current stock population and ACL for gray triggerfish in the Gulf are unclear and should be published.

*Response:* The current ACLs for gray triggerfish were established in Amendment 37 and are available for public review at the website [http://sero.nmfs.noaa.gov/sustainable\\_fisheries/gulf\\_fisheries/reef\\_fish/2013/am37/documents/pdfs/rf\\_amend37.pdf](http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/reef_fish/2013/am37/documents/pdfs/rf_amend37.pdf). These ACLs were based on the stock population estimates and projections included in the SEDAR 9 update assessment that was completed in 2011 and can be found at the website [http://sedarweb.org/docs/sar/SEDAR9\\_SAR1%20GOM%20Gray%20Triggerfish.pdf](http://sedarweb.org/docs/sar/SEDAR9_SAR1%20GOM%20Gray%20Triggerfish.pdf). The most recent stock population estimates are included in SEDAR 43, which can be found at the website [http://sedarweb.org/docs/sar/S43\\_SAR\\_FINAL.pdf](http://sedarweb.org/docs/sar/S43_SAR_FINAL.pdf). Amendment 46 explains the results of SEDAR 43 and the basis for retaining the current ACLs.

Commercial landings are verified through vessel and dealer reporting. Any fisher whose vessel has a commercial Federal vessel permit for Gulf reef fish must report their landings within 7 days of a trip through the commercial logbook program. Data from dealers' reports submitted electronically are used to monitor the gray triggerfish ACLs. All dealers in the Gulf are required to have a single Federal permit to purchase managed species and must submit their reports once per week. These datasets are updated weekly and are available for review at the following website: [http://sero.nmfs.noaa.gov/sustainable\\_fisheries/acl\\_monitoring/commercial\\_gulf/index.html](http://sero.nmfs.noaa.gov/sustainable_fisheries/acl_monitoring/commercial_gulf/index.html).

## Classification

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is consistent with Amendment 46, the FMP, the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Magnuson-Stevens Act provides the statutory basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this final rule.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this rule would not have a significant adverse economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. No public comments were made related to the economic implications and potential impacts on small businesses, and no changes to this final rule were made in response to public comments. As a result, a final regulatory flexibility analysis was not required and none was prepared.

## List of Subjects in 50 CFR Part 622

Commercial, Fisheries, Fishing, Gray triggerfish, Gulf, Recreational.

Dated: December 12, 2017.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

## PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

■ 2. In § 622.34, revise paragraph (f) to read as follows:

### § 622.34 Seasonal and area closures designed to protect Gulf reef fish.

\* \* \* \* \*

(f) *Seasonal closures for gray triggerfish.* The recreational sector for gray triggerfish in or from the Gulf EEZ is closed from January 1 through the end of February, and from June 1 through July 31, each year. During a recreational

closure, the bag and possession limits for gray triggerfish in or from the Gulf EEZ are zero. The commercial sector for gray triggerfish in or from the Gulf EEZ is closed from June 1 through July 31, each year. During the period of both the commercial and recreational closure, all harvest or possession in or from the Gulf EEZ of gray triggerfish is prohibited and the sale and purchase of gray triggerfish taken from the Gulf EEZ is prohibited.

\* \* \* \* \*

■ 3. In § 622.37, revise paragraph (c)(1) to read as follows:

§ 622.37 Size limits.

\* \* \* \* \*

(c) \* \* \*

(1) *Gray triggerfish.* (i) For a person not subject to the bag limit specified in § 622.38(b)(5)—14 inches (35.6 cm), fork length.

(ii) For a person subject to the bag limit specified in § 622.38(b)(5)—15 inches (38.1 cm), fork length.

\* \* \* \* \*

■ 4. In § 622.38, revise paragraph (b)(5) to read as follows:

§ 622.38 Bag and possession limits.

\* \* \* \* \*

(b) \* \* \*

(5) Gulf reef fish, combined, excluding those specified in paragraphs (b)(1) through (4) and paragraphs (b)(6) and (7) of this section—20. In addition, within the 20-fish aggregate reef fish bag limit, no more than 1 fish may be gray triggerfish and no more than 10 fish may be vermilion snapper.

\* \* \* \* \*

■ 5. In § 622.43, revise paragraph (b) to read as follows:

§ 622.43 Commercial trip limits.

\* \* \* \* \*

(b) *Gray triggerfish.* Until the commercial ACT (commercial quota) specified in § 622.39(a)(1)(vi) is reached—16 fish. See § 622.39(b) for the limitations regarding gray triggerfish after the commercial ACT (commercial quota) is reached.

\* \* \* \* \*

[FR Doc. 2017-27068 Filed 12-14-17; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 160301164-6694-02]

RIN 0648-XF883

Fisheries of the Northeastern United States; Northeast Skate Complex; Adjustment to the Skate Wing Inseason Possession Limit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason adjustment.

SUMMARY: NMFS announces the reduction of the commercial skate wing fishery per-trip possession limit for the remainder of the 2017 fishing year, through April 30, 2018. This possession limit reduction is necessary to prevent the skate wing commercial quota from being exceeded, while still allowing the opportunity to harvest the annual total allowable landings. This announcement also informs the public that the skate wing possession limit is reduced.

DATES: Effective December 27, 2017, through April 30, 2018.

FOR FURTHER INFORMATION CONTACT: Cynthia Hanson, Fishery Management Specialist, (978) 281-9180, or Cynthia.Hanson@noaa.gov.

SUPPLEMENTARY INFORMATION: The skate wing and bait fisheries are managed through the Northeast Skate Complex Fishery Management Plan; the regulations for which are found at 50 CFR part 648, subpart O. Regulations at § 648.322(b)(2) describe the process of adjusting the commercial possession limit of skate wings. When 85 percent of the annual total allowable landings (TAL) for skate wing fishery is projected to be harvested, the NMFS Greater Atlantic Regional Administrator may reduce the skate wing possession limit to the incidental limit, unless the reduction would be expected to prevent

attainment of the annual TAL. The initial skate wing possession limit is 4,100 lb (1,860 kg) of wings (9,307 lb (4,222 kg) whole weight). When the 85-percent trigger is reached, this is reduced to the incidental limit of and 500 lb (227 kg) of wings (1,135 lb (515 kg) whole weight). We anticipate that implementing this inseason adjustment will allow the opportunity for the skate wing fishery to harvest the annual TAL while reducing the possibility of exceeding it.

Based on commercial landings data reported through December 2, 2017, we project the skate wing fishery to reach 85 percent of the annual TAL (18.46 million lb, 8,372 mt) on or about December 11, 2017. Furthermore, without adjustment, there is a high probability that skate wing landings will exceed the TAL before the end of the fishing year. Therefore, consistent with § 648.322(b)(2), we are reducing the skate wing possession limit from 4,100 lb (1,860 kg) of skate wings (9,307 lb (4,222 kg) whole weight) to 500 lb (227 kg) of skate wings (1,135 lb (515 kg) whole weight) per trip. At the request of industry to allow adequate time for safe gear removal, we are affording a 14-day notice period before implementing this reduction. Effective December 27, 2017, no person may possess on board or land more than 500 lb (227 kg) of skate wings (1,135 lb (515 kg) whole weight), or any prorated combination of skate wings and whole skates based on the conversion factor for wing weight to whole weight of 2.27, per trip for the remainder of the 2017 fishing year. This action does not affect vessels fishing under a skate bait letter of authorization. On May 1, 2018, the 2018 fishing year begins, and the commercial skate wing possession limit will increase to the skate wing season 1 (May 1, 2018, to August 31, 2018) possession limit of 2,600 lb (1,179 kg) of skate wings (5,902 lb (2,677 kg) whole weight) per trip.

**Classification**

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest. This action lowers the possession limit for the commercial skate wing fishery to the incidental limit in order to prevent the

annual quota from being exceeded, while still allowing the opportunity to harvest the annual TAL. The regulations at § 648.322(b)(2) allow such action when landings reach a trigger of 85 percent of the annual TAL to ensure this TAL is not exceeded. If implementation of this reduction were delayed to solicit prior public comment, the quota for this fishing year would likely be exceeded, thereby undermining the conservation objectives of the Northeast Skate Complex Fishery Management Plan. The

Assistant Administrator further finds, pursuant to 5 U.S.C. 553(d)(3), good cause to waive the 30-day delayed effectiveness period for the reason stated above.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: December 12, 2017.

**Emily H. Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2017-27082 Filed 12-12-17; 4:15 pm]

**BILLING CODE 3510-22-P**

# Proposed Rules

Federal Register

Vol. 82, No. 240

Friday, December 15, 2017

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 252

[Regulation YY; Docket No. OP-1587]

#### Stress Testing Policy Statement

**AGENCY:** Board of Governors of the Federal Reserve System (Board).

**ACTION:** Proposed rule; policy statement with request for public comment.

**SUMMARY:** The Board is inviting comment on a proposed policy statement on the approach to supervisory stress testing conducted under the Board's Regulation YY pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) and the Board's capital plan rule.

**DATES:** Comments must be received by January 22, 2018.

**ADDRESSES:** You may submit comments, identified by Docket No. OP-1587 by any of the following methods:

- *Agency website:* <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.aspx>.
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include the docket number and RIN number in the subject line of the message.
- *Fax:* (202) 452-2819 or (202) 452-3102.
- *Mail:* Ann Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments will be made available on the Board's website at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.aspx> as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed

electronically or in paper form in Room 3515, 1801 K St. NW (between 18th and 19th Streets NW), Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452-3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

**FOR FURTHER INFORMATION CONTACT:** Lisa Ryu, Associate Director, (202) 263-4833, Kathleen Johnson, Assistant Director, (202) 452-3644, Joseph Cox, Supervisory Financial Analyst, (202) 452-3216, Hillel Kipnis, Senior Financial Analyst, (202) 452-2924, Aurite Werman, Financial Analyst, (202) 263-4802, Division of Supervision and Regulation; Benjamin W. McDonough, Assistant General Counsel, (202) 452-2036, or Julie Anthony, Counsel, (202) 475-6682, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. Users of Telecommunication Device for Deaf (TDD) only, call (202) 263-4869.

#### SUPPLEMENTARY INFORMATION:

##### I. Overview

The proposed policy statement (Policy Statement) outlines the key principles and policies governing the Board's approach to the development, implementation, and validation of models used in the supervisory stress test. The supervisory stress test models are used to produce estimates of post-stress capital ratios for covered companies,<sup>1</sup> pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) and the Board's stress test rules.<sup>2</sup> This annual exercise is referred to as the Dodd-Frank Act Stress Test (DFAST). The supervisory models are also used in the Comprehensive Capital Analysis and Review (CCAR), pursuant to the Board's

<sup>1</sup> Covered companies are defined as bank holding companies (BHCs) and U.S. intermediate holding companies of foreign banking organizations (IHCs) with total consolidated assets of \$50 billion or more, and any nonbank financial company that the Financial Stability Oversight Committee has determined shall be supervised by the Board. See 12 U.S.C. 5365.

<sup>2</sup> Public Law 111-203, 124 Stat. 1376 (2010); 12 CFR part 252, subpart E.

capital plan rule.<sup>3</sup> The Board is proposing the Policy Statement to increase transparency around the development, implementation, and validation of these models by the Federal Reserve. Accordingly, the Policy Statement would not apply to models used by covered companies in the company-run stress tests mandated by the Dodd-Frank Act and the Board's stress test rules.<sup>4</sup>

##### II. Background

Supervisory stress testing is a tool that allows the Board to assess whether the largest and most complex financial firms are sufficiently capitalized to absorb losses in stressful economic conditions while continuing to meet obligations to creditors and other counterparties and to lend to households and businesses. The 2007-2009 financial crisis showed that many large bank holding companies (BHCs) did not hold capital commensurate with their risk profiles and were insufficiently capitalized to withstand unanticipated losses in severe economic stress and remain a going concern. Post-crisis reforms to regulation and supervision have improved the quality and quantity of capital in the financial system. These improvements have strengthened financial institutions and have reduced the likelihood and severity of future financial crises, which can cause severe and lasting damage to the economy.

The Board's approach to supervisory stress testing has evolved since the Supervisory Capital Assessment Program (SCAP) in 2009, which was the first evaluation of BHCs' capital levels on a forward-looking basis under stress. The lessons from SCAP encouraged the creation, pursuant to the Dodd-Frank Act, of DFAST,<sup>5</sup> a forward-looking quantitative evaluation of the impact of stressful economic and financial market conditions on covered companies' capital. CCAR is a related supervisory program that was developed pursuant to the Board's capital plan rule and focuses on forward-looking capital planning and the use of stress testing to assess firms' capital adequacy. The quantitative assessment in CCAR uses the same

<sup>3</sup> 12 CFR 225.8.

<sup>4</sup> See 12 U.S.C. 5365(i); 12 CFR part 252, subparts B and F.

<sup>5</sup> 77 FR 62377 (October 12, 2012) (stress test rules). See 12 CFR part 252, subparts E and F.



supervisory stress test as does DFAST, and includes firms' planned capital distributions, including any dividend payments or common stock repurchases.<sup>6</sup> By assessing the capital adequacy of a covered company under severe projected economic and financial stress, the supervisory stress test complements minimum regulatory capital ratios, which reflect the covered company's current condition.

The proposed Policy Statement describes the principles, policies, and procedures that guide the development, implementation, and validation of the Federal Reserve's supervisory stress test models, and would complement the Board's policy statement on scenario design.<sup>7</sup>

The Federal Reserve maintains the same standards for model development and implementation of supervisory models as the Federal Reserve has established for covered companies. In addition to maintaining those standards, the Federal Reserve adheres to specific principles for model development and implementation. These principles, which apply broadly across the full set of supervisory models, have guided the formulation of the Federal Reserve's supervisory modeling approach and continue to guide changes to supervisory models.

Models used in the supervisory stress test are also subject to ongoing review and validation by an independent unit within the Federal Reserve. In addition to addressing principles and policies of model development, implementation, and use, the Policy Statement describes principles of model validation, which is central to the credibility of supervisory models and to the credibility of the stress test exercise. The proposed Policy Statement is organized as follows. Section 1 describes the principles that guide the design of the supervisory stress test and the Federal Reserve's approach to supervisory modeling. Section 2 describes the governing policies and implementation of the supervisory stress test. Section 3 establishes the principles and policies for the validation of models used in the supervisory stress test. The Board may determine that modifications to the Policy Statement would be appropriate if the principles and policies that guide decisions in the supervisory stress test are revised materially. The Board is

inviting public comment on all aspects of the proposed Policy Statement.

### III. Administrative Law Matters

#### A. Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338, 1471, 12 U.S.C. 4809) requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board has sought to present the proposed rule in a simple and straightforward manner, and invites comment on the use of plain language.

#### B. Paperwork Reduction Act Analysis

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), the Board has reviewed the proposed policy statement to assess any information collections. There are no collections of information as defined by the Paperwork Reduction Act in the proposal.

#### C. Regulatory Flexibility Act Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act (RFA), the Board is publishing an initial regulatory flexibility analysis of the proposed policy statement. The RFA, 5 U.S.C. 601 *et seq.*, requires each federal agency to prepare an initial regulatory flexibility analysis in connection with the promulgation of a proposed rule, or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.<sup>8</sup> The RFA requires an agency either to provide an initial regulatory flexibility analysis with a proposed rule for which a general notice of proposed rulemaking is required or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. Based on its analysis and for the reasons stated below, the Board believes that the proposed policy statement will not have a significant economic impact on a substantial number of small entities.

Under regulations issued by the Small Business Administration (SBA), a "small entity" includes those firms within the "Finance and Insurance" sector with asset sizes that vary from \$7 million or less in assets to \$175 million or less in assets.<sup>9</sup> The Board believes that the Finance and Insurance sector constitutes a reasonable universe of firms for these purposes because such firms generally engage in activities that are financial in nature. Consequently, bank holding companies or nonbank financial companies with assets sizes of \$175

million or less are small entities for purposes of the RFA.

As discussed in the **SUPPLEMENTARY INFORMATION**, the proposed policy statement generally would affect the stress test framework used in regulations that apply to bank holding companies with \$50 billion or more in total consolidated assets and nonbank financial companies that the Council has determined under section 113 of the Dodd-Frank Act must be supervised by the Board and for which such determination is in effect. Companies that are affected by the proposed policy statement therefore substantially exceed the \$175 million asset threshold at which a banking entity is considered a "small entity" under SBA regulations.<sup>10</sup> The proposed policy statement would affect a nonbank financial company designated by the Council under section 113 of the Dodd-Frank Act regardless of such a company's asset size. Although the asset size of nonbank financial companies may not be the determinative factor of whether such companies may pose systemic risks and would be designated by the Council for supervision by the Board, it is an important consideration.<sup>11</sup> It is therefore unlikely that a financial firm that is at or below the \$175 million asset threshold would be designated by the Council under section 113 of the Dodd-Frank Act because material financial distress at such firms, or the nature, scope, size, scale, concentration, interconnectedness, or mix of its activities, are not likely to pose a threat to the financial stability of the United States.

As noted above, because the proposed policy statement is not likely to apply to any company with assets of \$175 million or less, if adopted in final form, it is not expected to affect any small entity for purposes of the RFA. The Board does not believe that the proposed policy statement duplicates, overlaps, or conflicts with any other Federal rules. In light of the foregoing, the Board does not believe that the proposed policy statement, if adopted in final form, would have a significant economic impact on a substantial number of small entities supervised. Nonetheless, the Board seeks comment on whether the proposed policy statement would impose undue burdens on, or have unintended consequences

<sup>6</sup> 12 CFR 225.8. CCAR also includes a qualitative assessment of capital planning practices at the largest and most complex firms, which is not the subject of this proposed Policy Statement.

<sup>7</sup> See 12 CFR part 252, appendix A, "Policy Statement on the Scenario Design Framework for Stress Testing."

<sup>8</sup> See 5 U.S.C. 603, 604, and 605.

<sup>9</sup> 13 CFR 121.201.

<sup>10</sup> The Dodd-Frank Act provides that the Board may, on the recommendation of the Council, increase the \$50 billion asset threshold for the application of certain of the enhanced standards. See 12 U.S.C. 5365(a)(2)(B). However, neither the Board nor the Council has the authority to lower such threshold.

<sup>11</sup> See 76 FR 4555 (January 26, 2011).

for, small organizations, and whether there are ways such potential burdens or consequences could be minimized in a manner consistent its purpose.

#### List of Subjects in 12 CFR Part 252

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies, Nonbank financial companies supervised by the Board, Reporting and recordkeeping requirements, Securities, Stress testing.

#### Authority and Issuance

For the reasons stated in the Supplementary Information, the Board of Governors of the Federal Reserve System proposes to amend 12 CFR part 252 as follows:

### PART 252—ENHANCED PRUDENTIAL STANDARDS (Regulation YY)

■ 1. The authority citation for part 252 continues to read as follows:

**Authority:** 12 U.S.C. 321–338a, 1467a(g), 1818, 1831p–1, 1844(b), 1844(c), 5361, 5365, 5366.

■ 2. Add appendix B to part 252 to read as follows:

#### Appendix B to Part 252—Stress Testing Policy Statement

This Policy Statement describes the principles, policies, and procedures that guide the development, implementation, and validation of models used in the Federal Reserve's supervisory stress test.

##### 1. Principles of Supervisory Stress Testing

The system of models used in the supervisory stress test is designed to result in projections that are (i) from an independent supervisory perspective; (ii) forward-looking; (iii) consistent and comparable across covered companies; (iv) generated from simple approaches, where appropriate; (v) robust and stable; (vi) conservative; and (vii) able to capture the impact of economic stress. These principles are further explained below.

##### 1.1. Independence

In the supervisory stress test, the Federal Reserve uses models that are developed internally and independently (*i.e.*, separately from models used by covered companies). The supervisory models rely on detailed portfolio data provided by covered companies, but do not rely on models or estimates provided by covered companies to the greatest extent possible.

The Federal Reserve's stress testing framework is unique among regulators in its generation of estimates of covered companies' stressed losses and revenues that are not determined in consultation with firms or influenced by firm-provided estimates. Doing so enables the Federal Reserve to provide the public and the covered companies with credible, independent assessments of each firm's capital adequacy under stress and helps instill public confidence in the banking system.

The independence of the supervisory stress test allows stress test projections to adhere to the other key principles described in the Policy Statement. The use of independent models allows for consistent treatment across firms. Losses and revenues under stress are estimated using the same modeling assumptions for all covered companies, enabling comparisons across supervisory stress test results. Differences in covered companies' results reflect differences in firm-specific risks and input data instead of differences in modeling assumptions. The use of independent models also ensures that stress test results are produced by stress-focused models, designed to project the performance of covered companies in adverse economic conditions.

In instances in which it is not possible or appropriate to create a supervisory model for use in the stress test, including when supervisory data are insufficient to support a modeled estimate of losses or revenues, the Federal Reserve may use firm-provided estimates or third-party models or data. For example, in order to project trading and counterparty losses, sensitivities to risk factors and other information generated by covered companies' internal models are used. In the cases where firm-provided or third-party model estimates are used, the Federal Reserve monitors the quality and performance of the estimates through targeted examination, additional data collection, or benchmarking. The Board releases a list of the providers of third-party models or data used in the stress test exercise in the annual disclosure of quantitative results.

*Question number 1: The modeling framework of the Federal Reserve's supervisory stress test seeks to promote consistency and comparability in evaluating the impact of severe economic stress upon covered companies by generating independent estimates of losses, revenues, and capital. Are there additional advantages or disadvantages to this independent framework, relative to a framework that relies on models or estimates provided by covered companies?*

##### 1.2. Forward-Looking

The Federal Reserve has designed the supervisory stress test to be forward-looking. Supervisory models are tools for producing projections of potential losses and revenue effects based on each covered company's portfolio and circumstances.

While supervisory models are specified using historical data, they should generally avoid relying solely on extrapolation of past trends in order to make projections, and instead should be able to incorporate events or outcomes that have not occurred. As described in Section 2.4, the Federal Reserve implements several supervisory modeling policies to limit reliance on past outcomes in its projections of losses and revenues. The incorporation of the macroeconomic scenario and global market shock component also introduces elements outside the realm of historical experience into the supervisory stress test.

##### 1.3. Consistency and Comparability

The Federal Reserve uses the same set of models and assumptions to produce loss

projections for all covered companies participating in the supervisory stress test. A standard set of scenarios, assumptions, and models promotes equitable treatment of firms participating in the supervisory stress test and comparability of results, supporting cross-firm analysis and providing valuable information to supervisors and to the public. Adhering to a consistent modeling approach across covered companies means that differences in projected results are due to differences in input data, such as instrument type or portfolio risk characteristics, rather than differences in firm-specific assumptions made by the Federal Reserve.

##### 1.4. Simplicity

The Federal Reserve uses simple approaches in supervisory modeling, where possible. Given a range of modeling approaches that are equally conceptually sound, the Federal Reserve will select the least complex modeling approach. In assessing simplicity, the Federal Reserve favors those modeling approaches that allow for a more straightforward interpretation of the drivers of model results and that minimize operational challenges for model implementation.

##### 1.5. Robustness and Stability

The Federal Reserve maintains supervisory models that aim to be robust and stable, such that changes in model projections over time reflect underlying risk factors, scenarios, and model enhancements, rather than transitory factors. The estimates of post-stress capital produced by the supervisory stress test provide information regarding a covered company's capital adequacy to market participants, covered companies, and the public. Adherence to this principle helps to ensure that changes in these model projections over time are not driven by temporary variations in model performance or inputs. Supervisory models are recalibrated with newly available input data each year. These data affect supervisory model projections, particularly in times of evolving risks. However, these changes generally should not be the principal driver of a change in results, year over year.

##### 1.6. Conservatism

Given a reasonable set of assumptions or approaches, all else equal, the Federal Reserve will opt to use those that result in larger losses or lower revenue. For example, given a lack of information about the true risk of a portfolio, the Federal Reserve will compensate for the lack of data by using a high percentile loss rate.

##### 1.7. Focus on the Ability To Evaluate the Impact of Severe Economic Stress

In evaluating whether supervisory models are appropriate for use in a stress testing exercise, the Federal Reserve places particular emphasis on supervisory models' abilities to project outcomes in stressed economic environments. In the supervisory stress test, the Federal Reserve also seeks to capture risks to capital that arise specifically in times of economic stress, and that would not be prevalent in more typical economic environments. For example, the Federal Reserve includes losses stemming from the default of a covered company's largest

counterparty in projections of post-stress capital for firms with substantial trading or processing and custodial operations. The default of a company's largest counterparty is more likely to occur in times of severe economic stress than in normal economic conditions.

## 2. Supervisory Stress Test Model Policies

To be consistent with the seven principles outlined in Section 1, the Federal Reserve has established policies and procedures to guide the development, implementation, and use of all models used in supervisory stress test projections, described in more detail below. Each policy facilitates adherence to at least one of the modeling principles that govern the supervisory stress test, and in most cases facilitates adherence to several modeling principles.

### 2.1. Soundness in Model Design

During development, the Federal Reserve (i) subjects supervisory models to extensive review of model theory and logic and general conceptual soundness; (ii) examines and evaluates justifications for modeling assumptions; and (iii) tests models to establish the accuracy and stability of the estimates and forecasts that they produce.

After development, the Federal Reserve continues to subject supervisory models to scrutiny during implementation to ensure that the models remain appropriate for use in the stress test exercise. The Federal Reserve monitors changes in the economic environment, the structure of covered companies and their portfolios, and the structure of the stress testing exercise, if applicable, to verify that a model in use continues to serve the purposes for which it was designed. Generally, the same principles, rigor, and standards for evaluating the suitability of supervisory models that apply in model development and design will apply in ongoing monitoring of supervisory models.

### 2.2. Disclosure of Information Related to the Supervisory Stress Test

In general, the Board does not disclose firm-specific results or other information related to the supervisory stress test to covered companies if that information is not also publicly disclosed. This policy promotes consistent and equitable treatment of covered companies by ensuring that institutions do not have access to information about the supervisory stress test that is not accessible to all covered companies, corresponding to Principle 1.3.

The Board publicly discloses information related to the supervisory stress test on a regular basis, instead of privately communicating this information to covered companies. The Board has increased the breadth of its public disclosure since the inception of the supervisory stress test to include more information about model changes and key risk drivers, in addition to more detail on different components of projected net revenues and losses. Increasing public disclosure helps the public understand and interpret the results of the supervisory stress test, particularly with respect to the condition and capital adequacy of participating firms. Providing additional information about the supervisory stress test

also allows the public to make an evaluation of the quality of the Board's capital adequacy assessment.

### 2.3. Phasing in of Highly Material Model Changes

The Federal Reserve may revise its supervisory stress test models to include advances in modeling techniques, enhancements in response to model validation findings, incorporation of richer and more detailed data, public comment, and identification of models with improved performance, particularly under adverse economic conditions. Revisions to supervisory stress models may at times have a material impact on modeled outcomes.

In order to mitigate sudden and unexpected changes to the supervisory stress test results, the Federal Reserve follows a general policy of phasing highly material model changes into the supervisory stress test over two years. The Federal Reserve assesses whether a model change would have a highly significant impact on the projections of losses, components of revenue, or post-stress capital ratios for covered companies. In these instances, in the first year when the model change is first implemented, estimates produced by the enhanced model are averaged with estimates produced by the model used in the previous stress test exercise. In the second and subsequent years, the supervisory stress test exercise will reflect only estimates produced by the enhanced model. This policy contributes to the stability of the results of the supervisory stress test, corresponding to Principle 1.5. By implementing highly material model changes over the course of two stress test cycles, the Federal Reserve seeks to ensure that changes in model projections primarily reflect changes in underlying risk factors and scenarios, year over year.

*Question number 2: The Federal Reserve assesses individual model changes each year to determine whether these model changes will have a highly significant impact on the projections of losses, revenues, or post-stress capital ratios for covered companies, and whether these changes warrant a phase-in over two stress test exercises. What thresholds should the Federal Reserve use to determine whether model changes will have a highly significant impact on projections?*

### 2.4. Limiting Reliance on Past Outcomes

Models should not place undue emphasis on historical outcomes in predicting future outcomes. The Federal Reserve aims to produce supervisory stress test results that reflect likely outcomes under the supervisory scenarios. The supervisory scenarios may potentially incorporate events that have not occurred historically. It is not consistent with the purpose of a stress testing exercise to assume that the future will always be like the past.

In order to model potential outcomes outside the realm of historical experience, the Federal Reserve generally does not include variables that would capture unobserved historical patterns in supervisory models. The use of industry-level models, restricted use of firm-specific fixed effects (described below), and minimized use of dummy variables indicating a loan vintage or

a specific year ensure that the outcomes of the supervisory models are forward-looking, consistent and comparable across firms, and robust and stable.

Firm-specific fixed effects are variables that identify a specific firm and capture unobserved differences in the revenues, expenses or losses among firms. Firm-specific fixed effects are generally not incorporated in supervisory models in order to avoid the assumption that unobserved firm-specific historical patterns will continue in the future. Exceptions to this policy are made where appropriate. For example, if granular portfolio-level data on key drivers of a covered company's performance are limited or unavailable, and firm-specific fixed effects are more predictive of a covered company's future performance than are industry-level variables, then supervisory models may be specified with firm-specific fixed effects.

Models used in the supervisory stress test are developed according to an industry-level approach, calibrated using data from many institutions. In adhering to an industry-level approach, the Federal Reserve models the response of specific portfolios and instruments to variations in macroeconomic and financial scenario variables. In this way, the Federal Reserve ensures that differences across covered companies are driven by differences in firm-specific input data, as opposed to differences in model parameters or specifications. The industry approach to modeling is also forward-looking, consistent with Principle 1.2, as the Federal Reserve does not assume that historical patterns will necessarily continue into the future for individual firms. By modeling a portfolio or instrument's response to changes in economic or financial conditions at the industry level, the Federal Reserve ensures that projected future losses are a function of that portfolio or instrument's own characteristics, rather than the historical experience of the covered company. This policy helps to ensure that two firms with the same portfolio receive the same results for that portfolio in the supervisory stress test.

The Federal Reserve minimizes the use of loan vintage or year-specific fixed effects when estimating models and producing supervisory projections. In general, these types of variables are employed only when there are significant structural market shifts or other unusual factors for which supervisory models cannot otherwise account. Similar to the firm-specific fixed effects policy, and consistent with Principle 1.2, this vintage indicator policy is in place so that projections of future performance under stress do not incorporate assumptions that patterns in unmeasured factors from brief historical time periods persist. For example, the loans originated in a particular year should not be assumed to continue to default at a higher rate in the future because they did so in the past.

*Question number 3: The Federal Reserve seeks to model potential outcomes outside the realm of historical experience, and in connection with doing so, has implemented policies to limit its own reliance on historical outcomes in model design and calibration. What other policies or methodologies would allow the Federal Reserve to incorporate*

*events that have not occurred historically in supervisory stress test projections while maintaining the integrity of the supervisory stress tests?*

#### 2.5. Treatment of Global Market Shock and Largest Counterparty Default Components

Both the global market shock and counterparty default components are exogenous components of the supervisory stress scenarios that are independent of the macroeconomic and financial market environment specified in those scenarios, and do not affect projections of risk-weighted assets or balances. The global market shock, which specifies movements in numerous market factors,<sup>1</sup> applies only to covered companies with significant trading exposure. The largest counterparty default scenario component applies only to covered companies with substantial trading or processing and custodial operations. Though these stress factors may not be directly correlated to macroeconomic or financial assumptions, they can materially affect covered companies' risks. Losses from both components are therefore considered in addition to the estimates of losses under the macroeconomic scenario.

Counterparty credit risk on derivatives and repo-style activities is incorporated in supervisory modeling in part by assuming the default of the single counterparty to which the covered firm would be most exposed in the global market shock event.<sup>2</sup> Requiring covered companies subject to the largest counterparty default component to estimate and report the potential losses and effects on capital associated with such an instantaneous default is a simple method for capturing an important risk to capital for firms with large trading and custodial or processing activities. Engagement in substantial trading or custodial operations makes the covered companies subject to the largest counterparty default scenario component particularly vulnerable to the default of their major counterparty or their clients' counterparty, in transactions for which the covered companies act as agents. The largest counterparty default component is consistent with the purpose of a stress testing exercise, as discussed in Principle 1.7. The default of a covered company's largest counterparty is a salient risk in a macroeconomic and financial crisis, and generally less likely to occur in times of economic stability. This approach seeks to ensure that covered companies can absorb losses associated with the default of any counterparty, in addition to losses associated with adverse economic conditions, in an environment of economic uncertainty.

The full effect of the global market shock and counterparty default components is

<sup>1</sup> See appendix A to this part, "Policy Statement on the Scenario Design Framework for Stress Testing," for a detailed description of the global market shock.

<sup>2</sup> In addition to incorporating counterparty credit risk by assuming the default of the covered company's largest counterparty, the Federal Reserve incorporates counterparty credit risk in the supervisory stress test by estimating mark-to-market losses, credit valuation adjustment (CVA) losses, and incremental default risk (IDR) losses associated with the global market shock.

realized in net income in the first quarter of the projection horizon in the supervisory stress test. The Board expects covered companies with material trading and counterparty exposures to be sufficiently capitalized to absorb losses stemming from these exposures that could occur during times of general macroeconomic stress.

#### 2.6. Incorporation of Business Plan Changes

The Federal Reserve incorporates material changes in the business plans of covered companies, including mergers, acquisitions, and divestitures over the projection horizon, in the supervisory stress test projections. The incorporation of business plan changes in the supervisory stress test is a requirement of the capital plan rule,<sup>3</sup> and captures a risk to the capital of covered companies. Allowing for the inclusion of mergers, acquisitions, and divestitures is forward-looking, and consistent with Principle 1.2, as the Federal Reserve seeks to capture material impacts on a covered company's post-stress capital that may arise from a business plan change in the course of the projection horizon.

The incorporation of business plan changes in supervisory projections is consistent with the purpose of a stress testing exercise, corresponding to Principle 1.7. In CCAR specifically, the Board evaluates whether covered companies have the ability to complete their projected capital actions in the supervisory stress test while remaining above post-stress minimum capital and leverage ratios. Business plan changes such as mergers, acquisitions, or divestitures, may have material impacts on these firm-projected capital actions and on the projected ability of a covered company to make planned capital distributions and maintain capital ratios above regulatory minima.

A consistent methodology for modeling of business plan changes is applied across covered companies. The data that are available about characteristics of assets being acquired or divested are generally limited and less granular than other data collected by the Board in the Capital Assessments and Stress Testing (FR Y-14) information collection. Projections of the effects of business plan changes may rely on less granular information and may result in simpler modeling approaches than supervisory projections for legacy portfolios or businesses.

#### 2.7. Credit Supply Maintenance

The supervisory stress test incorporates the assumption that aggregate credit supply does not contract during the stress period. The aim of supervisory stress testing is to assess whether firms are sufficiently capitalized to absorb losses during times of economic stress, while meeting obligations and continuing to lend to households and businesses. The assumption that a balance sheet of constant or increasing magnitude is maintained allows supervisors to evaluate the health of the banking sector, assuming firms continue to lend during times of stress.

In order to implement this policy, the Federal Reserve must make assumptions about new loan balances. To predict losses on new originations over the planning

horizon, newly originated loans are assumed to have the same risk characteristics as the existing portfolio, where applicable, with the exception of loan age and delinquency status. These newly originated loans would be part of a covered company's normal business, even in a stressed economic environment. While an individual firm may assume that it reacts to rising losses by sharply restricting its lending, (e.g. by exiting a particular business line), the banking industry as a whole cannot do so without creating a "credit crunch" and substantially increasing the severity and duration of an economic downturn. The assumption that the magnitude of firm balance sheets will be fixed or growing in the supervisory stress test ensures that covered companies cannot assume they will "shrink to health," and serves the Federal Reserve's goal of helping to ensure that major financial firms remain sufficiently capitalized to accommodate credit demand in a severe downturn. In addition, by precluding the need to make assumptions about how underwriting standards might tighten or loosen during times of economic stress, the Federal Reserve adheres to Principle 1.3 and promotes consistency across covered companies.

*Question number 4: The Federal Reserve seeks to assess covered companies' capital adequacy in times of stress while those firms continue to lend. Beyond assuming that the magnitude of firm balance sheets is fixed or growing, are there other assumptions that could be incorporated into the supervisory stress test that would allow the Federal Reserve to make this assessment?*

#### 2.8. Firm-Specific Overlays and Additional Firm-Provided Data

The Federal Reserve does not make firm-specific overlays to model results used in the supervisory stress test. This policy ensures that the supervisory stress test results are determined solely by the industry-level supervisory models and by firm-specific input data. The Federal Reserve does not use additional input data submitted by one or more covered companies unless it collects comparable data from all the covered companies that have material exposure in a given area. Input data necessary to produce supervisory stress test estimates is collected via the Capital Assessments and Stress Testing (FR Y-14) information collection. The Federal Reserve may request additional information from covered companies, but otherwise will not incorporate additional information provided as part of a firm's CCAR submission or obtained through other channels into stress test projections.

This policy curbs the use of data only from firms that have incentives to provide it, as in cases in which additional data would support the estimation of a lower loss rate or a higher revenue rate, and adheres to Principle 1.3 by promoting consistency across the stress test results of covered companies.

#### 2.9. Treatment of Missing or Erroneous Data

Missing data, or data with deficiencies significant enough to preclude the use of supervisory models, create uncertainty around estimates of losses or components of revenue. If data that are direct inputs to

<sup>3</sup> 12 CFR 225.8(e)(2).

supervisory models are not provided as required by the Capital Assessments and Stress Testing (FR Y–14) information collection or are reported erroneously, then a conservative value will be assigned to the specific data based on all available data reported by covered companies, depending on the extent of the data deficiency. If the data deficiency is severe enough that a modeled estimate cannot be produced for a portfolio segment or portfolio, then the Federal Reserve may assign a conservative rate (e.g., 10th or 90th percentile PPNR or loss rate, respectively) to that segment or portfolio.

This policy reflects a conservative assumption given a lack of information sufficient to produce a risk-sensitive estimate of losses or revenues. This policy promotes policy 1.3 by ensuring consistent treatment for all covered companies that report data deemed insufficient to produce a modeled estimate. Finally, this policy is simple and transparent, consistent with Principle 1.4.

#### 2.10. Treatment of Immaterial Portfolio Data

The Federal Reserve makes a distinction between missing or insufficient data reported by covered companies for material and immaterial portfolios. To limit regulatory burden, the Federal Reserve allows covered companies not to report detailed loan-level or portfolio-level data for loan types that are not material as defined in the FR Y–14 reporting instructions. In these cases, a loss rate representing the median rates among covered companies for whom the rate is calculated will be applied to immaterial portfolios. This approach is consistent across covered companies, simple, and transparent, promoting Principles 1.3 and 1.4.

*Question number 5: Each of the modeling policies described in Section 2 are consistent with at least one of the central principles of supervisory stress test modeling described herein. Are there other policies the Federal Reserve could implement to further promote the principles of independence, forward-looking perspective, consistency and comparability, simplicity, robustness and stability, or conservatism, or that would focus on the ability to evaluate the impact of severe economic stress?*

### 3. Principles and Policies of Supervisory Model Validation

Independent and comprehensive model validation is key to the credibility of the supervisory stress test. An independent unit of validation staff within the Federal Reserve, with input from an advisory council of academic experts not affiliated with the Federal Reserve, ensures that stress test models are subject to effective challenge, defined as critical analysis by objective, informed parties that can identify model limitations and recommend appropriate changes.

The Federal Reserve's supervisory model validation program, built upon the principles of independence, technical competence, and stature, is able to subject models to effective challenge, expanding upon supervisory modeling teams' efforts to manage model risk and confirming that supervisory models are appropriate for their intended uses. The supervisory model validation program

produces reviews that are consistent, thorough, and comprehensive. Its structure ensures independence from the Federal Reserve's model development function, and its prominent role in communicating the state of model risk to the Board of Governors assures its stature within the Federal Reserve.

#### 3.1. Structural Independence

The management and staff of the internal model validation program are structurally independent from the model development teams. Validators do not report to model developers, and vice versa. This ensures that model validation is conducted and overseen by objective parties. Validation staff's performance criteria include an ability to review all aspects of the models rigorously, thoroughly, and objectively, and to provide meaningful and clear feedback to model developers and users.

In addition, a council of external academic experts provides independent advice on the Federal Reserve's process to assess models used in the supervisory stress test. In biannual meetings with Federal Reserve officials, members of the council discuss selected supervisory models, after being provided with detailed model documentation for those models, including some confidential supervisory information. The documentation and discussions enable the council to assess the effectiveness of the models used in the supervisory stress tests and of the overarching model validation program.

#### 3.2. Technical Competence of Validation Staff

The model validation program is designed to provide thorough, high-quality reviews that are consistent across supervisory models.

First, the model validation program employs technically expert staff with knowledge across model types. Second, reviews for every supervisory model follow the same set of review guidelines, and take place on an ongoing basis. The model validation program is comprehensive, in the sense that validators assess all models currently in use, and expand the scope of validation beyond basic model use, and cover both model soundness and performance.

The model validation program covers three main areas of validation: (1) Conceptual soundness; (2) ongoing monitoring; and (3) outcomes analysis. Validation staff evaluate all aspects of model development, implementation, and use, including but not limited to theory, design, methodology, input data, testing, performance, documentation standards, implementation controls (including access and change controls), and code verification. Finally, the model validation program seeks to balance technical expertise with fresh scrutiny of supervisory models. In order to provide a new perspective on established models and practices, validation staff are re-allocated across models at regular intervals.

#### 3.3. Stature of Validation Function

Through clear communication and participation in the model decision making process, the validation function has the influence and stature within the Federal

Reserve to ensure that any issues and deficiencies are appropriately addressed in a timely and substantive manner.

The model validation program communicates its findings and recommendations regarding model risk to all internal stakeholders. Validators provide detailed feedback to model developers and provide thematic feedback or observations on the overall system of models to the management of the modeling teams. Model validation feedback is also communicated to the users of supervisory model output for use in their deliberations and decisions about supervisory stress testing. In addition, the Federal Reserve Board's Director of Supervision and Regulation approves all models used in the supervisory stress test in advance of each exercise, based on validators' recommendations, development responses, and suggestions for risk mitigants. In several cases, models have been modified or implemented differently based on validators' feedback. The advisory council of academic experts also contributes to the stature of the Federal Reserve's validation program, by providing an external point of view on modifications to supervisory models and on validation program governance.

Ultimately, the validation program serves to inform the Board of Governors about the state of model risk in the overall stress testing program, along with ongoing practices to control and mitigate model risk.

By order of the Board of Governors of the Federal Reserve System, December 7, 2017.

**Ann E. Misback,**  
*Secretary of the Board.*

[FR Doc. 2017–26857 Filed 12–14–17; 8:45 am]

**BILLING CODE 6210-01-P**

---

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 252

[Regulation YY; Docket No. OP–1588]

#### Policy Statement on the Scenario Design Framework for Stress Testing

**AGENCY:** Board of Governors of the Federal Reserve System (Board).

**ACTION:** Proposed rule; policy statement with request for public comment.

---

**SUMMARY:** The Board is requesting public comment on amendments to its policy statement on the scenario design framework for stress testing. The proposed amendments to the policy statement would clarify when the Board may adopt a change in the unemployment rate in the severely adverse scenario of less than 4 percentage points; institute a counter-cyclical guide for the change in the house price index in the severely adverse scenario; and provide notice that the Board plans to incorporate wholesale funding costs for banking organizations in the scenarios. The Board would continue to use the policy

statement to develop the macroeconomic scenarios and additional scenario components that are used in the supervisory and company-run stress tests conducted under the Board's stress test rules and the Board's capital plan rule.

**DATES:** Comments must be received by January 22, 2018.

**ADDRESSES:** You may submit comments, identified by Docket No. OP-1588 by any of the following methods:

- *Agency website:* <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.aspx>.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Email:* [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include the docket number and RIN number in the subject line of the message.

- *Fax:* (202) 452-2819 or (202) 452-3102.

- *Mail:* Ann Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments will be made available on the Board's website at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.aspx> as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K St. NW (between 18th and 19th Streets NW), Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452-3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

**FOR FURTHER INFORMATION CONTACT:** Lisa Ryu, Associate Director, (202) 263-4833, Joseph Cox, Supervisory Financial Analyst, (202) 452-3216, or Aurite Werman, Financial Analyst (202) 263-4802, Division of Supervision and Regulation; Benjamin W. McDonough, Assistant General Counsel, (202) 452-2036, or Julie Anthony, Counsel, (202) 475-6682, Legal Division; or William Bassett, Associate Director, (202) 736-5644, Luca Guerrieri, Deputy Associate Director, (202) 452-2550, or Bora

Durdu, Chief, (202) 452-3755, Division of Financial Stability.

#### **SUPPLEMENTARY INFORMATION:**

### **I. Background**

#### *A. Supervisory Scenarios*

Pursuant to the Board's stress test rules, the Board conducts supervisory stress tests of bank holding companies and U.S. intermediate holding companies subsidiaries of foreign banking organizations with total consolidated assets of \$50 billion or more (covered companies) and requires covered companies to conduct semi-annual company-run stress tests.<sup>1</sup> In addition, savings and loan holding companies, state member banks with greater than \$10 billion in total consolidated assets, and bank holding companies with assets of more than \$10 billion but less than \$50 billion are required to conduct annual company-run stress tests.<sup>2</sup>

To conduct the supervisory stress tests, the Board develops three scenarios—a baseline, adverse, and severely adverse scenario—and projects a firm's balance sheet, risk-weighted assets, net income, and resulting post-stress capital levels and regulatory capital ratios under each scenario. Similarly, a firm subject to company-run stress tests under the Board's rules uses the same adverse and severely adverse scenarios that apply in the supervisory stress test to conduct an annual company-run stress test. The scenarios also serve as an input into a covered company's capital plan under the Board's capital plan rule (12 CFR 225.8), and the Federal Reserve also uses these scenarios to evaluate each firm's capital plan in the supervisory post-stress capital assessment.<sup>3</sup>

On November 29, 2013, the Board adopted a final policy statement on its scenario design framework for stress testing (policy statement).<sup>4</sup> The policy statement outlined the characteristics of the supervisory stress test scenarios and explained the considerations and procedures that underlie the formulation of these scenarios. The

considerations and procedures described in the policy statement apply to the Board's stress testing framework, including to the stress tests required under 12 CFR part 252, subparts B, E, and F, and the Board's capital plan rule. The policy statement describes in greater detail than the stress test rules the baseline, adverse, and severely adverse scenarios. The policy statement also describes the Board's approach for developing these three macroeconomic scenarios and additional components of the stress test scenarios, which apply to a subset of covered companies.

As described in the policy statement, the severely adverse scenario is designed to reflect conditions that have characterized post-war U.S. recessions (the "recession approach"). Historically, recessions typically feature increases in the unemployment rate and contractions in aggregate incomes and economic activity. In light of the typical comovement of measures of economic activity during economic downturns, such as the unemployment rate and gross domestic product, in developing the severely adverse scenario, the Board first specifies a path for the unemployment rate and then develops paths for other measures of activity broadly consistent with the course of the unemployment rate.

The Board's scenario design framework includes a counter-cyclical design element in the change in the unemployment rate in the severely adverse scenario. The policy statement provides that the Board anticipates the unemployment rate in the severely adverse scenario would increase by between 3 and 5 percentage points from its initial level. However, if a 3 to 5 percentage point increase in the unemployment rate does not raise the level of the unemployment rate to at least 10 percent, the path of the unemployment rate in most cases will be specified so as to raise the unemployment rate to at least 10 percent. The policy statement also notes that the typical increase in the unemployment rate in the severely adverse scenario will be about 4 percentage points. The policy statement provides that the Board intends to set the unemployment rate at the higher end of the 3 to 5 percentage point range if the Board believes that cyclical systemic risks are high (as they would be after a sustained long expansion), and to the lower end of the range if cyclical systemic risks are low (as they would be in the earlier stages of a recovery).

The policy statement provides that economic variables included in the scenarios may change over time, or that

<sup>1</sup> 12 CFR part 252, subparts E and F. In addition, the supervisory stress test rules would apply to any nonbank financial company supervised by the Board that becomes subject to these requirements pursuant to a rule or order of the Board. Currently, no nonbank financial companies supervised by the Board are subject to the capital planning or stress test requirements.

<sup>2</sup> 12 CFR part 252, subpart B.

<sup>3</sup> Bank holding companies with \$50 billion or more in total consolidated assets and U.S. intermediate holding companies of foreign banking organizations additionally conduct mid-cycle company-run stress tests under scenarios that they develop. See 12 CFR 252.55.

<sup>4</sup> See 12 CFR part 252, appendix A.

the Board may augment the recession approach to account for salient risks.<sup>5</sup> The Board has not historically captured stress to funding markets in the supervisory stress test exercise. However, it is exploring the inclusion of such a stress in the scenarios, given the potential impact that funding shocks could have on firms subject to the supervisory stress test.

#### B. Review of Stress Test Exercises

The Federal Reserve routinely reviews its experience with each year's stress testing and capital planning programs as implemented through DFAST and CCAR. These reviews have included formal engagements with public interest groups, meetings with academics in the fields of economics and finance, and internal assessments.

In the course of its review of the stress test exercises, the Federal Reserve has received feedback on the Board's framework for designing stress scenarios. Some participants advocated developing a structured process for strengthening scenario design over time. Other participants were concerned that the Federal Reserve would be pressured to reduce the severity of the scenario over time. As part of its internal assessment of the stress test exercises,

the Federal Reserve also considered ways to further enhance the countercyclical elements, transparency, and risk coverage of the scenario design framework.

After considering feedback received in these reviews and possible improvements to the methodology for specifying the macroeconomic scenarios used in the supervisory stress test and the annual company-run stress tests, the Board is proposing to modify the policy statement to enhance the countercyclical and transparency of the Board's scenario design framework and improve the risk coverage of the scenarios.

## II. Review of the Supervisory Scenarios

### A. Unemployment and House Prices in the Severely Adverse Scenario

The Board investigated possible improvements to the methodology for specifying the macroeconomic scenarios used in supervisory and company-run stress tests. A main area of inquiry was the severity of macroeconomic scenarios used in previous stress test exercises. As noted, the scenario design framework was formulated to increase the severity of the severely adverse scenario during economic expansions in order to limit

the procyclicality of the financial system by increasing the resilience of the banking system to building risks. The review evaluated the path of key variables in the severely adverse scenarios since 2011, and determined that amendments to the scenario design framework could further limit procyclicality.<sup>6</sup>

The severity of a scenario can be gauged by considering both the maximum (or minimum) levels obtained by key variables and changes of the variables from their starting points. Table 1 shows the peak and change in the unemployment rate in the supervisory severely adverse scenarios since 2011.<sup>7</sup> The peak unemployment rate in the severely adverse scenario has been falling since CCAR 2012 as the economy improved. Beginning in 2016, the countercyclical element of the Board's scenario design framework acted to increase scenario severity, so while the peak level of the unemployment rate remained about the same, the change in the unemployment rate increased. The countercyclical design of the scenarios is also reflected in the change in real GDP, which, in 2017, declined by the largest amount since 2012.

TABLE 1—UNEMPLOYMENT RATE AND REAL GDP IN THE SEVERELY ADVERSE SCENARIO

	Stress test exercise							Great recession <sup>b</sup>	Severe recessions <sup>c</sup>
	2011 <sup>a</sup>	2012 <sup>a</sup>	2013	2014	2015	2016	2017		
<b>Panel A: Developments as published in the supervisory scenarios</b>									
Unemployment Rate:									
Peak Level (pct.) .....	11.1	12.6	12.1	11.3	10.1	10.0	10.0	10.0	9.3
Change Start-to-peak (pp.) .....	1.5	3.6	4.0	4.0	4.0	5.0	5.3	4.5	3.6
Real GDP:									
Change Start-to-trough (pct.) .....	-4.1	-6.9	-4.8	-4.7	-4.7	-6.2	-6.6	-4.7	-3.4

#### Note:

<sup>a</sup> In 2011 and 2012 the scenario was referred to as the "supervisory stress scenario."

<sup>b</sup> Great Recession is defined as that which occurred in Q4:2007–Q2:2009.

<sup>c</sup> Recessions classified as severe: 1957:Q3–1958:Q2, 1973:Q4–1975:Q1, 1981:Q3–1982:Q4, and 2007:Q4–2009:Q2.

The Board also evaluated its approach to developing the path of house prices, which is a key scenario variable, to assess whether it could improve the transparency of the measure and to identify a guide that would formalize the Board's countercyclical objectives. To date, the Board has developed the path of house prices using a judgmental approach, and has not established a quantitative guide for the trajectory of house prices.

As demonstrated in Panel A of table 2, the existing approach to house prices has resulted in increasing severity over time. The declines in the nominal house price index (nominal HPI) from the start to the trough have increased from 21 percent (in 2012 and 2013) to about 25–26 percent (in 2014 through 2017). The increased severity in the decline in nominal HPI in supervisory scenarios beginning in 2014 offset the rise in

observed house prices over that period, and hence limited procyclicality.

Assessing the procyclicality of house price paths over time is complicated by the fact that house prices—in contrast to the unemployment rate—naturally trend upward over time. The ratio of nominal house prices to nominal, per capita, disposable personal income (HPI–DPI ratio, henceforth), does not exhibit an upward trend and, as such, provides an alternative way to assess the

<sup>5</sup> For example, if scenario variables do not capture material risks to capital, or if historical relationships between macroeconomic variables change such that one variable is no longer an appropriate proxy for another, the Board may add variables to a supervisory scenario. The Board may also include additional scenario components or

additional scenarios that are designed to capture the effects of different adverse events on revenue, losses, and capital.

<sup>6</sup> For completeness, the tables present data from the 2017 severely adverse scenario, however, this data was not available at the time of the review conducted by the Board. The data from 2017 was

generally consistent with the analysis of the earlier scenarios.

<sup>7</sup> The change in real gross domestic product (real GDP) is also presented as an additional gauge of severity because the path of real GDP is formulated based on the path of the unemployment.



procyclicality of the scenarios' house price paths. The severity of a scenario depends on both the change and the trough level of the HPI-DPI ratio. Panel A of table 2 indicates that the change in

the HPI-DPI ratio increased in absolute terms in the years 2014 to 2017 compared to the years 2012 and 2013. However, the trough of the HPI-DPI ratio achieved in the severely adverse

scenarios has generally moved up since 2012. Scenarios with higher HPI-DPI troughs may be less severe even if they feature the same decline in the ratio.

TABLE 2—HOUSE PRICES IN THE SEVERELY ADVERSE SCENARIO

	Stress test exercise							Great recession <sup>b</sup>	Housing recessions <sup>c</sup>
	2011 <sup>a</sup>	2012 <sup>a</sup>	2013	2014	2015	2016	2017		
<b>Panel A: Developments as published in the supervisory scenarios</b>									
Nominal HPI:									
Change Start-to-trough (pct.) .....	-11	-21	-21	-26	-26	-25	-25	-30	2.5
Trough Level <sup>c</sup> .....	124	106	111	116	126	135	134	130	.....
HPI-DPI Ratio:									
Change Start-to-trough (pct.) .....	-11	-19	-18	-27	-25	-25	-24	-41	-25
Trough Level <sup>c</sup> .....	89	76	78	75	79	82	81	87	95
<b>Panel B: Developments as implied by the HPI-DPI Guide</b>									
Nominal HPI:									
Change Start-to-trough (pct.) .....	-25	-27	-27	-24	-25	-25	-26	-30	2.5
Trough Level <sup>c</sup> .....	104	98	102	119	127	134	134	130	.....
HPI-DPI Ratio:									
Change Start-to-trough (pct.) .....	-25	-25	-25	-25	-25	-25	-25	-41	-25
Trough Level <sup>d</sup> .....	75	70	72	76	80	82	79	87	95

**Note:**

<sup>a</sup>In 2011 and 2012 the scenario was referred to as the "supervisory stress scenario."

<sup>b</sup>Great Recession is defined as that which occurred in Q4:2007–Q2:2009.

<sup>c</sup>Housing recessions are defined as the following date ranges: 1980–1985, 1989–1996, and 2006–2011. The date-ranges of housing recessions are based on the timing of house-price retracements. These dates were also associated with sustained declines in real residential investment, although, the precise timings of housing recessions would likely be slightly different were they to be classified based on real residential investment in addition to house prices.

<sup>d</sup>Both the nominal HPI and HPI-DPI ratios are indexed to 100 in 2000:Q1.

Based on this analysis, the Board determined that its scenario design framework could be strengthened by (1) enhancing the counter-cyclicality of the scenarios when conditions at the start of the exercise already reflected stress; and (2) improving the transparency of the scenario design framework by developing an explicit guide for formulating the path of house prices in the severely adverse scenario.

**B. Risk Coverage in Supervisory Scenarios**

The Board also has examined whether there were important dimensions of risk that had not featured in supervisory scenarios to date. The review suggested that a key risk dimension that had not been directly addressed in the supervisory stress test was banking organizations' reliance on certain types of runnable liabilities, which has been an important source of financial stress on banking organizations, as well a channel by which one firm's distress affects other firms. For example, shocks to the costs of short-term wholesale funding played a prominent role in the recent financial crisis, and had a notable effect on firms' ability to operate as financial intermediaries. Accordingly, the Board is exploring incorporating an increase in the cost of short-term wholesale funding in its scenarios and stress tests.

**III. Proposed Amendments to the Policy Statement**

The proposal includes three modifications to the Board's scenario design framework. First, the proposal would modify the current guide in the policy statement for the peak unemployment rate in the severely adverse scenario to include a description of the circumstances in which an increase in the unemployment rate at the lower end of the 3 to 5 percentage point range suggested by the guide would be warranted. Second, the proposal would add to the policy statement an explicit guide for house prices in the severely adverse scenario based on the HPI-DPI ratio that features both a minimum level and a fixed change in the HPI-DPI ratio. Third, the proposal would provide notice that the Board is exploring the inclusion of an increase in the cost of funds for banking organizations as an explicit factor in the scenarios. Finally, the policy statement would be amended to update references and remove obsolete text.

**A. Unemployment Rate in the Severely Adverse Scenario**

The proposal would include more specific guidance for the change in the unemployment rate when the stress test is conducted during a period in which the unemployment rate is already elevated. The Board currently calibrates the peak unemployment rate in the

severely adverse scenario as the greater of a 3 to 5 percentage point increase from the unemployment rate at the beginning of the stress test planning horizon, or 10 percent. This approach introduces an element of counter-cyclicality to the scenario design process, as lower levels of the unemployment rate at the beginning of the stress planning horizons imply a larger increase in unemployment over the severely adverse scenario to a level that is at least consistent with past severe recessions.

Consistent with the current policy statement, the Board believes that the typical increase in the unemployment rate in the severely adverse scenario will be about 4 percentage points, and that a lower increase may be appropriate in certain circumstances. In determining the increase in the unemployment rate, the Board would consider the level of unemployment at the start of the scenarios, the strength of the labor market, and the strength of firms' balance sheets. The proposed framework would clarify that the Board may adopt an increase in the unemployment rate of less than 4 percentage points when the unemployment rate at the start of the scenarios is elevated but the labor market is judged to be strengthening and higher-than-usual credit losses stemming from previously elevated unemployment rates were either already realized—or are in the process of being



realized—and thus removed from banks' balance sheets. Evidence of a strengthening labor market could include a declining unemployment rate, steadily expanding nonfarm payroll employment, or improving labor force participation. Evidence that credit losses are being realized could include elevated charge-offs on loans and leases, loan-loss provisions in excess of gross charge-offs, or losses being realized in securities portfolios that include securities that are subject to credit risk.

This proposed change would keep the unemployment rate in the macroeconomic scenario broadly similar to that in previous scenarios except during times when a smaller change would be appropriate based on the credit cycle. By adopting a smaller change in the unemployment rate when the economy was recovering and losses had already been broadly recognized by the industry, the proposal would complement the current countercyclical design elements.

*Question number 1: In connection with this proposal, the Federal Reserve considered an alternative guide for the unemployment rate, in which the path of the unemployment rate would reach the lesser of a level 4 percentage points above its level at the beginning of the scenario or 11 percent. On average, this alternative would increase the severity of severely adverse scenarios but also would be more countercyclical than the current guide. What are the advantages or disadvantages to this alternative relative to the proposed guide?*

#### *B. House Prices in the Severely Adverse Scenario*

The policy statement would also be amended to include guidance for the path of the nominal house price index in the severely adverse scenario. The nominal house price index is a key scenario variable, and providing explicit guidance for its path over the planning horizon would enhance the transparency and countercyclical design of the scenario design framework.

The proposal would establish a quantitative guide for house prices. The guide for house prices would be informed by the ratio of the nominal house price index to nominal per capita disposable income (HPI–DPI ratio). Unlike the level of house prices, the HPI–DPI ratio does not exhibit a trend over time. Under most circumstances, the decline in the HPI–DPI ratio in the severely adverse scenario is expected to be 25 percent from its starting value or enough to bring the ratio down to its Great Recession trough, whichever is greater. A rule with both a minimum change in the ratio and a level of

severity that the ratio must reach is consistent with the rule for the path of the unemployment rate and would further the Board's countercyclical goals in scenario design.

In its analysis, the Board identified the HPI–DPI trough reached during the Great Recession as the lowest trough attained in housing recessions since 1976, and considered this trough an appropriate basis for explicit guidance for the path of house prices. Setting a minimum decline in the HPI–DPI ratio would ensure that additional economic stress would be incorporated into the macroeconomic scenario, even if house prices were depressed at the outset of the scenario. The Board would typically set a minimum decline in the HPI–DPI ratio of 25 percent from its starting value. A decline of 25 percent is consistent with the average decline in housing recessions (see table 2 in the Policy Statement) and with the path of house prices in the supervisory severely adverse scenarios since 2015.

Procyclicality in house prices would be limited by setting a maximum level for the trough of the HPI–DPI ratio in the severely adverse scenario. This would increase the severity of the decline in house prices as house prices rise relative to disposable personal incomes, as is the case in times of economic expansion. When the HPI–DPI ratio rises above the level at which a 25 percent decline would bring the ratio to its Great Recession trough, at the start of the stress test, the change in the ratio would be greater than 25 percent in order to bring the ratio to its Great Recession trough.<sup>8</sup> This proposal would offer a more systematic approach to specifying house price paths than does the current approach, and would limit procyclicality while broadly preserving the decline in the nominal HPI featured in recent stress testing cycles.

*Question number 2: In connection with this proposal, the Federal Reserve considered alternative guides for projecting house prices, including guides based on the ratio of the nominal house price index to an index of nominal rent prices for residential housing. What are the advantages or disadvantages to such alternatives relative to the proposed guide?*

<sup>8</sup> The Great Recession trough depends on the reference date used for indexing. For example, with nominal HPI and HPI–DPI ratios indexed to 100 in 2000:Q1, a decline in the HPI–DPI index of more than 25 percent would be necessary to reach the Great Recession trough of 87 when the HPI–DPI ratio at the start of the supervisory scenario was 116 or greater.

#### *C. Incorporating Short-Term Wholesale Funding Costs in the Adverse and Severely Adverse Scenarios*

To date, the Board's adverse and severely adverse scenarios have not incorporated stress to funding markets. The proposal states that the Board may include variables or an additional component in the scenario to capture the cost of funds, particularly wholesale funds, to banking organizations. Including stress to funding costs in the scenarios would account for the impact of increased costs of certain runnable liabilities on net income and capital of banking organizations reliant on short-term wholesale funding. The Board would not expect to incorporate wholesale funding costs in the scenarios before 2019, and would expect to include wholesale funding costs in the adverse scenario before the severely adverse scenario. Accordingly, the Board would not expect to include a stress to funding costs in the severely adverse scenario until 2020 at the earliest.

*Question number 3: What variable or combinations of variables would best represent stress to funding costs or availability in the supervisory scenarios?*

*Question number 4: What, if any, other risks should the Federal Reserve consider capturing in the supervisory scenarios?*

#### *D. Impact Analysis*

Generally, the proposed amendments would not affect the severity of the scenarios in a manner that persists throughout the economic cycle. The one exception is the introduction of an increase in the cost of certain runnable liabilities. Generally, the inclusion of a stress to wholesale funding would be expected to increase the stringency of the stress test. The extent of the increased stringency would depend on the implementation of the stress, such as the type of liabilities stressed, and the duration and magnitude of the stress considered.

The proposed unemployment rate clarification would reduce the stringency of the scenario if the economy had already experienced stress and was recovering, and would not impact the stringency of the scenario in other points during the economic cycle. The house price guide would formalize an approach that was previously judgmental with little persistent impact on the severity of the stress to house prices in the severely adverse scenarios. However, the countercyclical element of the guide would increase the severity of the stress to house prices when the ratio

of house prices to disposable personal income was particularly elevated at the start of the stress test.

*Question number 5: The Federal Reserve is proposing changes to the Scenario Design Policy Statement to enhance the countercyclicality, risk coverage, and transparency of the scenario development process. Are there other modifications not included in this proposal that could further enhance the scenario development process?*

#### IV. Administrative Law Matters

##### A. Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338, 1471, 12 U.S.C. 4809) requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board has sought to present the proposed rule in a simple and straightforward manner, and invites comment on the use of plain language.

##### B. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), the Board has reviewed the proposed policy statement to assess any information collections. There are no collections of information as defined by the Paperwork Reduction Act in the proposal.

##### C. Regulatory Flexibility Act Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act (RFA), the Board is publishing an initial regulatory flexibility analysis of the proposed policy statement. The RFA, 5 U.S.C. 601 *et seq.*, requires each federal agency to prepare an initial regulatory flexibility analysis in connection with the promulgation of a proposed rule, or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.<sup>9</sup> The RFA requires an agency either to provide an initial regulatory flexibility analysis with a proposed rule for which a general notice of proposed rulemaking is required or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. Based on its analysis and for the reasons stated below, the Board believes that the proposed policy statement would not have a significant economic impact on a substantial number of small entities.

Under regulations issued by the Small Business Administration (SBA), a “small entity” includes those firms within the “Finance and Insurance” sector with asset sizes that vary from \$7

million or less in assets to \$175 million or less in assets.<sup>10</sup> The Board believes that the Finance and Insurance sector constitutes a reasonable universe of firms for these purposes because such firms generally engage in activities that are financial in nature. Consequently, bank holding companies, savings and loan holding companies, state member banks, or nonbank financial companies with assets sizes of \$175 million or less are small entities for purposes of the RFA.

As discussed in the **SUPPLEMENTARY INFORMATION**, the proposed policy statement generally would affect the scenario design framework used in regulations that apply to covered companies, savings and loan holding companies, and state member banks with greater than \$10 billion in total consolidated assets and bank holding companies with assets of more than \$10 billion but less than \$50 billion. Companies that are affected by the proposed policy statement therefore substantially exceed the \$175 million asset threshold at which a banking entity is considered a “small entity” under SBA regulations.<sup>11</sup> The proposed policy statement would affect a nonbank financial company designated by the Council under section 113 of the Dodd-Frank Act regardless of such a company’s asset size. Although the asset size of nonbank financial companies may not be the determinative factor of whether such companies may pose systemic risks and would be designated by the Council for supervision by the Board, it is an important consideration.<sup>12</sup> It is therefore unlikely that a financial firm that is at or below the \$175 million asset threshold would be designated by the Council under section 113 of the Dodd-Frank Act because material financial distress at such firms, or the nature, scope, size, scale, concentration, interconnectedness, or mix of its activities, are not likely to pose a threat to the financial stability of the United States.

As noted above, because the proposed policy statement is not likely to apply to any company with assets of \$175 million or less, if adopted in final form, it is not expected to affect any small entity for purposes of the RFA. The Board does not believe that the proposed policy statement duplicates,

overlaps, or conflicts with any other Federal rules. In light of the foregoing, the Board does not believe that the proposed policy statement, if adopted in final form, would have a significant economic impact on a substantial number of small entities supervised. Nonetheless, the Board seeks comment on whether the proposed policy statement would impose undue burdens on, or have unintended consequences for, small organizations, and whether there are ways such potential burdens or consequences could be minimized in a manner consistent its purpose.

##### List of Subjects in 12 CFR Part 252

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies, Nonbank financial companies supervised by the Board, Reporting and recordkeeping requirements, Securities, Stress testing.

##### Authority and Issuance

For the reasons stated in the **SUPPLEMENTARY INFORMATION**, the Board of Governors of the Federal Reserve System proposes to amend 12 CFR part 252 as follows:

#### **PART 252—ENHANCED PRUDENTIAL STANDARDS (Regulation YY)**

■ 1. The authority citation for part 252 continues to read as follows:

**Authority:** 12 U.S.C. 321–338a, 1467a(g), 1818, 1831p–1, 1844(b), 1844(c), 5361, 5365, 5366.

■ 2. Appendix A to part 252 is revised to read as follows:

#### **Appendix A to Part 252—Policy Statement on the Scenario Design Framework for Stress Testing**

##### 1. Background

a. The Board has imposed stress testing requirements through its regulations (stress test rules) implementing section 165(i) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act or Act) and through its capital plan rule (12 CFR 225.8). Under the stress test rules issued under section 165(i)(1) of the Act, the Board conducts an annual stress test (supervisory stress tests), on a consolidated basis, of each bank holding company with total consolidated assets of \$50 billion or more, intermediate holding company of a foreign banking organization, and nonbank financial company that the Financial Stability Oversight Council has designated for supervision by the Board (together, covered companies).<sup>1</sup> In addition, under the stress test rules issued under section 165(i)(2) of the Act, covered companies must conduct stress tests semi-annually and other financial

<sup>10</sup> 13 CFR 121.201.

<sup>11</sup> The Dodd-Frank Act provides that the Board may, on the recommendation of the Council, increase the \$50 billion asset threshold for the application of certain of the enhanced standards. See 12 U.S.C. 5365(a)(2)(B). However, neither the Board nor the Council has the authority to lower such threshold.

<sup>12</sup> See 76 FR 4555 (January 26, 2011).

<sup>1</sup> 12 U.S.C. 5365(i)(1); 12 CFR part 252, subpart E.

<sup>9</sup> See 5 U.S.C. 603, 604 and 605.

companies with total consolidated assets of more than \$10 billion and for which the Board is the primary regulatory agency must conduct stress tests on an annual basis (together, company-run stress tests).<sup>2</sup> The Board will provide for at least three different sets of conditions (each set, a scenario), including baseline, adverse, and severely adverse scenarios for both supervisory and company-run stress tests (macroeconomic scenarios).<sup>3</sup>

b. The stress test rules provide that the Board will notify covered companies by no later than February 15 of each year of the scenarios it will use to conduct its annual supervisory stress tests and provide, also by no later than February 15, covered companies and other financial companies subject to the final rules the set of scenarios they must use to conduct their annual company-run stress tests.<sup>4</sup> Under the stress test rules, the Board may require certain companies to use additional components in the adverse or severely adverse scenario or additional scenarios. For example, the Board expects to require large banking organizations with significant trading activities to include a trading and counterparty component (market shock, described in the following sections) in their adverse and severely adverse scenarios. The Board will provide any additional components or scenario by no later than March 1 of each year.<sup>5</sup> The Board expects that the scenarios it will require the companies to use will be the same as those the Board will use to conduct its supervisory stress tests (together, stress test scenarios).

c. In addition, § 225.8 of the Board's Regulation Y (capital plan rule) requires covered companies to submit annual capital plans, including stress test results, to the Board to allow the Board to assess whether they have robust, forward-looking capital planning processes and have sufficient capital to continue operations throughout times of economic and financial stress.<sup>6</sup>

d. Stress tests required under the stress test rules and under the capital plan rule require the Board and financial companies to calculate pro-forma capital levels—rather than “current” or actual levels—over a specified planning horizon under baseline and stressful scenarios. This approach integrates key lessons of the 2007–2009 financial crisis into the Board's supervisory framework. During the financial crisis, investor and counterparty confidence in the capitalization of financial companies eroded rapidly in the face of changes in the current and expected economic and financial conditions, and this loss in market confidence imperiled companies' ability to access funding, continue operations, serve as a credit intermediary, and meet obligations to creditors and counterparties. Importantly, such a loss in confidence occurred even

when a financial institution's capital ratios were in excess of regulatory minimums. This is because the institution's capital ratios were perceived as lagging indicators of its financial condition, particularly when conditions were changing.

e. The stress tests required under the stress test rules and capital plan rule are a valuable supervisory tool that provide a forward-looking assessment of large financial companies' capital adequacy under hypothetical economic and financial market conditions. Currently, these stress tests primarily focus on credit risk and market risk—that is, risk of mark-to-market losses associated with companies' trading and counterparty positions—and not on other types of risk, such as liquidity risk. Pressures stemming from these sources are considered in separate supervisory exercises. No single supervisory tool, including the stress tests, can provide an assessment of a company's ability to withstand every potential source of risk.

f. Selecting appropriate scenarios is an especially significant consideration for stress tests required under the capital plan rule, which ties the review of a company's performance under stress scenarios to its ability to make capital distributions. More severe scenarios, all other things being equal, generally translate into larger projected declines in banks' capital. Thus, a company would need more capital today to meet its minimum capital requirements in more stressful scenarios and have the ability to continue making capital distributions, such as common dividend payments. This translation is far from mechanical, however; it will depend on factors that are specific to a given company, such as underwriting standards and the company's business model, which would also greatly affect projected revenue, losses, and capital.

## 2. Overview and Scope

a. This policy statement provides more detail on the characteristics of the stress test scenarios and explains the considerations and procedures that underlie the approach for formulating these scenarios. The considerations and procedures described in this policy statement apply to the Board's stress testing framework, including to the stress tests required under 12 CFR part 252, subparts B, E, and F, as well as the Board's capital plan rule (12 CFR 225.8).<sup>7</sup>

b. Although the Board does not envision that the broad approach used to develop scenarios will change from year to year, the stress test scenarios will reflect changes in the outlook for economic and financial conditions and changes to specific risks or vulnerabilities that the Board, in consultation with the other federal banking agencies, determines should be considered in the annual stress tests. The stress test scenarios should not be regarded as forecasts; rather, they are hypothetical paths of economic variables that will be used to assess the strength and resilience of the companies' capital in various economic and financial environments.

c. The remainder of this policy statement is organized as follows. Section 3 provides a broad description of the baseline, adverse, and severely adverse scenarios and describes the types of variables that the Board expects to include in the macroeconomic scenarios and the market shock component of the stress test scenarios applicable to companies with significant trading activity. Section 4 describes the Board's approach for developing the macroeconomic scenarios, and section 5 describes the approach for the market shocks. Section 6 describes the relationship between the macroeconomic scenario and the market shock components. Section 7 provides a timeline for the formulation and publication of the macroeconomic assumptions and market shocks.

## 3. Content of the Stress Test Scenarios

a. The Board will publish a minimum of three different scenarios, including baseline, adverse, and severely adverse conditions, for use in stress tests required in the stress test rules.<sup>8</sup> In general, the Board anticipates that it will not issue additional scenarios. Specific circumstances or vulnerabilities that in any given year the Board determines require particular vigilance to ensure the resilience of the banking sector will be captured in either the adverse or severely adverse scenarios. A greater number of scenarios could be needed in some years—for example, because the Board identifies a large number of unrelated and uncorrelated but nonetheless significant risks.

b. While the Board generally expects to use the same scenarios for all companies subject to the final rule, it may require a subset of companies—depending on a company's financial condition, size, complexity, risk profile, scope of operations, or activities, or risks to the U.S. economy—to include additional scenario components or additional scenarios that are designed to capture different effects of adverse events on revenue, losses, and capital. One example of such components is the market shock that applies only to companies with significant trading activity. Additional components or scenarios may also include other stress factors that may not necessarily be directly correlated to macroeconomic or financial assumptions but nevertheless can materially affect companies' risks, such as the unexpected default of a major counterparty.

c. Early in each stress testing cycle, the Board plans to publish the macroeconomic scenarios along with a brief narrative summary that provides a description of the economic situation underlying the scenario and explains how the scenarios have changed relative to the previous year. In addition, to assist companies in projecting the paths of additional variables in a manner consistent with the scenario, the narrative will also provide descriptions of the general path of some additional variables. These descriptions will be general—that is, they will describe developments for broad classes of variables rather than for specific variables—and will specify the intensity and direction of variable

<sup>2</sup> 12 U.S.C. 5365(i)(2); 12 CFR part 252, subparts B and F.

<sup>3</sup> The stress test rules define scenarios, baseline scenario, adverse scenario, and severely adverse scenario. See 12 CFR 252.12(b), (f), (p), and (q); 12 CFR 252.42(b), (e), (n), and (o); 12 CFR 252.52(b), (e), (o), and (p).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> See 12 CFR 225.8.

<sup>7</sup> 12 CFR 252.14(a), 12 CFR 252.44(a), 12 CFR 252.54(a).

<sup>8</sup> 12 CFR 252.14(b), 12 CFR 252.44(b), 12 CFR 252.54(b).

changes but not numeric magnitudes. These descriptions should provide guidance that will be useful to companies in specifying the paths of the additional variables for their company-run stress tests. Note that in practice it will not be possible for the narrative to include descriptions on all of the additional variables that companies may need for their company-run stress tests. In cases where scenarios are designed to reflect particular risks and vulnerabilities, the narrative will also explain the underlying motivation for these features of the scenario. The Board also plans to release a broad description of the market shock components.

### 3.1 Macroeconomic Scenarios

a. The macroeconomic scenarios will consist of the future paths of a set of economic and financial variables.<sup>9</sup> The economic and financial variables included in the scenarios will likely comprise those included in the “2014 Supervisory Scenarios for Annual Stress Tests Required under the Dodd-Frank Act Stress Testing Rules and the Capital Plan Rule” (2013 supervisory scenarios). The domestic U.S. variables provided for in the 2013 supervisory scenarios included:

i. Six measures of economic activity and prices: Real and nominal gross domestic product (GDP) growth, the unemployment rate of the civilian non-institutional population aged 16 and over, real and nominal disposable personal income growth, and the Consumer Price Index (CPI) inflation rate;

ii. Four measures of developments in equity and property markets: The Core Logic National House Price Index, the National Council for Real Estate Investment Fiduciaries Commercial Real Estate Price Index, the Dow Jones Total Stock Market Index, and the Chicago Board Options Exchange Market Volatility Index; and

iii. Six measures of interest rates: The rate on the three-month Treasury bill, the yield on the 5-year Treasury bond, the yield on the 10-year Treasury bond, the yield on a 10-year BBB corporate security, the prime rate, and the interest rate associated with a conforming, conventional, fixed-rate, 30-year mortgage.

b. The international variables provided for in the 2014 supervisory scenarios included, for the euro area, the United Kingdom, developing Asia, and Japan:

i. Percent change in real GDP;

ii. Percent change in the Consumer Price Index or local equivalent; and

iii. The U.S./foreign currency exchange rate.<sup>10</sup>

c. The economic variables included in the scenarios influence key items affecting financial companies' net income, including pre-provision net revenue and credit losses on loans and securities. Moreover, these variables exhibit fairly typical trends in

adverse economic climates that can have unfavorable implications for companies' net income and, thus, capital positions.

d. The economic variables included in the scenario may change over time. For example, the Board may add variables to a scenario if the international footprint of companies that are subject to the stress testing rules changed notably over time such that the variables already included in the scenario no longer sufficiently capture the material risks of these companies. Alternatively, historical relationships between macroeconomic variables could change over time such that one variable (e.g., disposable personal income growth) that previously provided a good proxy for another (e.g., light vehicle sales) in modeling companies' pre-provision net revenue or credit losses ceases to do so, resulting in the need to create a separate path, or alternative proxy, for the other variable. However, recognizing the amount of work required for companies to incorporate the scenario variables into their stress testing models, the Board expects to eliminate variables from the scenarios only in rare instances.

e. The Board expects that the company may not use all of the variables provided in the scenario, if those variables are not appropriate to the company's line of business, or may add additional variables, as appropriate. The Board expects the companies will ensure that the paths of such additional variables are consistent with the scenarios the Board provided. For example, the companies may use, as part of their internal stress test models, local-level variables, such as state-level unemployment rates or city-level house prices. While the Board does not plan to include local-level macro variables in the stress test scenarios it provides, it expects the companies to evaluate the paths of local-level macro variables as needed for their internal models, and ensure internal consistency between these variables and their aggregate, macroeconomic counterparts. The Board will provide the macroeconomic scenario component of the stress test scenarios for a period that spans a minimum of 13 quarters. The scenario horizon reflects the supervisory stress test approach that the Board plans to use. Under the stress test rules, the Board will assess the effect of different scenarios on the consolidated capital of each company over a forward-looking planning horizon of at least nine quarters.

### 3.2 Market Shock Component

a. The market shock component of the adverse and severely adverse scenarios will only apply to companies with significant trading activity and their subsidiaries.<sup>11</sup> The

<sup>11</sup> Currently, companies with significant trading activity include any bank holding company or intermediate holding company that (1) has aggregate trading assets and liabilities of \$50 billion or more, or aggregate trading assets and liabilities equal to 10 percent or more of total consolidated assets, and (2) is not a large and noncomplex firm. The Board may also subject a state member bank subsidiary of any such bank holding company to the market shock component. The set of companies subject to the market shock component could change over time as the size, scope, and complexity of financial company's trading activities evolve.

component consists of large moves in market prices and rates that would be expected to generate losses. Market shocks differ from macroeconomic scenarios in a number of ways, both in their design and application. For instance, market shocks that might typically be observed over an extended period (e.g., 6 months) are assumed to be an instantaneous event which immediately affects the market value of the companies' trading assets and liabilities. In addition, under the stress test rules, the as-of date for market shocks will differ from the quarter-end, and the Board will provide the as-of date for market shocks no later than February 1 of each year. Finally, as described in section 4, the market shock includes a much larger set of risk factors than the set of economic and financial variables included in macroeconomic scenarios. Broadly, these risk factors include shocks to financial market variables that affect asset prices, such as a credit spread or the yield on a bond, and, in some cases, the value of the position itself (e.g., the market value of private equity positions).

b. The Board envisions that the market shocks will include shocks to a broad range of risk factors that are similar in granularity to those risk factors trading companies use internally to produce profit and loss estimates, under stressful market scenarios, for all asset classes that are considered trading assets, including equities, credit, interest rates, foreign exchange rates, and commodities. Examples of risk factors include, but are not limited to:

i. Equity indices of all developed markets, and of developing and emerging market nations to which companies with significant trading activity may have exposure, along with term structures of implied volatilities;

ii. Cross-currency FX rates of all major and many minor currencies, along term structures of implied volatilities;

iii. Term structures of government rates (e.g., U.S. Treasuries), interbank rates (e.g., swap rates) and other key rates (e.g., commercial paper) for all developed markets and for developing and emerging market nations to which companies may have exposure;

iv. Term structures of implied volatilities that are key inputs to the pricing of interest rate derivatives;

v. Term structures of futures prices for energy products including crude oil (differentiated by country of origin), natural gas, and power;

vi. Term structures of futures prices for metals and agricultural commodities;

vii. “Value-drivers” (credit spreads or instrument prices themselves) for credit-sensitive product segments including: Corporate bonds, credit default swaps, and collateralized debt obligations by risk; non-agency residential mortgage-backed securities and commercial mortgage-backed securities by risk and vintage; sovereign debt; and, municipal bonds; and

viii. Shocks to the values of private equity positions.

### 4. Approach for Formulating the Macroeconomic Assumptions for Scenarios

a. This section describes the Board's approach for formulating macroeconomic

<sup>9</sup> The future path of a variable refers to its specification over a given time period. For example, the path of unemployment can be described in percentage terms on a quarterly basis over the stress testing time horizon.

<sup>10</sup> The Board may increase the range of countries or regions included in future scenarios, as appropriate.

assumptions for each scenario. The methodologies for formulating this part of each scenario differ by scenario, so these methodologies for the baseline, severely adverse, and the adverse scenarios are described separately in each of the following subsections.

b. In general, the baseline scenario will reflect the most recently available consensus views of the macroeconomic outlook expressed by professional forecasters, government agencies, and other public-sector organizations as of the beginning of the annual stress-test cycle. The severely adverse scenario will consist of a set of economic and financial conditions that reflect the conditions of post-war U.S. recessions. The adverse scenario will consist of a set of economic and financial conditions that are more adverse than those associated with the baseline scenario but less severe than those associated with the severely adverse scenario.

c. Each of these scenarios is described further in sections below as follows: Baseline (subsection 4.1), severely adverse (subsection 4.2), and adverse (subsection 4.3).

#### 4.1 Approach for Formulating Macroeconomic Assumptions in the Baseline Scenario

a. The stress test rules define the baseline scenario as a set of conditions that affect the U.S. economy or the financial condition of a banking organization, and that reflect the consensus views of the economic and financial outlook. Projections under a baseline scenario are used to evaluate how companies would perform in more likely economic and financial conditions. The baseline serves also as a point of comparison to the severely adverse and adverse scenarios, giving some sense of how much of the company's capital decline could be ascribed to the scenario as opposed to the company's capital adequacy under expected conditions.

b. The baseline scenario will be developed around a macroeconomic projection that captures the prevailing views of private-sector forecasters (e.g. Blue Chip Consensus Forecasts and the Survey of Professional Forecasters), government agencies, and other public-sector organizations (e.g., the International Monetary Fund and the Organization for Economic Co-operation and Development) near the beginning of the annual stress-test cycle. The baseline scenario is designed to represent a consensus expectation of certain economic variables over the time period of the tests and it is not the Board's internal forecast for those economic variables. For example, the baseline path of short-term interest rates is constructed from consensus forecasts and may differ from that implied by the FOMC's *Summary of Economic Projections*.

c. For some scenario variables—such as U.S. real GDP growth, the unemployment rate, and the consumer price index—there will be a large number of different forecasts available to project the paths of these variables in the baseline scenario. For others, a more limited number of forecasts will be available. If available forecasts diverge notably, the baseline scenario will reflect an

assessment of the forecast that is deemed to be most plausible. In setting the paths of variables in the baseline scenario, particular care will be taken to ensure that, together, the paths present a coherent and plausible outlook for the U.S. and global economy, given the economic climate in which they are formulated.

#### 4.2 Approach for Formulating the Macroeconomic Assumptions in the Severely Adverse Scenario

The stress test rules define a severely adverse scenario as a set of conditions that affect the U.S. economy or the financial condition of a financial company and that overall are more severe than those associated with the adverse scenario. The financial company will be required to publicly disclose a summary of the results of its stress test under the severely adverse scenario, and the Board intends to publicly disclose the results of its analysis of the financial company under the adverse scenario and the severely adverse scenario.

##### 4.2.1 General Approach: The Recession Approach

a. The Board intends to use a recession approach to develop the severely adverse scenario. In the recession approach, the Board will specify the future paths of variables to reflect conditions that characterize post-war U.S. recessions, generating either a typical or specific recreation of a post-war U.S. recession. The Board chose this approach because it has observed that the conditions that typically occur in recessions—such as increasing unemployment, declining asset prices, and contracting loan demand—can put significant stress on companies' balance sheets. This stress can occur through a variety of channels, including higher loss provisions due to increased delinquencies and defaults; losses on trading positions through sharp moves in market prices; and lower bank income through reduced loan originations. For these reasons, the Board believes that the paths of economic and financial variables in the severely adverse scenario should, at a minimum, resemble the paths of those variables observed during a recession.

b. This approach requires consideration of the type of recession to feature. All post-war U.S. recessions have not been identical: Some recessions have been associated with very elevated interest rates, some have been associated with sizable asset price declines, and some have been relatively more global. The most common features of recessions, however, are increases in the unemployment rate and contractions in aggregate incomes and economic activity. For this and the following reasons, the Board intends to use the unemployment rate as the primary basis for specifying the severely adverse scenario. First, the unemployment rate is likely the most representative single summary indicator of adverse economic conditions. Second, in comparison to GDP, labor market data have traditionally featured more prominently than GDP in the set of indicators that the National Bureau of Economic Research reviews to

inform its recession dates.<sup>12</sup> Third and finally, the growth rate of potential output can cause the size of the decline in GDP to vary between recessions. While changes in the unemployment rate can also vary over time due to demographic factors, this seems to have more limited implications over time relative to changes in potential output growth. The unemployment rate used in the severely adverse scenario will reflect an unemployment rate that has been observed in severe post-war U.S. recessions, measuring severity by the absolute level of and relative increase in the unemployment rate.<sup>13</sup>

c. The Board believes that the severely adverse scenario should also reflect a housing recession. The house prices path set in the severely adverse scenario will reflect developments that have been observed in post-war U.S. housing recessions, measuring severity by the absolute level of and relative decrease in the house prices.

d. The Board will specify the paths of most other macroeconomic variables based on the paths of unemployment, income, house prices, and activity. Some of these other variables, however, have taken wildly divergent paths in previous recessions (e.g., foreign GDP), requiring the Board to use its informed judgment in selecting appropriate paths for these variables. In general, the path for these other variables will be based on their underlying structure at the time that the scenario is designed (e.g., economic or financial-system vulnerabilities in other countries).

e. The Board considered alternative methods for scenario design of the severely adverse scenario, including a probabilistic approach. The probabilistic approach constructs a baseline forecast from a large-scale macroeconomic model and identifies a scenario that would have a specific probabilistic likelihood given the baseline forecast. The Board believes that, at this time, the recession approach is better suited for developing the severely adverse scenario than a probabilistic approach because it guarantees a recession of some specified severity. In contrast, the probabilistic approach requires the choice of an extreme tail outcome—relative to baseline—to characterize the severely adverse scenario (e.g., a 5 percent or a 1 percent tail outcome). In practice, this choice is difficult as adverse economic outcomes are typically thought of in terms of how variables evolve in an absolute sense rather than how far away they lie in the probability space away from the baseline. In this sense, a scenario featuring a recession may be somewhat clearer and more straightforward to communicate. Finally, the

<sup>12</sup> More recently, a monthly measure of GDP has been added to the list of indicators.

<sup>13</sup> Even though all recessions feature increases in the unemployment rate and contractions in incomes and economic activity, the size of this change has varied over post-war U.S. recessions. Table 1 of this appendix documents the variability in the depth of post-war U.S. recessions. Some recessions—labeled mild in Table 1—have been relatively modest with GDP edging down just slightly and the unemployment rate moving up about a percentage point. Other recessions—labeled severe in Table 1—have been much harsher with GDP dropping 3¼ percent and the unemployment rate moving up a total of about 4 percentage points.

probabilistic approach relies on estimates of uncertainty around the baseline scenario and such estimates are in practice model-dependent.

#### 4.2.2 *Setting the Unemployment Rate Under the Severely Adverse Scenario*

a. The Board anticipates that the severely adverse scenario will feature an unemployment rate that increases between 3 to 5 percentage points from its initial level over the course of 6 to 8 calendar quarters.<sup>14</sup> The initial level will be set based on the conditions at the time that the scenario is designed. However, if a 3 to 5 percentage point increase in the unemployment rate does not raise the level of the unemployment rate to at least 10 percent—the average level to which it has increased in the most recent three severe recessions—the path of the unemployment rate in most cases will be specified so as to raise the unemployment rate to at least 10 percent.

b. This methodology is intended to generate scenarios that feature stressful outcomes but do not induce greater procyclicality in the financial system and macroeconomy. When the economy is in the early stages of a recovery, the unemployment rate in a baseline scenario generally trends downward, resulting in a larger difference between the path of the unemployment rate in the severely adverse scenario and the baseline scenario and a severely adverse scenario that is relatively more intense. Conversely, in a sustained strong expansion—when the unemployment rate may be below the level consistent with full employment—the unemployment in a baseline scenario generally trends upward, resulting in a smaller difference between the path of the unemployment rate in the severely adverse scenario and the baseline scenario and a severely adverse scenario that is relatively less intense. Historically, a 3 to 5 percentage point increase in unemployment rate is reflective of stressful conditions. As illustrated in Table 1 of this appendix, over the last half-century, the U.S. economy has experienced four severe post-war recessions. In all four of these recessions the unemployment rate increased 3 to 5 percentage points and in the three most recent of these recessions the unemployment rate reached a level between 9 percent and 11 percent.

c. Under this method, if the initial unemployment rate were low—as it would be after a sustained long expansion—the unemployment rate in the scenario would increase to a level as high as what has been seen in past severe recessions. However, if the initial unemployment rate were already high—as would be the case in the early stages of a recovery—the unemployment rate would exhibit a change as large as what has been seen in past severe recessions.

d. The Board believes that the typical increase in the unemployment rate in the

severely adverse scenario will be about 4 percentage points. However, the Board will calibrate the increase in unemployment based on its views of the status of cyclical systemic risk. The Board intends to set the unemployment rate at the higher end of the range if the Board believed that cyclical systemic risks were high (as it would be after a sustained long expansion), and to the lower end of the range if cyclical systemic risks were low (as it would be in the earlier stages of a recovery). This may result in a scenario that is slightly more intense than normal if the Board believed that cyclical systemic risks were increasing in a period of robust expansion.<sup>15</sup> Conversely, it will allow the Board to specify a scenario that is slightly less intense than normal in an environment where systemic risks appeared subdued, such as in the early stages of an expansion. Indeed, the Board expects that, in general, it will adopt a change in the unemployment rate of less than 4 percentage points when the unemployment rate at the start of the scenarios is elevated but the labor market is judged to be strengthening and higher-than-usual credit losses stemming from previously elevated unemployment rates were either already realized—or are in the process of being realized—and thus removed from banks' balance sheets.<sup>16</sup> However, even at the lower end of the range of unemployment-rate increases, the scenario will still feature an increase in the unemployment rate similar to what has been seen in about half of the severe recessions of the last 50 years.

e. As indicated previously, if a 3 to 5 percentage point increase in the unemployment rate does not raise the level of the unemployment rate to 10 percent—the average level to which it has increased in the most recent three severe recessions—the path of the unemployment rate will be specified so as to raise the unemployment rate to 10 percent. Setting a floor for the unemployment rate at 10 percent recognizes the fact that not only do cyclical systemic risks build up at financial intermediaries during robust expansions but that these risks are also easily obscured by the buoyant environment.

f. In setting the increase in the unemployment rate, the Board will consider the extent to which analysis by economists, supervisors, and financial market experts finds cyclical systemic risks to be elevated (but difficult to be captured more precisely in one of the scenario's other variables). In addition, the Board—in light of impending shocks to the economy and financial system—will also take into consideration the extent to which a scenario of some increased severity might be necessary for the results of

<sup>15</sup> Note, however, that the severity of the scenario would not exceed an implausible level: even at the upper end of the range of unemployment-rate increases, the path of the unemployment rate would still be consistent with severe post-war U.S. recessions.

<sup>16</sup> Evidence of a strengthening labor market could include a declining unemployment rate, steadily expanding nonfarm payroll employment, or improving labor force participation. Evidence that credit losses are being realized could include elevated charge-offs on loans and leases, loan-loss provisions in excess of gross charge-offs, or losses being realized in securities portfolios that include securities that are subject to credit risk.

the stress test and the associated supervisory actions to sustain confidence in financial institutions.

g. While the approach to specifying the severely adverse scenario is designed to avoid adding sources of procyclicality to the financial system, it is not designed to explicitly offset any existing procyclical tendencies in the financial system. The purpose of the stress test scenarios is to make sure that the companies are properly capitalized to withstand severe economic and financial conditions, not to serve as an explicit countercyclical offset to the financial system.

h. In developing the approach to the unemployment rate, the Board also considered a method that would increase the unemployment rate to some fairly elevated fixed level over the course of 6 to 8 quarters. This will result in scenarios being more severe in robust expansions (when the unemployment rate is low) and less severe in the early stages of a recovery (when the unemployment rate is high) and so would not result in pro-cyclicality. Depending on the initial level of the unemployment rate, this approach could lead to only a very modest increase in the unemployment rate—or even a decline. As a result, this approach—while not procyclical—could result in scenarios not featuring stressful macroeconomic outcomes.

#### 4.2.3 *Setting the Other Variables in the Severely Adverse Scenario*

a. Generally, all other variables in the severely adverse scenario will be specified to be consistent with the increase in the unemployment rate. The approach for specifying the paths of these variables in the scenario will be a combination of (1) how economic models suggest that these variables should evolve given the path of the unemployment rate, (2) how these variables have typically evolved in past U.S. recessions, and (3) and evaluation of these and other factors.

b. Economic models—such as medium-scale macroeconomic models—should be able to generate plausible paths consistent with the unemployment rate for a number of scenario variables, such as real GDP growth, CPI inflation and short-term interest rates, which have relatively stable (direct or indirect) relationships with the unemployment rate (e.g., Okun's Law, the Phillips Curve, and interest rate feedback rules). For some other variables, specifying their paths will require a case-by-case consideration.

c. Declining house prices, which are an important source of stress to a company's balance sheet, are not a steadfast feature of recessions, and the historical relationship of house prices with the unemployment rate is not strong. Simply adopting their typical path in a severe recession would likely underestimate risks stemming from the housing sector. In specifying the path for nominal house prices, the Board will consider the ratio of the nominal house price index (HPI) to nominal, per capita, disposable income (DPI). The Board believes that the typical decline in the HPI-DPI ratio will be at a minimum 25 percent from its starting value, or enough to bring the ratio

<sup>14</sup> Six to eight quarters is the average number of quarters for which a severe recession lasts plus the average number of subsequent quarters over which the unemployment rate continues to rise. The variable length of the timeframe reflects the different paths to the peak unemployment rate depending on the severity of the scenario.

down to its Great Recession trough. As illustrated in Table 2 of this appendix, housing recessions have on average featured HPI–DPI ratio declines of about 25 percent and the HPI–DPI ratio fell to its Great Recession trough.<sup>17</sup>

d. In addition, judgment is necessary in projecting the path of a scenario's international variables. Recessions that occur simultaneously across countries are an important source of stress to the balance sheets of companies with notable international exposures but are not an invariable feature of the international economy. As a result, simply adopting the typical path of international variables in a severe U.S. recession would likely underestimate the risks stemming from the international economy. Consequently, an approach that uses both judgment and economic models informs the path of international variables.

#### 4.2.4 Adding Salient Risks to the Severely Adverse Scenario

a. The severely adverse scenario will be developed to reflect specific risks to the economic and financial outlook that are especially salient but will feature minimally in the scenario if the Board were only to use approaches that looked to past recessions or relied on historical relationships between variables.

b. There are some important instances when it will be appropriate to augment the recession approach with salient risks. For example, if an asset price were especially elevated and thus potentially vulnerable to an abrupt and potentially destabilizing decline, it would be appropriate to include such a decline in the scenario even if such a large drop were not typical in a severe recession. Likewise, if economic developments abroad were particularly unfavorable, assuming a weakening in international conditions larger than what typically occurs in severe U.S. recessions would likely also be appropriate.

c. Clearly, while the recession component of the severely adverse scenario is within some predictable range, the salient risk aspect of the scenario is far less so, and therefore, needs an annual assessment. Each year, the Board will identify the risks to the financial system and the domestic and international economic outlooks that appear more elevated than usual, using its internal analysis and supervisory information and in consultation with the Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC). Using the same information, the Board will then calibrate the paths of the

<sup>17</sup> The house-price retrenchments that occurred over the periods 1980–1985, 1989–1996, 2006–2011 (as detailed in Table 2 of this appendix) are referred to in this document as housing recessions. The date-ranges of housing recessions are based on the timing of house-price retrenchments. These dates were also associated with sustained declines in real residential investment, although, the precise timings of housing recessions would likely be slightly different were they to be classified based on real residential investment in addition to house prices. The ratios described in Table 2 are calculated based on nominal HPI and HPI–DPI ratios indexed to 100 in 2000:Q1.

macroeconomic and financial variables in the scenario to reflect these risks.

d. Detecting risks that have the potential to weaken the banking sector is particularly difficult when economic conditions are buoyant, as a boom can obscure the weaknesses present in the system. In sustained robust expansions, therefore, the selection of salient risks to augment the scenario will err on the side of including risks of uncertain significance.

e. The Board will factor in particular risks to the domestic and international macroeconomic outlook identified by its economists, bank supervisors, and financial market experts and make appropriate adjustments to the paths of specific economic variables. These adjustments will not be reflected in the general severity of the recession and, thus, all macroeconomic variables; rather, the adjustments will apply to a subset of variables to reflect co-movements in these variables that are historically less typical. The Board plans to discuss the motivation for the adjustments that it makes to variables to highlight systemic risks in the narrative describing the scenarios.<sup>18</sup>

#### 4.3 Approach for Formulating Macroeconomic Assumptions in the Adverse Scenario

a. The adverse scenario can be developed in a number of different ways, and the selected approach will depend on a number of factors, including how the Board intends to use the results of the adverse scenario.<sup>19</sup> Generally, the Board believes that the companies should consider multiple adverse scenarios for their internal capital planning purposes, and likewise, it is appropriate that the Board consider more than one adverse scenario to assess a company's ability to withstand stress. Accordingly, the Board does not identify a single approach for specifying the adverse scenario. Rather, the adverse scenario will be formulated according to one of the possibilities listed below. The Board may vary the approach it uses for the adverse scenario each year so that the results of the scenario provide the most value to supervisors, in light of current condition of the economy and the financial services industry.

b. The simplest method to specify the adverse scenario is to develop a less severe version of the severely adverse scenario. For example, the adverse scenario could be formulated such that the deviations of the paths of the variables relative to the baseline

<sup>18</sup> The means of effecting an adjustment to the severely adverse scenario to address salient systemic risks differs from the means used to adjust the unemployment rate. For example, in adjusting the scenario for an increased unemployment rate, the Board would modify all variables such that the future paths of the variables are similar to how these variables have moved historically. In contrast, to address salient risks, the Board may only modify a small number of variables in the scenario and, as such, their future paths in the scenario would be somewhat more atypical, albeit not implausible, given existing risks.

<sup>19</sup> For example, in the context of CCAAR, the Board currently uses the adverse scenario as one consideration in evaluating a firm's capital adequacy.

were simply one-half of or two-thirds of the deviations of the paths of the variables relative to the baseline in the severely adverse scenario. *A priori*, specifying the adverse scenario in this way may appear unlikely to provide the greatest possible informational value to supervisors—given that it is just a less severe version of the severely adverse scenario. However, to the extent that the effect of macroeconomic variables on company loss positions and incomes are nonlinear, there could be potential value from this approach.

c. Another method to specify the adverse scenario is to capture risks in the adverse scenario that the Board believes should be understood better or should be monitored, but does not believe should be included in the severely adverse scenario, perhaps because these risks would render the scenario implausibly severe. For instance, the adverse scenario could feature sizable increases in oil or natural gas prices or shifts in the yield curve that are atypical in a recession. The adverse scenario might also feature less acute, but still consequential, adverse outcomes, such as a disruptive slowdown in growth from emerging-market economies.

d. Under the Board's stress test rules, covered companies are required to develop their own scenarios for mid-cycle company-run stress tests.<sup>20</sup> A particular combination of risks included in these scenarios may inform the design of the adverse scenario for annual stress tests. In this same vein, another possibility would be to use modified versions of the circumstances that companies describe in their living wills as being able to cause their failures.

e. It might also be informative to periodically use a stable adverse scenario, at least for a few consecutive years. Even if the scenario used for the stress test does not change over the credit cycle, if companies tighten and relax lending standards over the cycle, their loss rates under the adverse scenario—and indirectly the projected changes to capital—would decrease and increase, respectively. A consistent scenario would allow the direct observation of how capital fluctuates to reflect growing cyclical risks.

f. The Board may consider specifying the adverse scenario using the probabilistic approach described in section 4.2.1 (that is, with a specified lower probability of occurring than the severely adverse scenario but a greater probability of occurring than the baseline scenario). The approach has some intuitive appeal despite its shortcomings. For example, using this approach for the adverse scenario could allow the Board to explore an alternative approach to develop stress testing scenarios and their effect on a company's net income and capital.

g. Finally, the Board could design the adverse scenario based on a menu of historical experiences—such as, a moderate recession (*e.g.*, the 1990–1991 recession); a stagflation event (*e.g.*, stagflation during 1974); an emerging markets crisis (*e.g.*, the Asian currency crisis of 1997–1998); an oil price shock (*e.g.*, the shock during the run up

<sup>20</sup> 12 CFR 252.55.



to the 1990–1991 recession); or high inflation shock (e.g., the inflation pressures of 1977–1979). The Board believes these are important stresses that should be understood; however, there may be notable benefits from formulating the adverse scenario following other approaches—specifically, those described previously in this section—and consequently the Board does not believe that the adverse scenario should be limited to historical episodes only.

h. With the exception of cases in which the probabilistic approach is used to generate the adverse scenario, the adverse scenario will at a minimum contain a mild to moderate recession. This is because most of the value from investigating the implications of the risks described above is likely to be obtained from considering them in the context of balance sheets of companies that are under some stress.

### 5. Approach for Formulating the Market Shock Component

a. This section discusses the approach the Board proposes to adopt for developing the market shock component of the adverse and severely adverse scenarios appropriate for companies with significant trading activities. The design and specification of the market shock component differs from that of the macroeconomic scenarios because profits and losses from trading are measured in mark-to-market terms, while revenues and losses from traditional banking are generally measured using the accrual method. As noted above, another critical difference is the time-evolution of the market shock component. The market shock component consists of an instantaneous “shock” to a large number of risk factors that determine the mark-to-market value of trading positions, while the macroeconomic scenarios supply a projected path of economic variables that affect traditional banking activities over the entire planning period.

b. The development of the market shock component that are detailed in this section are as follows: baseline (subsection 5.1), severely adverse (subsection 5.2), and adverse (subsection 5.3).

#### 5.1 Approach for Formulating the Market Shock Component Under the Baseline Scenario

By definition, market shocks are large, previously unanticipated moves in asset prices and rates. Because asset prices should, broadly speaking, reflect consensus opinions about the future evolution of the economy, large price movements, as envisioned in the market shock, should not occur along the baseline path. As a result, the market shock will not be included in the baseline scenario.

#### 5.2 Approach for Formulating the Market Shock Component Under the Severely Adverse Scenario

This section addresses possible approaches to designing the market shock component in the severely adverse scenario, including important considerations for scenario design, possible approaches to designing scenarios, and a development strategy for implementing the preferred approach.

#### 5.2.1 Design Considerations for Market Shocks

a. The general market practice for stressing a trading portfolio is to specify market shocks either in terms of extreme moves in observable, broad market indicators and risk factors or directly as large changes to the mark-to-market values of financial instruments. These moves can be specified either in relative terms or absolute terms. Supplying values of risk factors after a “shock” is roughly equivalent to the macroeconomic scenarios, which supply values for a set of economic and financial variables; however, trading stress testing differs from macroeconomic stress testing in several critical ways.

b. In the past, the Board used one of two approaches to specify market shocks. During SCAP and CCAR in 2011, the Board used a very general approach to market shocks and required companies to stress their trading positions using changes in market prices and rates experienced during the second half of 2008, without specifying risk factor shocks. This broad guidance resulted in inconsistency across companies both in terms of the severity and the application of shocks. In certain areas companies were permitted to use their own experience during the second half of 2008 to define shocks. This resulted in significant variation in shock severity across companies.

c. To enhance the consistency and comparability in market shocks for the stress tests in 2012 and 2013, the Board provided to each trading company more than 35,000 specific risk factor shocks, primarily based on market moves in the second half of 2008. While the number of risk factors used in companies’ pricing and stress-testing models still typically exceed that provided in the Board’s scenarios, the greater specificity resulted in more consistency in the scenario across companies. The benefit of the comprehensiveness of risk factor shocks is at least partly offset by potential difficulty in creating shocks that are coherent and internally consistent, particularly as the framework for developing market shocks deviates from historical events.

d. Also importantly, the ultimate losses associated with a given market shock will depend on a company’s trading positions, which can make it difficult to rank order, *ex ante*, the severity of the scenarios. In certain instances, market shocks that include large market moves may not be particularly stressful for a given company. Aligning the market shock with the macroeconomic scenario for consistency may result in certain companies actually benefiting from risk factor moves of larger magnitude in the market scenario if the companies are hedging against salient risks to other parts of their business. Thus, the severity of market shocks must be calibrated to take into account how a complex set of risks, such as directional risks and basis risks, interacts with each other, given the companies’ trading positions at the time of stress. For instance, a large depreciation in a foreign currency would benefit companies with net short positions in the currency while hurting those with net long positions. In addition, longer maturity positions may move differently from shorter

maturity positions, adding further complexity.

e. The instantaneous nature of market shocks and the immediate recognition of mark-to-market losses add another element to the design of market shocks, and to determining the appropriate severity of shocks. For instance, in previous stress tests, the Board assumed that market moves that occurred over the six-month period in late 2008 would occur instantaneously. The design of the market shocks must factor in appropriate assumptions around the period of time during which market events will unfold and any associated market responses.

#### 5.2.2 Approaches to Market Shock Design

a. As an additional component of the adverse and severely adverse scenarios, the Board plans to use a standardized set of market shocks that apply to all companies with significant trading activity. The market shocks could be based on a single historical episode, multiple historical periods, hypothetical (but plausible) events, or some combination of historical episodes and hypothetical events (hybrid approach). Depending on the type of hypothetical events, a scenario based on such events may result in changes in risk factors that were not previously observed. In the supervisory scenarios for 2012 and 2013, the shocks were largely based on relative moves in asset prices and rates during the second half of 2008, but also included some additional considerations to factor in the widening of spreads for European sovereigns and financial companies based on actual observation during the latter part of 2011.

b. For the market shock component in the severely adverse scenario, the Board plans to use the hybrid approach to develop shocks. The hybrid approach allows the Board to maintain certain core elements of consistency in market shocks each year while providing flexibility to add hypothetical elements based on market conditions at the time of the stress tests. In addition, this approach will help ensure internal consistency in the scenario because of its basis in historical episodes; however, combining the historical episode and hypothetical events may require small adjustments to ensure mutual consistency of the joint moves. In general, the hybrid approach provides considerable flexibility in developing scenarios that are relevant each year, and by introducing variations in the scenario, the approach will also reduce the ability of companies with significant trading activity to modify or shift their portfolios to minimize expected losses in the severely adverse market shock.

c. The Board has considered a number of alternative approaches for the design of market shocks. For example, the Board explored an option of providing tailored market shocks for each trading company, using information on the companies’ portfolio gathered through ongoing supervision, or other means. By specifically targeting known or potential vulnerabilities in a company’s trading position, the tailored approach will be useful in assessing each company’s capital adequacy as it relates to the company’s idiosyncratic risk. However, the Board does not believe this approach to



be well-suited for the stress tests required by regulation. Consistency and comparability are key features of annual supervisory stress tests and annual company-run stress tests required in the stress test rules. It would be difficult to use the information on the companies' portfolio to design a common set of shocks that are universally stressful for all covered companies. As a result, this approach will be better suited to more customized, tailored stress tests that are part of the company's internal capital planning process or to other supervisory efforts outside of the stress tests conducted under the capital rule and the stress test rules.

### 5.2.3 Development of the Market Shock

a. Consistent with the approach described above, the market shock component for the severely adverse scenario will incorporate key elements of market developments during the second half of 2008, but also incorporate observations from other periods or price and rate movements in certain markets that the Board deems to be plausible though such movements may not have been observed historically. Over time the Board also expects to rely less on market events of the second half of 2008 and more on hypothetical events or other historical episodes to develop the market shock.

b. The developments in the credit markets during the second half of 2008 were unprecedented, providing a reasonable basis for market shocks in the severely adverse scenario. During this period, key risk factors in virtually all asset classes experienced extremely large shocks; the collective breadth and intensity of the moves have no parallels in modern financial history and, on that basis, it seems likely that this episode will continue to be the most relevant historical scenario, although experience during other historical episodes may also guide the severity of the market shock component of the severely adverse scenario. Moreover, the risk factor moves during this episode are directly consistent with the "recession" approach that underlies the macroeconomic assumptions. However, market shocks based only on historical events could become stale and less relevant over time as the company's positions change, particularly if more salient features are not added each year.

c. While the market shocks based on the second half of 2008 are of unparalleled magnitude, the shocks may become less relevant over time as the companies' trading positions change. In addition, more recent events could highlight the companies' vulnerability to certain market events. For example, in 2011, Eurozone credit spreads in the sovereign and financial sectors surpassed those observed during the second half of 2008, necessitating the modification of the severely adverse market shock in 2012 and 2013 to reflect a salient source of stress to trading positions. As a result, it is important to incorporate both historical and hypothetical outcomes into market shocks for the severely adverse scenario. For the time being, the development of market shocks in the severely adverse scenario will begin with the risk factor movements in a particular historical period, such as the second half of 2008. The Board will then consider

hypothetical but plausible outcomes, based on financial stability reports, supervisory information, and internal and external assessments of market risks and potential flash points. The hypothetical outcomes could originate from major geopolitical, economic, or financial market events with potentially significant impacts on market risk factors. The severity of these hypothetical moves will likely be guided by similar historical events, assumptions embedded in the companies' internal stress tests or market participants, and other available information.

d. Once broad market scenarios are agreed upon, specific risk factor groups will be targeted as the source of the trading stress. For example, a scenario involving the failure of a large, interconnected globally active financial institution could begin with a sharp increase in credit default swap spreads and a precipitous decline in asset prices across multiple markets, as investors become more risk averse and market liquidity evaporates. These broad market movements will be extrapolated to the granular level for all risk factors by examining transmission channels and the historical relationships between variables, though in some cases, the movement in particular risk factors may be amplified based on theoretical relationships, market observations, or the saliency to company trading books. If there is a disagreement between the risk factor movements in the historical event used in the scenario and the hypothetical event, the Board will reconcile the differences by assessing *a priori* expectation based on financial and economic theory and the importance of the risk factors to the trading positions of the covered companies.

### 5.3 Approach for Formulating the Market Shock Under the Adverse Scenario

a. The market shock component included in the adverse scenario will feature risk factor movements that are generally less significant than the market shock component of the severely adverse scenario. However, the adverse market shock may also feature risk factor shocks that are substantively different from those included in the severely adverse scenario, in order to provide useful information to supervisors. As in the case of the macroeconomic scenario, the market shock component in the adverse scenario can be developed in a number of different ways.

b. The adverse scenario could be differentiated from the severely adverse scenario by the absolute size of the shock, the scenario design process (e.g., historical events versus hypothetical events), or some other criteria. The Board expects that as the market shock component of the adverse scenario may differ qualitatively from the market shock component of the severely adverse scenario, the results of adverse scenarios may be useful in identifying a particularly vulnerable area in a trading company's positions.

c. There are several possibilities for the adverse scenario and the Board may use a different approach each year to better explore the vulnerabilities of companies with significant trading activity. One approach is to use a scenario based on some combination of historical events. This approach is similar

to the one used for the market shock in 2012, where the market shock component was largely based on the second half of 2008, but also included a number of risk factor shocks that reflected the significant widening of spreads for European sovereigns and financials in late 2011. This approach will provide some consistency each year and provide an internally consistent scenario with minimal implementation burden. Having a relatively consistent adverse scenario may be useful as it potentially serves as a benchmark against the results of the severely adverse scenario and can be compared to past stress tests.

d. Another approach is to have an adverse scenario that is identical to the severely adverse scenario, except that the shocks are smaller in magnitude (e.g., 100 basis points for adverse versus 200 basis points for severely adverse). This "scaling approach" generally fits well with an intuitive interpretation of "adverse" and "severely adverse." Moreover, since the nature of the moves will be identical between the two classes of scenarios, there will be at least directional consistency in the risk factor inputs between scenarios. While under this approach the adverse scenario will be superficially identical to the severely adverse, the logic underlying the severely adverse scenario may not be applicable. For example, if the severely adverse scenario was based on a historical scenario, the same could not be said of the adverse scenario. It is also remains possible, although unlikely, that a scaled adverse scenario actually will result in greater losses, for some companies, than the severely adverse scenario with similar moves of greater magnitude. For example, if some companies are hedging against tail outcomes then the more extreme trading book dollar losses may not correspond to the most extreme market moves. The market shock component of the adverse scenario in 2013 was largely based on the scaling approach where a majority of risk factor shocks were smaller in magnitude than the severely adverse scenario, but it also featured long-term interest rate shocks that were not part of the severely adverse market shock.

e. Alternatively, the market shock component of an adverse scenario could differ substantially from the severely adverse scenario with respect to the sizes and nature of the shocks. Under this approach, the market shock component could be constructed using some combination of historical and hypothetical events, similar to the severely adverse scenario. As a result, the market shock component of the adverse scenario could be viewed as an alternative to the severely adverse scenario and, therefore, it is possible that the adverse scenario could have larger losses for some companies than the severely adverse scenario.

f. Finally, the design of the adverse scenario for annual stress tests could be informed by the companies' own trading scenarios used for their BHC-designed scenarios in CCAR and in their mid-cycle company-run stress tests.<sup>21</sup>

<sup>21</sup> 12 CFR 252.55.

### 6. Consistency Between the Macroeconomic Scenarios and the Market Shock

a. As discussed earlier, the market shock comprises a set of movements in a very large number of risk factors that are realized instantaneously. Among the risk factors specified in the market shock are several variables also specified in the macroeconomic scenarios, such as short- and long-maturity interest rates on Treasury and corporate debt, the level and volatility of U.S. stock prices, and exchange rates.

b. The market shock component is an addition to the macroeconomic scenarios that is applied to a subset of companies, with no assumed effect on other aspects of the stress tests such as balances, revenues, or other losses. As a result, the market shock component may not be always directionally consistent with the macroeconomic scenario. Because the market shock is designed, in part, to mimic the effects of a sudden market dislocation, while the macroeconomic scenarios are designed to provide a description of the evolution of the real economy over two or more years, assumed economic conditions can move in significantly different ways. In effect, the market shock can simulate a market panic, during which financial asset prices move

rapidly in unexpected directions, and the macroeconomic assumptions can simulate the severe recession that follows. Indeed, the pattern of a financial crisis, characterized by a short period of wild swings in asset prices followed by a prolonged period of moribund activity, and a subsequent severe recession is familiar and plausible.

c. As discussed in section 4.2.4, the Board may feature a particularly salient risk in the macroeconomic assumptions for the severely adverse scenario, such as a fall in an elevated asset price. In such instances, the Board may also seek to reflect the same risk in one of the market shocks. For example, if the macroeconomic scenario were to feature a substantial decline in house prices, it may seem plausible for the market shock to also feature a significant decline in market values of any securities that are closely tied to the housing sector or residential mortgages.

d. In addition, as discussed in section 4.3, the Board may specify the macroeconomic assumptions in the adverse scenario in such a way as to explore risks qualitatively different from those in the severely adverse scenario. Depending on the nature and type of such risks, the Board may also seek to reflect these risks in one of the market shocks as appropriate.

### 7. Timeline for Scenario Publication

a. The Board will provide a description of the macroeconomic scenarios by no later than February 15. During the period immediately preceding the publication of the scenarios, the Board will collect and consider information from academics, professional forecasters, international organizations, domestic and foreign supervisors, and other private-sector analysts that regularly conduct stress tests based on U.S. and global economic and financial scenarios, including analysts at the covered companies. In addition, the Board will consult with the FDIC and the OCC on the salient risks to be considered in the scenarios. The Board expects to conduct this process in October and November of each year and to update the scenarios based on incoming macroeconomic data releases and other information through the end of January.

b. The Board expects to provide a broad overview of the market shock component along with the macroeconomic scenarios. The Board will publish the market shock templates by no later than March 1 of each year, and intends to publish the market shock earlier in the stress test and capital plan cycles to allow companies more time to conduct their stress tests.

TABLE 1 TO APPENDIX A OF PART 252—CLASSIFICATION OF U.S. RECESSIONS

Peak	Trough	Severity	Duration (quarters)	Decline in real GDP	Change in the unemployment rate during the recession	Total change in the unemployment rate (incl. after the recession)
1957Q3 .....	1958Q2 .....	Severe .....	4 (Medium) ...	-3.6	3.2	3.2
1960Q2 .....	1961Q1 .....	Moderate .....	4 (Medium) ...	-1.0	1.6	1.8
1969Q4 .....	1970Q4 .....	Moderate .....	5 (Medium) ...	-0.2	2.2	2.4
1973Q4 .....	1975Q1 .....	Severe .....	6 (Long) .....	-3.1	3.4	4.1
1980Q1 .....	1980Q3 .....	Moderate .....	3 (Short) .....	-2.2	1.4	1.4
1981Q3 .....	1982Q4 .....	Severe .....	6 (Long) .....	-2.8	3.3	3.3
1990Q3 .....	1991Q1 .....	Mild .....	3 (Short) .....	-1.3	0.9	1.9
2001Q1 .....	2001Q4 .....	Mild .....	4 (Medium) ...	0.2	1.3	2.0
2007Q4 .....	2009Q2 .....	Severe .....	7 (Long) .....	-4.3	4.5	5.1
Average .....	.....	Severe .....	6 .....	-3.5	3.7	3.9
Average .....	.....	Moderate .....	4 .....	-1.1	1.8	1.8
Average .....	.....	Mild .....	3 .....	-0.6	1.1	1.9

Source: Bureau of Economic Analysis, National Income and Product Accounts, Comprehensive Revision on July 31, 2013.

TABLE 2 TO APPENDIX A OF PART 252—HOUSE PRICES IN HOUSING RECESSIONS

Peak	Trough	Severity	Duration (quarters)	Percent change in NHPI	Percent change in HPI-DPI	HPI-DPI Trough Level (2000:Q1 = 100)
1980Q2 .....	1985Q2 .....	Moderate .....	20 (long) .....	26.6	-15.9	102.1
1989Q4 .....	1997Q1 .....	Moderate .....	29 (long) .....	10.5	-17.0	94.9
2005Q4 .....	2012Q1 .....	Severe .....	25 (long) .....	-29.6	-41.3	86.9
Average .....	.....	.....	24.7 .....	2.5	-24.7	94.6

Source: CoreLogic, BEA.

Note: The date-ranges of housing recessions listed in this table are based on the timing of house-price retrenchments.

By order of the Board of Governors of the Federal Reserve System, December 7, 2017.

**Ann E. Misback,**  
Secretary of the Board.

[FR Doc. 2017-26858 Filed 12-14-17; 8:45 am]

BILLING CODE 6210-01-P

## FEDERAL RESERVE SYSTEM

### 12 CFR Chapter II

[Docket No. OP-1586]

#### Enhanced Disclosure of the Models Used in the Federal Reserve's Supervisory Stress Test

**AGENCY:** Board of Governors of the Federal Reserve System (Board).

**ACTION:** Notification with request for public comment.

**SUMMARY:** The Board is inviting comment on an enhanced disclosure of the models used in the Federal Reserve's supervisory stress test conducted under the Board's Regulation YY pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) and the Board's capital plan rule.

**DATES:** Comments must be received by January 22, 2018.

**ADDRESSES:** You may submit comments, identified by Docket No. OP-1586 by any of the following methods:

- *Agency website:* <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.aspx>.
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include the docket number and RIN number in the subject line of the message.
- *Fax:* (202) 452-2819 or (202) 452-3102.

• *Mail:* Ann Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments will be made available on the Board's website at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.aspx> as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K St. NW (between 18th and 19th Streets NW), Washington, DC 20006 between 9:00 a.m. and 5:00 p.m.

on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452-3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

**FOR FURTHER INFORMATION CONTACT:** Lisa Ryu, Associate Director, (202) 263-4833, Kathleen Johnson, Assistant Director, (202) 452-3644, Robert Sarama, Manager (202) 973-7436, Division of Supervision and Regulation; Benjamin W. McDonough, Assistant General Counsel, (202) 452-2036, or Julie Anthony, Counsel, (202) 475-6682, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. Users of Telecommunication Device for Deaf (TDD) only, call (202) 263-4869.

#### SUPPLEMENTARY INFORMATION:

##### Table of Contents

- I. Overview
- II. Description of Enhanced Model Disclosure
  - A. Enhanced Description of Models
  - B. Modeled Loss Rates on Pools of Loans
  - C. Portfolios of Hypothetical Loans and Associated Loss Rates
  - D. Explanatory Notes on Enhanced Model Disclosures
- III. Request for Comment
- IV. Example of Enhanced Model Disclosure
  - A. Enhanced Description of Models
  - B. Modeled Loss Rates on Pools of Loans
  - C. Portfolios of Hypothetical Loans and Associated Loss Rates

##### I. Overview

Each year the Federal Reserve publicly discloses the results of the supervisory stress test.<sup>1</sup> The disclosures include revenues, expenses, losses, pre-tax net income, and capital ratios that would result under two sets of adverse economic and financial conditions. As part of the disclosures, the Federal Reserve also describes the broad framework and methodology used in the supervisory stress test, including information about the models used to estimate the revenues, losses, and capital ratios in the stress test. The annual disclosures of both the stress test results and supervisory model framework and methodology represent a significant increase in the public transparency of large bank supervision in the U.S.<sup>2</sup> Indeed, prior to the first

<sup>1</sup> See, for example, Dodd-Frank Act Stress Test 2017: Supervisory Stress Test Methodology and Results, June 2017 and Comprehensive Capital Analysis and Review 2017: Assessment Framework and Results, June 2017.

<sup>2</sup> In addition to those public disclosures, the Federal Reserve has published detailed information

supervisory stress test in 2009, many analysts and institutions cautioned against these disclosures, arguing that releasing bank-specific loss estimates to the public would be destabilizing. However, experience to date has shown the opposite to be true—disclosing these details to the public has garnered public and market confidence in the process.

The Federal Reserve routinely reviews its stress testing and capital planning programs, and during those reviews the Federal Reserve has received feedback regarding the transparency of the supervisory stress test models.<sup>3</sup> Some of those providing feedback requested more detail on modeling methodologies with a focus on year-over-year changes in the supervisory models.<sup>4</sup> Others, however, cautioned against disclosing too much information about the supervisory models because doing so could permit firms to reverse-engineer the stress test.

The Federal Reserve recognizes that disclosing additional information about supervisory models and methodologies has significant public benefits, and is committed to finding ways to further increase the transparency of the supervisory stress test. More detailed disclosures could further enhance the credibility of the stress test by providing the public with information on the fundamental soundness of the models and their alignment with best modeling practices. These disclosures would also facilitate comments on the models from the public, including academic experts. These comments could lead to improvements, particularly in the data most useful to understanding the risks of particular loan types. More detailed disclosures could also help the public understand and interpret the results of the stress test, furthering the goal of maintaining market and public confidence in the U.S. financial system. Finally, more detailed disclosures of how the Federal Reserve's models assign losses to particular positions

about its scenario design framework and annual letters detailing material model changes. The Federal Reserve also hosts an annual symposium in which supervisors and financial industry practitioners share best practices in modeling, model risk management, and governance.

<sup>3</sup> During a review that began in 2015, the Federal Reserve received feedback from senior management at firms subject to the Board's capital plan rule, debt and equity market analysts, representatives from public interest groups, and academics in the fields of economics and finance. That review also included an internal assessment.

<sup>4</sup> Some of the comments in favor of additional disclosure included requests that the Federal Reserve provide additional information to firms only, without making the additional disclosures public. Doing so would be contrary to the Federal Reserve's established practice of not disclosing information related to the stress test to firms if that information is not also publicly disclosed.

could help those financial institutions that are subject to the stress test understand the capital implications of changes to their business activities, such as acquiring or selling a portfolio of assets.

The Federal Reserve also believes there are material risks associated with fully disclosing the models to the firms subject to the supervisory stress test. One implication of releasing all details of the models is that firms could conceivably use them to make modifications to their businesses that change the results of the stress test without changing the risks they face. In the presence of such behavior, the stress test could give a misleading picture of the actual vulnerabilities faced by firms. Further, such behavior could increase correlations in asset holdings among the largest banks, making the financial system more vulnerable to adverse financial shocks.<sup>5</sup> Another implication is that full model disclosure could incent banks to simply use models similar to the Federal Reserve's, rather than build their own capacity to identify, measure, and manage risk. That convergence to the Federal Reserve's model would create a "model monoculture," in which all firms have similar internal stress testing models which may miss key idiosyncratic risks faced by the firms.<sup>6</sup>

In the next section of the paper, three proposed enhancements to the supervisory stress test model disclosures are described, with an example of the enhanced disclosure for the Federal Reserve's corporate loan loss model. If the proposed enhancements were implemented, the Federal Reserve would expect to publish the enhanced disclosures in the first quarter of each year, starting with selected loan portfolios in 2018. The Federal Reserve expects that the annual disclosure would reflect any updates to supervisory models, for applicable portfolios, in a given year, but would be based on data and scenarios from the prior year.

The proposed enhancements are designed to balance the costs and benefits discussed above in a way that would further enhance the public's understanding of the supervisory stress test models without undermining the

effectiveness of the stress test as a supervisory tool.

## II. Description of Enhanced Model Disclosure

The proposed enhanced disclosures have three components: (1) Enhanced descriptions of supervisory models, including key variables; (2) modeled loss rates on loans grouped by important risk characteristics and summary statistics associated with the loans in each group; and, (3) portfolios of hypothetical loans and the estimated loss rates associated with the loans in each portfolio.<sup>7</sup>

Collectively, the additional information is designed to facilitate the public's ability to understand the workings of the models and provide meaningful feedback.

### A. Enhanced Description of Models

The Federal Reserve currently discloses descriptions of the supervisory stress test models in an appendix in the annual Dodd-Frank Act supervisory stress test methodology and results document. For each modeling area, the appendix includes a description of the structure of the model, key features, and the most important explanatory variables in the model.

The proposed enhanced descriptions of the models would expand these descriptions in two ways. First, they would provide more detailed information about the structure of the models. For example, the existing disclosure for corporate loans explains that the model estimates expected losses using models of probability of default (PD), loss given default (LGD), and exposure at default (EAD). It further explains that PDs are projected using a series of equations fitted to the historical relationship between changes in the PD and macroeconomic variables, including growth in real gross domestic product, changes in the unemployment rate, and changes in the spread on BBB-rated corporate bonds. The proposed enhanced model description would include certain important equations that characterize aspects of the model. Second, the proposed enhanced descriptions would include a table that contains a list of the key loan characteristics and macroeconomic variables that influence the results of a given model. The table would show the relevant variables for each component of the model (*e.g.*, PD, LGD, EAD), and information about the source of the variables (see Table 1).

<sup>7</sup> The second and third components would be provided for the models used to project losses on the most material loan portfolios.

### B. Modeled Loss Rates on Pools of Loans

The proposed enhanced disclosure would include estimated loss rates for groups of loans with distinct characteristics. Those loss rates would allow the public to directly see how the supervisory models treat specific assets under stress. The corporate loan example included below illustrates how this new loss rate disclosure could operate in practice. The modeled loss rates are reported for eight groups of loans that have combinations of three loan characteristics: sector (financial and nonfinancial), security status (secured and unsecured), and rating class (investment grade and non-investment grade). The average (mean) estimated loss rate and 25th and 75th percentiles of the estimated loan-level loss rates are presented for each group of loans. By presenting the modeled loss rates in ranges as well as the average for each group, the disclosure highlights that loans within the same group may have different loss rates because of differences in other risk characteristics. For example, nonfinancial sector loans would include loans to companies in a range of sectors, which may have different sensitivities to the macroeconomic environment associated with any given scenario.

To shed more light on the degree of heterogeneity of loans within a given group, the enhanced disclosure could also include summary statistics associated with the loans in each group. Combined, the modeled loss rates and summary statistics would allow a firm to compare the characteristics of its own portfolio to those of the aggregate portfolio for all firms subject to the stress test and to better understand differences in loss rates between the two. The modeled loss rates could be reported for both the supervisory adverse and supervisory severely adverse scenarios, which would help to illustrate the effect of variation in macroeconomic conditions on modeled loss rates.

### C. Portfolios of Hypothetical Loans and Associated Loss Rates

Publishing portfolios of hypothetical loans is another way to enhance transparency. This approach would allow outside parties to use their own suites of models to estimate losses on the portfolios and compare loss rates across different models.

The portfolios the Federal Reserve may publish for certain asset classes could comprise three sets of hypothetical loans designed to mimic the characteristics of the actual loans reported by firms participating in the

<sup>5</sup> For example, if firms were to deem a specific asset as more advantageous to hold based on the particulars of the supervisory models, were an exogenous shock to occur to that specific asset class, the firms' losses would be magnified because they held correlated assets.

<sup>6</sup> See, Schuermann, T. (March 19, 2013). The Fed's Stress Tests Add Risk to the Financial System. *Wall Street Journal*, which highlights bank incentives to mimic Federal Reserve's stress test models.

stress test. The first set could be based on the full sample of loans observed in the data, the second could capture characteristics associated with lower-than-average risk loans, and the third could capture characteristics associated with higher-than-average risk loans. Importantly, those portfolios would not contain any individual firm's actual loan portfolio or any actual loans reported by firms, but rather would be portfolios of hypothetical loans designed to illustrate the effect of loan characteristics on estimated loss rates. The set of variables included for each portfolio would be designed such that the public could independently estimate loss rates for these portfolios, although this set would not necessarily include every variable that might be included in a loss model for the relevant loan type. The disclosure could also include the loss rates estimated by the supervisory models for each portfolio of hypothetical loans under the supervisory adverse and supervisory severely adverse scenarios.

#### *D. Explanatory Notes on Enhanced Model Disclosures*<sup>8</sup>

The proposed enhanced model disclosures described in this document focus on the design of and projections from particular models, whereas the current disclosures of supervisory stress test results include projections aggregated to the portfolio level that in most cases contain the outputs from multiple supervisory models. As such, the two different disclosures will not align exactly.

The proposed enhanced model disclosures would also differ from the current stress testing results disclosures in that they would not include accounting and other adjustments used to translate projected credit losses into net income. In the current supervisory stress test results disclosure, accounting adjustments are used to translate supervisory model estimates into provisions and other income or expense items needed to calculate stressed pre-tax net income. These adjustments often depend on factors that vary across participating banks, such as the write-

down amounts on loans purchased with credit impairments.

### **III. Request for Comment**

The Board requests comment on the proposed enhanced disclosure of the models used in the Federal Reserve's supervisory stress test. Where possible, commenters should provide both quantitative data and detailed analysis in their comments. Commenters should also explain the rationale for their suggestions. Specifically, feedback is requested on the following questions:

- Does the enhanced disclosure appropriately balance the benefits and costs of additional disclosure as outlined above?
- Would the enhanced disclosure allow the public, including academics, to comment on the soundness of the models and their alignment with best modeling practices?
- Are there specific ways the enhanced disclosures could be tailored to limit the potential for increased correlation of risks in the system?
- Are there additional disclosures that would be more helpful to the public without increasing the potential for increased correlation of risks in the system?

### **IV. Example of Enhanced Model Disclosure**

This section contains an illustrative example of what an enhanced model disclosure could look like for the supervisory corporate loan model.

#### *A. Enhanced Description of Models*

##### Overview of Corporate Loan Model

Losses stemming from the default of corporate loans are projected using a model that assigns a specific loss amount to each corporate loan held by a firm subject to the supervisory stress test. The model projects losses as the product of three components: Probability of default (PD), loss given default (LGD), and exposure at default (EAD). The PD component measures the likelihood that a borrower will stop repaying the loan. The other two components capture the lender's loss on the loan if the borrower enters default.

The LGD component measures the percent of the loan balance that the lender will not be able to recover after the loan defaults, and the EAD component measures the total expected outstanding balance on the loan at the time of default.

The model is estimated using historical data on corporate loan losses, loan characteristics, and economic conditions. Losses are projected using the estimated model, firm-reported loan characteristics, and economic conditions defined in the Federal Reserve's supervisory stress scenarios. Some of the key loan characteristics that affect projected losses include:

- The loan's credit rating;
  - The industry of the borrower;
  - The country in which the borrower is domiciled; and
  - Whether or not the loan is secured.
- The losses projected by the model for a given loan vary based on changes in the defined economic conditions over the nine quarters of the projection horizon. Those include:
- Growth in real gross domestic product (GDP);
  - Changes in the unemployment rate; and
  - Changes in the spread on BBB-rated loans relative to Treasuries.

#### Loan Coverage and Model Structure

Corporate loans modeled using the expected loss modeling framework described in this document consist of a number of different categories of loans, as defined by the Consolidated Financial Statements for Holding Companies—FR Y-9C report. The largest group of these loans includes commercial and industrial (C&I) loans with more than \$1 million in committed balances that are "graded" using a firm's corporate rating process. The corporate loan model is designed to project quarterly losses on those loans over the projection horizon of each stress test scenario.

Expected loss (EL) is the product of the three components described above (PD, LGD, and EAD), and for loan  $i$  in quarter  $t$  of the projection horizon it can be expressed as:<sup>9</sup>

$$EL(i, t) = PD(i, t) * LGD(i, t) * EAD(i). \quad (1)$$

<sup>8</sup> This section highlights definitional differences between the proposed enhanced disclosures and the loss rate disclosures in the annual Dodd-Frank Act stress test methodology and results document. Those differences are intended to facilitate the

stated goal of the proposed enhanced disclosure to illustrate more clearly how the Federal Reserve's models translate firms' portfolio characteristics and the scenarios into loss rates.

<sup>9</sup> For example, if the probability of default is 1 percent, the loss given default is 20 percent, and the expected outstanding balance at default is \$1,000,000 the expected loss is:  $EL = 0.01 * 0.20 * 1,000,000 = \$2,000$ .

Each of the three components is modeled separately. The three component models are described below.

#### Probability of Default

The PD model assumes that the probability that a loan defaults depends on macroeconomic factors, such as the unemployment rate. The model first calculates the loan's PD at the beginning of the projection horizon and then projects it forward using the estimated relationship between historical changes in PD and changes in the macroeconomic environment.<sup>10</sup>

*Calculating the Initial PD:* The initial PD, which is the PD at the beginning of the projection horizon (*i.e.*,  $PD(i,t=0)$ ), is calculated as the long-run average of daily expected default frequencies (EDFs). EDFs are measures of the probability of default based on a

structural model that links the value of a firm to credit risk. The initial PD for publicly traded borrowers for which a CUSIP is available in the firm-reported data reflects a borrower-specific EDF. The initial PD for other borrowers is based on the average EDF for the industry and rating category group in which the borrower is classified. A borrower's industry category is directly observed in the firm-reported data, and the rating category is derived from the firm-reported internal credit rating for the borrower and a firm-reported table that maps the internal rating to a standardized rating scale.

*Projecting the PD:* The initial PDs are then projected over the projection horizon using equations fitted to the historical relationship between changes in the EDFs and changes in macroeconomic variables. The

equations are estimated separately by borrower industry, rating category, and country of borrower domicile. The macroeconomic variables used to project changes in PDs over the projection horizon are GDP growth, changes in the unemployment rate, and changes in the spread on BBB-rated loans relative to Treasuries (BBB spread). GDP growth and the rate of unemployment reflect economy-wide changes in demand for goods and services which affect firms' probabilities of default, while the BBB spread represents factors that affect firms' profitability and investment opportunities, such as aggregate credit risk and the cost of borrowing.

For loan  $i$ , which is in country- $i$  industry group  $j$ , and rating category  $k$ , the change in PD from period  $t-1$  to  $t$  is given by:

$$\Delta PD(i,t) = \alpha_j + \lambda_k + \sum_{m=1}^M \beta_{jk}(m) \times S(t,m) \quad (2)$$

Where  $\beta_{jk}(m)$  is the estimated sensitivity of the probability of default to macroeconomic factor  $m$ , for country- $i$  industry segment  $j$  and rating category  $k$ , and  $S(t,m)$  is macroeconomic factor  $m$  in period  $t$ .

#### Loss Given Default

Similar to the PD model, the LGD model first calculates the loan's LGD at the beginning of the projection horizon and then projects it forward using the estimated relationship between historical changes in LGD and changes in the macroeconomic environment.

*Calculating the Initial LGD:* Firm-reported data on line of business and whether the loan is secured or unsecured are used to set the initial LGD for performing loans. In cases in which the loan has already been identified as troubled, *i.e.*, the firm has already put aside a reserve to cover the expected loss, the initial LGD is based on the size of the reserve. Further adjustments are made to the initial LGDs of loans that are in default at inception.<sup>11</sup> For foreign loans, initial LGDs are also adjusted based on the

country in which the obligor is domiciled, capturing differences in collateral recovery rates across countries.

*Projecting LGD:* The LGD is then projected forward by relating the change in the LGD to changes in the PD following Frye and Jacobs (2012).<sup>12</sup> Under that approach, changes in LGD are explicitly calculated as an increasing function of PD. Specifically, loan  $i$ 's LGD from period  $t-1$  to period  $t$  is given by:

$$LGD(i,t) = \frac{\Phi[\Phi^{-1}[PD(i,t)] - \Phi^{-1}[PD(i,t-1)] + \Phi^{-1}[PD(i,t-1) * LGD(i,t-1)]]}{PD(i,t)} \quad (3)$$

Where  $\Phi[\cdot]$  denotes the standard normal cumulative distribution function and  $\Phi^{-1}[\cdot]$  is its inverse. LGD in period  $t$  depends on PD in period  $t$  and on PD and LGD in period  $t-1$ . If  $PD(i,t) = PD(i,t-1)$ , then  $LGD(i,t) = LGD(i,t-1)$ .

#### Exposure at Default

For closed-end loans, the EAD is the utilized exposure.

For lines of credit and other revolving commitments, the EAD equals the utilized exposure plus a portion of the unfunded commitment (*i.e.*, the difference between the committed exposure and utilized exposure), which reflects the amount that is likely to be drawn down by the borrower in the event of default. The amount that is

likely to be drawn down is calibrated to the historical drawdown experience for defaulted U.S. syndicated revolving lines of credit that are in the Shared National Credit (SNC) database.<sup>13</sup>

Formally, the EAD for a line of credit or other revolving product  $i$  is set to:

<sup>10</sup>Loans that are 90 days past due, in non-accrual status, or that have a Financial Accounting Standards Board Accounting Standards Codification Subtopic 310-10 (ASC 310-10) reserve as of the reference date for the stress test are considered in default.

<sup>11</sup>Loans that are in default at inception of the stress period (*i.e.*,  $t=0$ ) are assigned a PD of 100%, and a LGD using the ASC 310-10 reserves reported by the firm.

<sup>12</sup>See, Frye, J., & Jacobs Jr, M. (2012). Credit loss and systematic loss given default. *The Journal of Credit Risk*, 8(1), 109.

<sup>13</sup>SNC loans have commitments of greater than \$20 million and are held by three or more regulated participating entities. For additional information, see "Shared National Credit Program," Board of Governors of the Federal Reserve System, [www.federalreserve.gov/supervisionreg/snc.htm](http://www.federalreserve.gov/supervisionreg/snc.htm).

$$EAD(i) = OB(i, t = 0) + LEQ * (CB(i, t = 0) - OB(i, t = 0)) \tag{4}$$

Where *LEQ* is the calibrated drawdown amount, *OB(i,t=0)* is the line's outstanding exposure at the start of the projection horizon, and *CB(i,t=0)* is the line's committed exposure at the start of the projection horizon. For standby letters of credit and trade finance credits, EADs are conservatively assumed to equal the total commitment, since typically these types of credits are fully drawn when they enter default status.

TABLE 1—LIST OF KEY VARIABLES IN THE CORPORATE LOAN MODELS AND SOURCES OF VARIABLES

Variable	Description	Variable type	Source
<b>PD model <sup>1</sup></b>			
U.S. BBB corporate yield spread ...	The difference between quarterly average of the yield on 10-year BBB corporate bonds and quarterly average of the yield on 10-year U.S. Treasury bonds.	Macroeconomic	FR supervisory scenarios.
U.S. Real GDP growth .....	Percent change in real gross domestic product in chained dollars, expressed at annualized rate.	Macroeconomic	FR supervisory scenarios.
U.S. unemployment rate .....	Quarterly average of seasonally-adjusted monthly data for the unemployment rate of civilian, non-institutional population of age 16 years and older.	Macroeconomic	FR supervisory scenarios.
Country .....	The two letter country code for the country in which the obligor is headquartered.	Loan/borrower characteristic.	FR Y-14.
Industry of obligor .....	Numeric code that describes the primary business activity of the obligor.	Loan/borrower characteristic.	FR Y-14.
Internal obligor rating .....	The obligor rating grade from the reporting entity's internal risk rating system.	Loan/borrower characteristic.	FR Y-14.
<b>LGD model</b>			
Country .....	The two letter country code for the country in which the obligor is headquartered.	Loan/borrower characteristic.	FR Y-14.
Lien position .....	The type of lien. Options include first lien senior, second lien, senior unsecured, or contractually subordinated.	Loan/borrower characteristic.	FR Y-14.
Line of business .....	The name of the internal line of business that originated the credit facility using the institution's own department descriptions.	Loan/borrower characteristic.	FR Y-14.
Type of facility .....	The type of credit facility. Potential types are defined in the FR Y-14Q H.1 corporate schedule.	Loan/borrower characteristic.	FR Y-14.
<b>EAD model</b>			
Committed exposure amount .....	The current dollar amount the obligor is legally allowed to borrow according to the credit agreement.	Loan/borrower characteristic.	FR Y-14.
Type of facility .....	The type of credit facility. Potential types are defined in the FR Y-14Q H.1 corporate schedule.	Loan/borrower characteristic.	FR Y-14.
Utilized exposure amount .....	The current dollar amount the obligor has drawn which has not been repaid, net of any charge-offs, ASC 310-30 (originally issued as SOP 03-03) adjustments, or fair value adjustments taken by the reporting institution, but gross of ASC 310-10 reserve amounts.	Loan/borrower characteristic.	FR Y-14.

<sup>1</sup> Other variables used to calculate initial loan status include days past due, non-accrual date, and ASC 310-10 amount.

**B. Modeled Loss Rates on Pools of Loans**

The output of the corporate loan model is the expected loss on each loan. As described above, estimated corporate loan loss rates depend on a number of variables. This section groups loans according to three of the most important variables in the model: Sector (financial and nonfinancial), security status (secured and unsecured), and rating class (investment grade and non-investment grade).<sup>14</sup> Categorizing

corporate loans reported on schedule H.1 of the FR Y-14Q report as of the fourth quarter of 2016 by sector, security status, and rating class results in eight groups of loans:<sup>15</sup>

- Financial, secured, investment grade
- Financial, secured, non-investment grade

loans with a credit rating ("rating") higher than and including BBB; all other loans are marked as non-investment grade.

<sup>15</sup> The set of loans on which loss rates are calculated excludes loans held for sale or accounted for under the fair value option, loan observations missing data fields used in the model, lines of credit that were undrawn as of 2016:Q4, and other types of loans that are not modeled using the corporate loan model (e.g., loans to financial depositories).

- Financial, unsecured, investment grade
- Financial, unsecured, non-investment grade
- Nonfinancial, secured, investment grade
- Nonfinancial, secured, non-investment grade
- Nonfinancial, unsecured, investment grade
- Nonfinancial, unsecured, non-investment grade.

The remainder of this section reports summary statistics and modeled loss rates for these eight groups of corporate loans.

Table 2 reports summary statistics for the eight groups of loans. The summary statistics cover a wide set of variables

<sup>14</sup> Financial loans have a NAICS category ("naics\_two\_digit\_cat") of 52; all other loans are marked nonfinancial. Secured loans are defined as loans with lien positions ("lien\_position\_cat") marked as "first-lien senior"; all other loans are marked as unsecured. Investment grade loans are defined as

that capture important characteristics of the loans and borrowers in the set of loans.

Tables 3 and 4 show the modeled loss rates for the eight groups of loans for the DFAST 2017 supervisory severely adverse and supervisory adverse scenarios, respectively. Each entry in the table shows the average (mean) estimated loss rate for the loans in one of the eight groups, as well as the 25th and 75th percentiles of the estimated loss rates.

Certain groups of loans generally have wider ranges of losses than other groups. Although the loans are grouped according to the most important characteristics in the model, other loan characteristics in the model also affect loss rates, albeit in more limited manner. Differences in these other characteristics within each loan group are responsible for the range of loss rates shown in the tables. Greater variation in these other characteristics within a group will generally lead to larger

ranges of loss rates. For example, among secured, non-investment grade loans, the loss rates shown in Table 3 range from 8.7 to 12.1 for financial firms, but range from 2.7 to 9.8 for nonfinancial firms, which include a wider variety of industries. Secured, non-investment grade loans to nonfinancial firms are predominantly loans to firms in the manufacturing, transportation, and technology sectors, but also include loans to firms in other sectors like education and utilities (Table 2).

TABLE 2—SUMMARY STATISTICS OF SELECTED VARIABLES IN THE CORPORATE LOAN DATA GROUPED BY LOAN AND BORROWER CHARACTERISTICS <sup>1</sup>

[Percent, except as noted]

Variables	Non-investment grade				Investment grade			
	Nonfinancial sector		Financial sector		Nonfinancial sector		Financial sector	
	Unsecured	Secured	Unsecured	Secured	Unsecured	Secured	Unsecured	Secured
Number of loans (thousands) .....	15.60	101.80	1.28	8.20	21.34	52.80	2.11	5.91
<b>Facility type, share of utilized balance</b>								
Revolving .....	37.14	41.52	33.37	45.28	32.27	37.17	51.78	71.39
Term loan .....	45.06	40.33	34.08	20.83	44.48	42.20	35.54	14.57
Other .....	17.80	18.15	32.55	33.89	23.25	20.63	12.67	14.04
<b>Credit rating, share of utilized balance</b>								
AAA .....	0.00	0.00	0.00	0.00	1.22	0.92	3.36	4.89
AA .....	0.00	0.00	0.00	0.00	6.55	7.17	12.12	11.05
A .....	0.00	0.00	0.00	0.00	22.23	23.63	25.16	39.80
BBB .....	0.00	0.00	0.00	0.00	70.00	68.28	59.35	44.26
BB .....	80.06	76.66	88.97	81.82	0.00	0.00	0.00	0.00
B .....	19.63	22.28	10.89	18.05	0.00	0.00	0.00	0.00
CCC or below .....	0.31	1.07	0.14	0.13	0.00	0.00	0.00	0.00
<b>Lien position, share of utilized balance</b>								
First-lien senior .....	0.00	100.00	0.00	100.00	0.00	100.00	0.00	100.00
Senior unsecured .....	95.10	0.00	98.51	0.00	98.26	0.00	98.75	0.00
Other .....	4.90	0.00	1.49	0.00	1.74	0.00	1.25	0.00
<b>Interest rate variability, share of utilized balance</b>								
Fixed .....	23.04	14.45	13.11	6.17	24.93	27.97	17.69	6.92
Floating .....	71.61	79.99	81.29	88.65	68.75	68.72	77.52	90.21
Mixed .....	5.33	5.54	5.59	5.15	6.22	2.74	4.73	2.74
<b>Industry, share of utilized balance <sup>2</sup></b>								
Agriculture, fishing, and hunting .....	0.66	1.50	0.00	0.00	0.28	0.50	0.00	0.00
Natural resources, utilities, and construction .....	13.02	7.92	0.00	0.00	8.89	5.21	0.00	0.00
Manufacturing .....	25.70	18.82	0.00	0.00	28.19	13.73	0.00	0.00
Trade and transportation .....	28.30	32.57	0.00	0.00	15.95	29.17	0.00	0.00
Technological and business services .....	22.28	22.18	0.00	0.00	28.91	19.54	0.00	0.00
Finance and insurance .....	0.00	0.00	100.00	100.00	0.00	0.00	100.00	100.00
Education, health care, and social assistance .....	3.76	6.45	0.00	0.00	8.08	13.84	0.00	0.00
Entertainment and lodging .....	2.46	6.06	0.00	0.00	2.13	4.39	0.00	0.00
Other services .....	3.82	4.49	0.00	0.00	7.57	13.62	0.00	0.00
<b>Guarantor flag, share of utilized balance</b>								
Full guarantee .....	41.24	41.83	42.22	29.09	30.23	29.95	42.22	12.02



TABLE 2—SUMMARY STATISTICS OF SELECTED VARIABLES IN THE CORPORATE LOAN DATA GROUPED BY LOAN AND BORROWER CHARACTERISTICS <sup>1</sup>—Continued

[Percent, except as noted]

Variables	Non-investment grade				Investment grade			
	Nonfinancial sector		Financial sector		Nonfinancial sector		Financial sector	
	Unsecured	Secured	Unsecured	Secured	Unsecured	Secured	Unsecured	Secured
U.S. government guarantee .....	5.03	0.18	0.23	0.03	0.52	0.26	0.00	0.00
Partial guarantee .....	2.62	4.23	3.09	3.28	1.77	2.41	3.86	4.99
No guarantee .....	51.11	53.74	54.47	67.60	67.49	67.31	53.92	82.99
Domestic obligor, share of utilized balance .....	63.53	91.35	65.10	72.29	71.58	91.46	65.93	81.37
Remaining maturity, average in months <sup>3,4</sup> .....	38.34	48.44	28.95	23.89	38.26	57.59	38.55	30.44
Interest rate, average in percent <sup>4</sup> .....	2.77	3.24	2.36	2.68	2.17	2.48	2.26	2.32
Committed exposure, average in millions of dollars .....	15.24	8.32	25.22	17.43	24.79	10.81	43.24	57.37
Utilized exposure, average in millions of dollars .....	10.89	6.17	19.89	14.17	16.46	8.35	28.36	39.64

<sup>1</sup> The set of loans presented in this table excludes loans held for sale or accounted for under the fair value option, loan observations missing data fields used in the model, lines of credit that were undrawn as of 2016:Q4, and other types of loans that are not modeled using the corporate loan model (e.g., loans to financial depositories).

<sup>2</sup> Industries are collapsed using the first digit of the NAICS 2007 code, except for finance and insurance.

<sup>3</sup> Maturity excludes demand loans.

<sup>4</sup> Averages for remaining maturity and interest rate are weighted by utilized exposure.

TABLE 3—PROJECTED AVERAGE LOAN LOSS RATES AND 25TH AND 75TH PERCENTILE RANGES BY LOAN AND BORROWER CHARACTERISTICS, 2017:Q1–2019:Q1, DFAST 2017 SEVERELY ADVERSE SCENARIO

Sector	Security status	Rating class	Loss rates (percent)
Financial .....	Secured .....	Investment grade .....	2.5 [1.6 to 3.3].
Financial .....	Secured .....	Non-investment grade .....	10.4 [8.7 to 12.1].
Financial .....	Unsecured .....	Investment grade .....	3.3 [1.9 to 5.3].
Financial .....	Unsecured .....	Non-investment grade .....	12.6 [8.3 to 17.0].
Nonfinancial .....	Secured .....	Investment grade .....	0.8 [0.3 to 1.0].
Nonfinancial .....	Secured .....	Non-investment grade .....	5.4 [2.7 to 9.8].
Nonfinancial .....	Unsecured .....	Investment grade .....	1.2 [0.5 to 1.7].
Nonfinancial .....	Unsecured .....	Non-investment grade .....	6.0 [3.6 to 11.7].

**Note:** Loan-level loss rates are calculated as cumulative nine-quarter losses on a given loan divided by initial utilized balance on that loan. Average loss rates reported in the table are the average of the loan-level loss rates weighted by initial utilized balances. The set of loans on which loss rates are calculated excludes loans held for sale or accounted for under the fair value option, loan observations missing data fields used in the model, lines of credit that were undrawn as of 2016:Q4, and other types of loans that are not modeled using the corporate loan model (e.g., loans to financial depositories).

TABLE 4—PROJECTED AVERAGE LOAN LOSS RATES AND 25TH AND 75TH PERCENTILE RANGES BY LOAN AND BORROWER CHARACTERISTICS, 2017:Q1–2019:Q1, DFAST 2017 ADVERSE SCENARIO

Sector	Security status	Rating class	Loss rates (percent)
Financial .....	Secured .....	Investment grade .....	1.5 [1.0 to 2.0].
Financial .....	Secured .....	Non-investment grade .....	5.9 [4.7 to 6.7].
Financial .....	Unsecured .....	Investment grade .....	2.0 [1.2 to 3.3].
Financial .....	Unsecured .....	Non-investment grade .....	7.3 [4.7 to 9.8].
Nonfinancial .....	Secured .....	Investment grade .....	0.5 [0.2 to 0.6].
Nonfinancial .....	Secured .....	Non-investment grade .....	3.2 [1.6 to 5.8].
Nonfinancial .....	Unsecured .....	Investment grade .....	0.8 [0.4 to 1.1].
Nonfinancial .....	Unsecured .....	Non-investment grade .....	3.7 [2.1 to 7.1].

**Note:** Loan-level loss rates are calculated as cumulative nine-quarter losses on a given loan divided by initial utilized balance on that loan. Average loss rates reported in the table are the average of the loan-level loss rates weighted by initial utilized balances. The set of loans on which loss rates are calculated excludes loans held for sale or accounted for under the fair value option, loan observations missing data fields used in the model, lines of credit that were undrawn as of 2016:Q4, and other types of loans that are not modeled using the corporate loan model (e.g., loans to financial depositories).

*C. Portfolios of Hypothetical Loans and Associated Loss Rates*

The effect of borrower and loan characteristics on the losses estimated by the corporate loan model can also be illustrated by the differences in the estimated loss rate on specific sets of hypothetical loans. This section contains descriptive statistics from three portfolios of hypothetical loans (Table 6) and the modeled loss rates for the three portfolios under the DFAST 2017 supervisory adverse and supervisory severely adverse scenarios (Table 7).

The portfolios of hypothetical loans are designed to have characteristics similar to the actual loans reported in schedule H.1 of the FR Y-14Q report. Three portfolios containing 200 loans each are provided, and they are designed to capture characteristics associated with:

1. Typical set of loans reported in the FR Y-14Q;
  2. Higher-than-average-risk loans (in this case, non-investment grade loans); and,
  3. Lower-than-average-risk loans (in this case, investment grade loans).
- The portfolios of hypothetical loans include 12 variables that describe characteristics of corporate loans that are generally used to estimate corporate loan losses (Table 5).<sup>16</sup>
- Table 6 contains summary statistics for the portfolios of hypothetical loans in the same format as Table 2. The portfolios of hypothetical loans are constructed to capture characteristics of certain sets of loans, but are not fully representative of the population of loans reported in Table 2. Table 7 contains the loss rates for the portfolios of hypothetical loans calculated under the DFAST 2017 supervisory severely

adverse and supervisory adverse scenarios. The rank ordering of the loss rates is consistent with the ranges of loss rates reported in Tables 3 and 4. The portfolio of higher-risk loans has higher loss rates under both the severely adverse and adverse scenarios and is also more sensitive to changes in macroeconomic conditions (loss rate of 7.2 percent in the severely adverse scenario and 4.2 percent in the adverse scenario) than the portfolio of typical loans (loss rate of 5.4 percent in the severely adverse scenario and 3.2 percent in the adverse scenario). Conversely, the portfolio of lower-risk loans has lower losses under both scenarios, and is less sensitive to changes in macroeconomic conditions (loss rate of 1.8 percent in the severely adverse scenario and 1.1 percent in the adverse scenario).

TABLE 5—LIST OF VARIABLES INCLUDED IN PORTFOLIOS OF HYPOTHETICAL LOANS

Variable	Mnemonic	Description
Origination year .....	orig_year .....	Year loan was originated.
Type of facility .....	facility_type_cat .....	The type of credit facility. 1 is revolving; 5 is non-revolving; and 0 is other.
Lien position .....	lien_position_cat .....	The type of lien. 1 is first-lien senior; 2 is second-lien; 3 is senior unsecured; and, 4 is contractually subordinated.
Credit rating .....	rating .....	Credit rating of obligor. Categories include AAA, AA, A, BBB, BB, B, CCC, CC, C, and D.
Domestic flag .....	domestic_flag .....	Equal to 1 if obligor is domiciled in the U.S.
Industry code (2-digit) .....	naics_two_digit_cat .....	Two-digit industry code based on 2007 NAICS definitions.
Committed exposure amount .....	committed_exposure_amt .....	Committed exposure in dollars.
Utilized exposure amount .....	utilized_exposure_amt .....	Utilized exposure in dollars.
Interest rate .....	interest_rate .....	Interest rate on credit facility.
Interest rate variability .....	interest_rate_variability .....	Interest rate type. 0 is fully undrawn (interest rate not provided); 1 is fixed; 2 is floating; 3 is mixed.
Remaining maturity .....	term .....	Remaining term of the loan in months.
Guarantor flag .....	guarantor_flag .....	Indicates the type of guarantee of the guarantor. 1 is full guarantee; 2 is partial guarantee; 3 is U.S. government agency guarantee; 4 is no guarantee.

**Note:** Some of the variables included in the portfolios of hypothetical loans are presented in a more aggregated form than they are reported in the FR Y-14.

TABLE 6—SUMMARY STATISTICS OF SELECTED VARIABLES IN THE PORTFOLIOS OF HYPOTHETICAL LOANS  
[Percent, except as noted]

Variables	Higher-risk	Lower-risk	Typical
<b>Facility type, share of utilized balance</b>			
Revolving .....	36.52	46.02	50.77
Term loan .....	42.67	39.97	33.32

<sup>16</sup> The sets of loans are available for download on the Federal Reserve's website: Higher-than-average-risk loans (<https://www.federalreserve.gov/newsevents/pressreleases/files/HigherRisk.csv>);

typical-risk loans (<https://www.federalreserve.gov/newsevents/pressreleases/files/Typical.csv>); and

lower-than-average-risk loans (<https://www.federalreserve.gov/newsevents/pressreleases/files/LowerRisk.csv>).

TABLE 6—SUMMARY STATISTICS OF SELECTED VARIABLES IN THE PORTFOLIOS OF HYPOTHETICAL LOANS—Continued  
[Percent, except as noted]

Variables	Higher-risk	Lower-risk	Typical
Other .....	20.81	14.02	15.91
<b>Credit rating, share of utilized balance</b>			
AAA .....	0.00	0.00	0.45
AA .....	0.00	6.79	1.06
A .....	0.00	9.72	4.48
BBB .....	0.00	83.49	41.32
BB .....	78.68	0.00	40.91
B .....	20.85	0.00	10.57
CCC or below .....	0.47	0.00	1.21
<b>Lien position, share of utilized balance</b>			
First-lien senior .....	82.79	61.31	76.61
Senior unsecured .....	17.21	38.69	23.39
Other .....	0.00	0.00	0.00
<b>Interest rate variability, share of utilized balance</b>			
Fixed .....	16.26	26.36	11.72
Floating .....	83.44	71.99	86.04
Mixed .....	0.30	1.64	2.24
<b>Industry, share of utilized balance <sup>1</sup></b>			
Agriculture, fishing, and hunting .....	0.42	0.00	0.16
Natural resources, utilities, and construction .....	10.71	9.34	4.03
Manufacturing .....	15.46	5.26	18.96
Trade and transportation .....	19.30	31.32	20.64
Technological and business services .....	26.36	11.52	13.74
Finance and insurance .....	16.36	15.51	20.15
Education, health care, and social assistance .....	6.40	7.67	7.05
Entertainment and lodging .....	1.96	1.66	1.52
Other services .....	3.03	17.73	13.75
<b>Guarantor flag, share of utilized balance</b>			
Full guarantee .....	41.61	50.93	32.40
U.S. government guarantee .....	1.50	0.00	0.38
Partial guarantee .....	1.57	0.06	2.15
No guarantee .....	55.32	49.01	65.08
Domestic obligor, share of utilized balance .....	93.88	82.34	94.64
Remaining maturity, average in months <sup>2,3</sup> .....	48.57	56.35	39.23
Interest rate, average in percentage <sup>3</sup> .....	3.33	2.75	2.87
Committed exposure, average in millions of dollars .....	7.87	17.94	17.47
Utilized exposure, average in millions of dollars .....	5.76	7.35	5.86

<sup>1</sup> Industries are collapsed using the first digit of the NAICS 2007 code, except for finance and insurance.

<sup>2</sup> Maturity excludes demand loans.

<sup>3</sup> Averages for remaining maturity and interest rate are weighted by utilized exposure.

TABLE 7—PROJECTED PORTFOLIO  
LOSS RATES, 2017:Q1–2019:Q1,  
DFAST 2017 SCENARIOS  
[Percent]

Hypothetical portfolio	Scenario	
	Severely adverse	Adverse
Typical .....	5.4	3.2
Lower-risk .....	1.8	1.1
Higher-risk .....	7.2	4.2

**Note:** Portfolio loss rates are calculated as sum of the cumulative nine-quarter losses divided by sum of initial utilized balances.

By Order of the Board of Governors of the  
Federal Reserve System, December 7, 2017.

**Ann E. Misback,**

*Secretary of the Board.*

[FR Doc. 2017–26856 Filed 12–14–17; 8:45 am]

**BILLING CODE 6210–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2017–1184; Product Identifier 2017–CE–029–AD]

RIN 2120–AA64

#### Airworthiness Directives; Pacific Aerospace Limited Airplanes

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for Pacific Aerospace Limited Model 750XL airplanes. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as incorrectly marked and annunciated low oil pressure indication warnings. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by January 29, 2018.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* (202) 493-2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Pacific Aerospace Limited, Airport Road, Hamilton, Private Bag 3027, Hamilton 3240, New Zealand; telephone: +64 7 843 6144; facsimile: +64 7 843 6134; email: [pacific@aerospace.co.nz](mailto:pacific@aerospace.co.nz); internet: [www.aerospace.co.nz](http://www.aerospace.co.nz). You may review this referenced service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329-4148.

#### Examining the AD Docket

You may examine the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2017-1184; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Mike Kiesov, Aerospace Engineer, FAA,

Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4144; fax: (816) 329-4090; email: [mike.kiesov@faa.gov](mailto:mike.kiesov@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA-2017-1184; Product Identifier 2017-CE-029-AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

##### Discussion

The Civil Aviation Authority (CAA), which is the aviation authority for New Zealand, has issued AD No. DCA/750XL/19, dated September 7, 2017 (referred to after this as “the MCAI”), to correct an unsafe condition for Pacific Aerospace Limited Model 750XL airplanes and was based on mandatory continuing airworthiness information originated by an aviation authority of another country. The MCAI states:

The low oil pressure warnings are incorrectly marked and annunciated on certain Pacific Aerospace 750XL aircraft. This AD introduces the requirements in Pacific Aerospace Mandatory Service Bulletin (MSB) PACSB/XL/088, dated 11 August 2017, to correct low oil pressure indication warnings.

You may examine the MCAI on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2017-1184.

##### Related Service Information Under 1 CFR Part 51

Pacific Aerospace Limited has issued Pacific Aerospace Mandatory Service Bulletin (MSB) PACSB/XL/088, dated August 11, 2017; and Pacific Aerospace temporary revisions XL/POH/00/001, XUPOH/02/001, XUPOH/03/001, and XUPOH/03/002 (co-published as one document), all dated August 18, 2017. The service bulletin describes procedures for adjustment or replacement of the low oil pressure light, pressure switch, and indicator. The temporary revisions correct the

reference to the incorrect instrument markings in the Pilots Operating Handbook (POH). This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

##### FAA’s Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

##### Costs of Compliance

We estimate that this proposed AD will affect 22 products of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is \$85 per work-hour. Required parts would cost about \$500 per product.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$14,740, or \$670 per product.

##### Authority for This Rulemaking

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

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

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C.

In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to small airplanes and domestic business jet transport airplanes to the Director of the Policy and Innovation Division.

### Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Is not a “significant rule” under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),
- (3) Will not affect intrastate aviation in Alaska, and
- (4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 39

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

### The Proposed Amendment

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

### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

- 2. The FAA amends § 39.13 by adding the following new AD:

**Pacific Aerospace Limited:** Docket No. FAA–2017–1184; Product Identifier 2017–CE–029–AD.

#### (a) Comments Due Date

We must receive comments by January 29, 2018.

#### (b) Affected ADs

None.

### (c) Applicability

This AD applies to Pacific Aerospace Limited 750XL airplanes, all serial numbers up to XL217, certificated in any category.

### (d) Subject

Air Transport Association of America (ATA) Code 79: Engine Oil.

### (e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as incorrectly marked and annunciated low oil pressure indication warnings. We are issuing this AD to prevent engine oil pressure from dropping below safe limits, which could cause possible engine damage or failure.

### (f) Actions and Compliance

Unless already done, do the following actions as appropriate in paragraph (f)(1) through (4) of this AD:

(1) *For airplanes with Pilots Operating Handbook (POH) AIR 2825:* Within the next 30 days after the effective date of this AD, insert Pacific Aerospace temporary revisions XL/POH/00/001, XL/POH/02/001, and XUPOH/03/001 (co-published as one document), all dated August 18, 2017, into the Pacific Aerospace Limited (PAL) 750XL POH AIR 2825.

(2) *For airplanes with Pilots Operating Handbook (POH) AIR 3237:* Within the next 30 days after the effective date of this AD, insert Pacific Aerospace temporary revisions XL/POH/00/001, XUPOH/02/001, XUPOH/03/001, and XUPOH/03/002 (co-published as one document), all dated August 18, 2017, into the PAL 750XL POH AIR 3237.

(3) *For Pacific Aerospace 750XL airplanes up to S/N XL217:* Within the next 100 hours time-in-service (TIS) after the effective date of this AD or within the next 12 months after the effective date of this AD, whichever occurs first, replace the pressure switch for the low oil pressure light per the instructions in Part A of Pacific Aerospace Limited Mandatory Service Bulletin (PALMSB) PACSB/XL/088, dated August 11, 2017.

(4) *For Pacific Aerospace 750XL airplanes up to S/N XL217 fitted with PIN INS 60–8 oil pressure/temperature indicator:* Within the next 100 hours TIS after the effective date of this AD or within the next 12 months after the effective date of this AD, whichever occurs first, replace the oil pressure/temperature indicator per the instructions in Part B of PALMSB PACSB/XL/088, dated August 11, 2017.

### (g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Small Airplane Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–

4144; fax: (816) 329–4090; email: [mike.kiesov@faa.gov](mailto:mike.kiesov@faa.gov). Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, Small Airplane Standards Branch, FAA; or The Civil Aviation Authority (CAA), which is the aviation authority for New Zealand.

### (h) Related Information

Refer to Civil Aviation Authority (CAA), which is the aviation authority for New Zealand MCAI AD No. DCA/750XL/19, dated September 7, 2017; Pacific Aerospace Mandatory Service Bulletin PACSB/XL/088, dated August 11, 2017, and Pacific Aerospace temporary revisions XL/POH/00/001, XUPOH/02/001, XUPOH/03/001, and XUPOH/03/002 (co-published as one document), all dated August 18, 2017; for related information. You may examine the MCAI on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA–2017–1184. For service information related to this AD, contact Pacific Aerospace Limited, Airport Road, Hamilton, Private Bag 3027, Hamilton 3240, New Zealand; telephone: +64 7 843 6144; facsimile: +64 7 843 6134; email: [pacific@aerospace.co.nz](mailto:pacific@aerospace.co.nz); internet: [www.aerospace.co.nz](http://www.aerospace.co.nz). You may review this referenced service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on December 11, 2017.

**Melvin J. Johnson,**

*Deputy Director, Policy & Innovation Division, Aircraft Certification Service.*

[FR Doc. 2017–27043 Filed 12–14–17; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2017–1107; Product Identifier 2016–NE–22–AD;]

**RIN 2120–AA64**

### Airworthiness Directives; Pratt & Whitney Division Turbofan Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to supersede Airworthiness Directive (AD) 2017–12–03, which applies to certain Pratt & Whitney Division (PW) PW2037,

PW2037M, and PW2040 turbofan engines. AD 2017–12–03 requires installing a software standard eligible for installation and precludes the use of electronic engine control (EEC) software standards earlier than SCN 5B/I. Since we issued AD 2017–12–03, software became available for additional PW engines models. This proposed AD would require installing a software standard eligible for installation and preclude the use of EEC software standards earlier than SCN 5B/I or SCN 27A. We are proposing this AD to address the unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by January 29, 2018.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Pratt & Whitney Division, 400 Main St., East Hartford, CT 06118; phone: 800–565–0140; fax: 860–565–5442. You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

**Examining the AD Docket**

You may examine the AD docket on the internet at <http://www.regulations.gov> by searching for

and locating Docket No. FAA–2017–1107; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Kevin Clark, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7088; fax: 781–238–7199; email: [kevin.m.clark@faa.gov](mailto:kevin.m.clark@faa.gov).

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA–2017–1107; Product Identifier 2016–NE–22–AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

**Discussion**

We issued AD 2017–12–03, Amendment 39–18918 (82 FR 27411, June 15, 2017), (“AD 2017–12–03”), for PW PW2037, PW2037M, and PW2040 turbofan engines. AD 2017–12–03 requires installing a software standard

eligible for installation and precludes the use of EEC software standards earlier than SCN 5B/I. AD 2017–12–03 resulted from an unrecoverable engine in-flight shutdown (IFSD) after an ice crystal icing event. We issued AD 2017–12–03 to prevent failure of the high-pressure turbine (HPT), rotor seizure, failure of one or more engines, loss of thrust control, and loss of the airplane.

**Actions Since AD 2017–12–03 Was Issued**

Since we issued AD 2017–12–03, software became available for PW engines with EEC model number EEC104–1 with 26K memory. These are older engine models that did not have software fixes available when AD 2017–12–03 was issued.

**Related Service Information**

We reviewed PW Alert Service Bulletin (ASB) PW2000 A73–170, dated July 14, 2016 and PW ASB PW2000 A73–171, dated March 24, 2017. The ASBs describe procedures for modifying or replacing the EEC.

**FAA’s Determination**

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

**Proposed AD Requirements**

This proposed AD would retain all the requirements of AD 2017–12–03. This proposed AD would add additional, older engine models to the applicability.

**Costs of Compliance**

We estimate that this proposed AD affects 587 engines, installed on airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

**ESTIMATED COSTS**

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
EEC software installation .....	1.8 work-hours × \$85 per hour = \$153 .....	0	\$153	\$89,811

**Authority for This Rulemaking**

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, “General requirements.” Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for

safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C.

In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to engines, propellers, and associated appliances to the Manager, Engine and Propeller Standards Branch, Policy and Innovation Division.

**Regulatory Findings**

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

For the reasons discussed above, I certify that the proposed regulation:

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Is not a “significant rule” under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),
- (3) Will not affect intrastate aviation in Alaska, and
- (4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

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

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2017–12–03, Amendment 39–18918 (82 FR 27411), and adding the following new AD:

**Pratt & Whitney Division:** Docket No. FAA–2017–1107; Product Identifier 2016–NE–22–AD.

**(a) Comments Due Date**

The FAA must receive comments on this AD action by January 29, 2018.

**(b) Affected ADs**

This AD replaces AD 2017–12–03, Amendment 39–18918 (82 FR 27411, June 15, 2017).

**(c) Applicability**

This AD applies to:  
 (1) All Pratt & Whitney Division (PW) PW2037, PW2037M, and PW2040 turbofan engines with electronic engine control (EEC), model number EEC104–40 or EEC104–60, installed, with an EEC software standard earlier than SCN 5B/I; and  
 (2) All PW PW2037, PW2037M, and PW2040 turbofan engines with EEC, model number EEC104–1 with part numbers (P/Ns) 1B7484, 1B7486, 1B7984, or 1B7985, installed, with an EEC software standard earlier than SCN 27A.

**(d) Subject**

Joint Aircraft System Component (JASC) Code 7321, Fuel Control Turbine Engines.

**(e) Unsafe Condition**

This AD was prompted by an unrecoverable engine in-flight shutdown (IFSD) after an ice crystal icing event. We are issuing this AD to prevent failure of the high-pressure turbine (HPT) and rotor seizure. The unsafe condition, if not corrected, could result in failure of one or more engines, loss of thrust control, and loss of the airplane.

**(f) Compliance**

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

**(g) Required Actions**

- (1) For an engine with an EEC model number EEC104–40 or EEC104–60 and a serial number (S/N) listed in Figure 1 to paragraph (g) of this AD, upgrade any EEC software standards earlier than SCN 5B/I or replace the EEC with a part eligible for installation at the next engine shop visit, or before December 1, 2018, whichever occurs first.
- (2) For an engine with an EEC model number EEC104–40 or EEC104–60 and an S/N not listed in Figure 1 to paragraph (g) of this AD, upgrade any EEC software standards earlier than SCN 5B/I or replace the EEC with a part eligible for installation at the next engine shop visit, or before July 1, 2024, whichever occurs first.
- (3) For an engine with an EEC model number EEC104–1 with PN 1B7484, 1B7486, 1B7984, or 1B7985, upgrade any EEC software standards earlier than SCN 27A or replace the EEC with a part eligible for installation at the next engine shop visit, or before July 1, 2024, whichever occurs first.

**FIGURE 1 TO PARAGRAPH (g)—ENGINE S/Ns**

716402	727272	728741
727103	727280	728743
727134	727281	728748
727152	727282	728779
727158	727286	728785
727189	727287	728795
727202	727288	728806
727204	728709	728811

**FIGURE 1 TO PARAGRAPH (g)—ENGINE S/Ns—Continued**

727231	728715	728812
727239	728716	728820
727240	728719	728824
727251	728720	728826
727252	728725	728827
727253	728726	728840
727257	728729	728864
727269	728730	728870

**(h) Installation Prohibition**

After the effective date of this AD, do not install any software standard earlier than:  
 (1) SCN 5B/I into any EEC model number EEC104–40 or EEC104–60; or  
 (2) SCN 27A into any EEC model number EEC104–1.

**(i) Definition**

For the purpose of this AD, an “engine shop visit” is the induction of an engine into the shop for maintenance involving the separation of pairs of major mating engine flanges, except that the separation of engine flanges solely for the purposes of transportation without subsequent engine maintenance does not constitute an engine shop visit.

**(j) Alternative Methods of Compliance (AMOCs)**

- (1) The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (k)(1) of this AD. You may email your request to: *ANE-AD-AMOC@faa.gov*.
- (2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

**(k) Related Information**

- (1) For more information about this AD, contact Kevin Clark, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7088; fax: 781–238–7199; email: *kevin.m.clark@faa.gov*.
- (2) For service information identified in this AD, contact Pratt & Whitney Division, 400 Main St., East Hartford, CT 06118; phone: 800–565–0140; fax: 860–565–5442. You may view this referenced service information at the FAA, Engine & Propeller Standards Branch, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on December 11, 2017.

**Robert J. Ganley,**  
*Manager, Engine and Propeller Standards Branch, Aircraft Certification Service.*

[FR Doc. 2017–26967 Filed 12–14–17; 8:45 am]

**BILLING CODE 4910–13–P**

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

[Docket No. FAA-2017-1108; Product Identifier 2012-NE-44-AD]

RIN 2120-AA64

**Airworthiness Directives; Rolls-Royce plc Turbojet Engines****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to supersede airworthiness directive (AD) 2016-03-03 that applies to all Rolls-Royce plc (RR) Viper Mk. 521, Viper Mk. 522, and Viper Mk. 601-22 turbojet engines. AD 2016-03-03 requires reducing the life of certain critical parts. Since we issued AD 2016-03-03, RR determined that additional parts for these RR Viper engine models are affected. This proposed AD would add additional engine parts to the applicability. We are proposing this AD to address the unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by January 29, 2018.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 202-493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact DA Services Operations Room at Rolls-Royce plc, Defense Sector Bristol, WH-70, P.O. Box 3, Filton, Bristol BS34 7QE, United Kingdom; phone: +44 (0) 117 97 90700; fax: +44 (0) 117 97 95498; email: [defence-operations-room@rolls-royce.com](mailto:defence-operations-room@rolls-royce.com). You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781-238-7125.

**Examining the AD Docket**

You may examine the AD docket on the internet at <http://www.regulations.gov>

by searching for and locating Docket No. FAA-2017-1108; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the mandatory continuing airworthiness information, regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Robert Green, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781-238-7754; fax: 781-238-7199; email: [robert.green@faa.gov](mailto:robert.green@faa.gov).

**SUPPLEMENTARY INFORMATION:****Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2017-1108; Product Identifier 2012-NE-44-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this NPRM.

**Discussion**

We issued AD 2016-03-03, Amendment 39-18390 (81 FR 12585, March 10, 2016), "AD 2016-03-03," for all RR Viper Mk. 521, Viper Mk. 522, and Viper Mk. 601-22 turbojet engines. AD 2016-03-03 requires reducing the life of certain critical parts. AD 2016-03-03 resulted from a determination by RR that the life of certain critical engine parts needed to be reduced. We issued AD 2016-03-03 to prevent failure of life-limited parts, which could lead to an uncontained part release, damage to the engine, and damage to the airplane.

**Actions Since AD 2016-03-03 Was Issued**

Since we issued AD 2016-03-03, RR determined that additional compressor rotating shrouds and the compressor

main shaft, installed on the affected Viper engines, require a reduction in their cyclic life limits. Also since we issued AD 2016-03-03, the European Aviation Safety Agency (EASA) has issued AD 2017-0148, dated August 15, 2017, which requires reducing the cyclic life limits of the affected parts.

**Related Service Information Under 14 CFR Part 51**

RR has issued Alert Service Bulletin (ASBs) Mk. 521 Number 72-A408, Circulation A; Mk. 521 Number 72-A408, Circulation B; Mk. 522 Number 72-A413, Circulation A; Mk. 522 Number 72-A412, Circulation B; and Mk. 601-22 Number 72-A207; all identified as Revision 1 and all dated June 2017. RR ASBs Mk. 521 Number 72-A408, Circulation A (Revision 1) and Mk. 521 Number 72-A408, Circulation B (Revision 1) describe applicable part numbers (P/Ns) and revised cyclic life limits for parts installed on the Mk. 521 engine. RR ASBs Mk. 522 Number 72-A413, Circulation A (Revision 1), and Mk. 522 Number 72-A412, Circulation B (Revision 1) describe applicable P/Ns and revised cyclic life limits for parts installed on the Mk. 522 engine. RR ASB Mk. 601-22 Number 72-A207, Rev. 1, describes applicable P/Ns and revised cyclic life limits for parts installed on the Mk. 601-22 engine. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

**FAA's Determination**

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

**Proposed AD Requirements**

This proposed AD would require reducing the cyclic life of certain critical parts. This proposed AD would add additional parts to the applicability of AD 2016-03-03.

**Costs of Compliance**

We estimate that this proposed AD affects 46 engines installed on helicopters of U.S. registry.

We estimate the following costs to comply with this proposed AD:



## ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Remove and replace parts .....	4 work-hours × \$85 per hour = \$340 .....	\$75,000	\$75,340	\$3,465,640

**Authority for This Rulemaking**

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

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

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to engines, propellers, and associated appliances to the Manager, Engine and Propeller Standards Branch, Policy and Innovation Division.

**Regulatory Findings**

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

For the reasons discussed above, I certify that the proposed regulation:

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),
- (3) Will not affect intrastate aviation in Alaska, and

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

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

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

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

- 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2016–13–03, Amendment 39–18390 (81 FR 12585, March 10, 2016), and adding the following new AD:

**Rolls-Royce plc (Type Certificate previously held by Rolls-Royce (1971) Limited, Bristol Engine Division):** Docket No. FAA–2017–1108; Product Identifier 2012–NE–44–AD.

**(a) Comments Due Date**

We must receive comments by January 29, 2018.

**(b) Affected ADs**

This AD replaces AD 2016–13–03, Amendment 39–18390 (81 FR 12585, March 10, 2016).

**(c) Applicability**

This AD applies to all Rolls-Royce plc (RR) Viper Mk. 521, Viper Mk. 522, and Viper Mk. 601–22 turbojet engines.

**(d) Subject**

Joint Aircraft System Component (JASC) Code 7230, Compressor Section.

**(e) Unsafe Condition**

This AD was prompted by a review by RR of the lives of certain critical parts. We are issuing this AD to prevent failure of life-limited parts, uncontained part release, damage to the engine, and damage to the airplane.

**(f) Compliance**

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

**(g) Required Actions**

(1) Remove from service any Group A component listed in Table 1 of the RR Alert Service Bulletins (ASBs) listed in paragraphs (g)(1)(i) through (v) of this AD within 30 days after the effective date of this AD, or before the part exceeds the revised life limit specified in the applicable ASB, whichever occurs later.

- (i) RR ASB Mk. 521 Number 72–A408, Circulation A (Revision 1), dated June 2017.
- (ii) RR ASB Mk. 521 Number 72–A408, Circulation B (Revision 1), dated June 2017.
- (iii) RR ASB Mk. 522 Number 72–A413, Circulation A (Revision 1), dated June 2017.
- (iv) RR ASB Mk. 522 Number 72–A412, Circulation B (Revision 1), dated June 2017.
- (v) RR ASB Mk. 601–22 Number 72–A207, Rev. 1, dated June 2017.

(2) Reserved.

**(h) Installation Prohibition**

After the effective date of this AD, do not install any Group A component identified in Table 1 of the RR ASBs in paragraph (g)(1)(i) through (v) of this AD into any engine, or return any engine to service with any affected part installed, if the affected part exceeds the revised life limit specified in the applicable ASB.

**(i) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, ECO Branch, FAA, may approve AMOCs for this AD, if requested, using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j) of this AD. You may email your request to: [ANE-AD-AMOC@faa.gov](mailto:ANE-AD-AMOC@faa.gov).

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

**(j) Related Information**

(1) For more information about this AD, contact Robert Green, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7754; fax: 781–238–7199; email: [robert.green@faa.gov](mailto:robert.green@faa.gov).

(2) Refer to MCAI European Aviation Safety Agency, AD 2017–0148, dated August 15, 2017, for more information. You may examine the MCAI in the AD docket on the internet at <http://www.regulations.gov> by searching for and locating it in Docket No. FAA–2017–1108.

(3) For service information identified in this AD, contact DA Services Operations Room at Rolls-Royce plc, Defense Sector

Bristol, WH-70, P.O. Box 3, Filton, Bristol BS34 7QE, United Kingdom; phone: +44 (0) 117 97 90700; fax: +44 (0) 117 97 95498; email: [defence-operations-room@rolls-royce.com](mailto:defence-operations-room@rolls-royce.com).

(4) You may view this referenced service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781-238-7125.

Issued in Burlington, Massachusetts, on December 8, 2017.

**Robert J. Ganley,**

*Manager, Engine and Propeller Standards Branch, Aircraft Certification Service.*

[FR Doc. 2017-26968 Filed 12-14-17; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF LABOR

### Wage and Hour Division

#### 29 CFR Part 531

RIN 1235-AA21

#### Tip Regulations Under the Fair Labor Standards Act (FLSA)

**AGENCY:** Wage and Hour Division, Department of Labor.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** This document extends the period for filing written comments until February 5, 2018 on the proposed rulemaking: Tip Regulations Under the Fair Labor Standards Act. The Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** on December 5, 2017. The Department of Labor (Department) is taking this action in order to provide interested parties additional time to submit comments.

**DATES:** The comment period for the proposed rule published December 5, 2017, at 82 FR 57395, is extended. The agency must receive comments on or before February 5, 2018. Comments must be received by 11:59 p.m. on February 5, 2018.

**ADDRESSES:** To facilitate the receipt and processing of written comments on this NPRM, the Department encourages interested persons to submit their comments electronically. You may submit comments, identified by Regulatory Information Number (RIN) 1235-AA21, by either of the following methods:

*Electronic Comments:* Follow the instructions for submitting comments on the Federal eRulemaking Portal <http://www.regulations.gov>.

*Mail:* Address written submissions to Melissa Smith, Director of the Division of Regulations, Legislation, and

Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue NW, Washington, DC 20210.

*Instructions:* This NPRM is available through the **Federal Register** and the <http://www.regulations.gov> website. You may also access this document via the Wage and Hour Division's (WHD) website at <http://www.dol.gov/whd/>. All comment submissions must include the agency name and Regulatory Information Number (RIN 1235-AA21) for this NPRM. Response to this NPRM is voluntary. The Department requests that no business proprietary information, copyrighted information, or personally identifiable information be submitted in response to this NPRM. Submit only one copy of your comment by only one method (e.g., persons submitting comments electronically are encouraged not to submit paper copies). Please be advised that comments received will become a matter of public record and will be posted without change to <http://www.regulations.gov>, including any personal information provided. All comments must be received by 11:59 p.m. on the date indicated for consideration in this NPRM; comments received after the comment period closes will not be considered. Commenters should transmit comments early to ensure timely receipt prior to the close of the comment period. Electronic submission via <http://www.regulations.gov> enables prompt receipt of comments submitted as DOL continues to experience delays in the receipt of mail in our area. For access to the docket to read background documents or comments, go to the Federal eRulemaking Portal at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Melissa Smith, Director of the Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue NW, Washington, DC 20210, telephone: (202) 693-0406 (this is not a toll-free number). Copies of this NPRM may be obtained in alternative formats (Large Print, Braille, Audio Tape or Disc), upon request, by calling (202) 693-0675 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1 (877) 889-5627 to obtain information or request materials in alternative formats.

Questions of interpretation and/or enforcement of the agency's regulations may be directed to the nearest WHD district office. Locate the nearest office by calling the WHD's toll-free help line at (866) 4US-WAGE ((866) 487-9243) between 8 a.m. and 5 p.m. in your local

time zone, or log onto WHD's website at <http://www.dol.gov/whd/america2.htm> for a nationwide listing of WHD district and area offices.

#### SUPPLEMENTARY INFORMATION:

##### I. Request for Comment

On December 5, 2017, the Department published a NPRM and request for comments in the **Federal Register** (82 FR 57395), proposing to rescind portions of its tip regulations issued pursuant to the Fair Labor Standards Act. The NPRM also requested that interested parties from the public submit comments on the NPRM on or before January 4, 2018.

The Department has decided to provide an extension of the period for submitting public comment until February 5, 2018.

**Bryan L. Jarrett,**

*Acting Administrator, Wage and Hour Division.*

[FR Doc. 2017-27085 Filed 12-12-17; 4:15 pm]

**BILLING CODE 4510-27-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG-2017-0713]

RIN 1625-AA09

#### Drawbridge Operation Regulation; Atlantic Intracoastal Waterway, Wappoo Creek, Charleston, SC

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to modify the operating schedule that governs the SR 171/700 (Wappoo Cut) Bridge across Wappoo Creek (AICW), mile 470.8, at Charleston, SC. This proposed action would eliminate the seasonal operating schedules and adjust the daily schedule due to an increase in vehicle traffic throughout the year. This proposed action is intended to reduce vehicular traffic congestion and provide a more consistent operating schedule for the bridge.

**DATES:** Comments and related material must reach the Coast Guard on or before January 16, 2018.

**ADDRESSES:** You may submit comments identified by docket number USCG-2017-0713 using Federal eRulemaking Portal at <http://www.regulations.gov>.

See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section

below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or email LT Justin Heck, Coast Guard Sector Charleston, SC, Waterways Management Division; telephone 843-740-3184, email [justin.c.heck@uscg.mil](mailto:justin.c.heck@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR Code of Federal Regulations  
 DHS Department of Homeland Security  
 FR Federal Register  
 OMB Office of Management and Budget  
 NPRM Notice of Proposed Rulemaking  
 § Section  
 U.S.C. United States Code  
 AICW Atlantic Intracoastal Waterway  
 SC South Carolina  
 SR State Route

**II. Background, Purpose and Legal Basis**

The existing regulation for the SR 171/700 (Wappoo Cut) Bridge across Wappoo Creek (AICW), mile 470.8, at Charleston, SC is contained in 33 CFR 117.911(d), which is entitled, "Atlantic Intracoastal Waterway, Little River to Savannah River." This regulation provides three different seasonal operating schedules throughout the year.

The SR 171/700 (Wappoo Cut) Bridge across Wappoo Creek (AICW), mile 470.8 at Charleston, SC, provides a vertical clearance of 33 feet in the closed position at MHW and a horizontal clearance of 100 feet between fenders.

On November 16, 2016, the Mayor of the City of Charleston requested that the Coast Guard modify the current regulation by changing the times the bridge is allowed to remain in the closed position, remove the seasonal operating schedules, and allow for a once an hour opening during the day. The South Carolina Department of Transportation, the bridge owner, has no objection to the requested changes.

The requested modification should simplify the current operating schedule, allow for a more consistent and efficient operation of the bridge and provide relief to vehicle traffic congestion while meeting the reasonable needs of navigation.

**III. Discussion of Proposed Rule**

The Coast Guard proposes to modify the regulation contained in 33 CFR 117.911(d). Under this proposed regulation, the draw of the SR171/700 (Wappoo Cut) Bridge would open on signal, except from 6 a.m. to 9:29 a.m. and 3:31 p.m. to 7 p.m., the bridge need not open. Additionally, the draw would

open once an hour on the half hour, between the hours of 9:30 a.m. and 3:30 p.m.

This proposed change would still allow vessels that can transit under the bridge, without an opening, to do so at any time while taking into account the reasonable needs of other modes of transportation. Emergency vessels and tugs with tows can still request openings at any time.

**IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive Orders and we discuss First Amendment rights of protestors.

*A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB) and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the ability of vessels to still transit the bridge once an hour during the day, except during the allowed closure times. Vessels in distress, public vessels of the United States and tugs with tows would be allowed to pass at any time.

*B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a

significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

*C. Collection of Information*

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

*D. Federalism and Indian Tribal Government*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

### F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves promulgating the operating regulations for a drawbridge. It is categorically excluded from further review under paragraph L49 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01.

We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

### V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using [http://](http://www.regulations.gov)

[www.regulations.gov](http://www.regulations.gov), contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <http://www.regulations.gov/privacynotice>.

Documents mentioned in this NPRM as being available in this docket and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

### List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

### PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 117.911(d) to read as follows:

#### § 117.911 Atlantic Intracoastal Waterway, Little River to Savannah River.

\* \* \* \* \*

(d) *SR 171/700 (Wappoo Cut) Bridge across Wappoo Creek, mile 470.8, at Charleston, SC.* The draw shall open on signal; except that the draw need not open from 6 a.m. to 9:29 a.m. and 3:31 p.m. to 7 p.m., Monday through Friday, except Federal holidays. Between 9:30 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays, the draw need open only once an hour on the half hour.

\* \* \* \* \*

Dated: December 11, 2017.

**Peter J. Brown,**

*Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.*

[FR Doc. 2017–26999 Filed 12–14–17; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 80

[Docket No. FWS–HQ–WSR–2017–0002; 91400–5110–POLI–7B; 91400–9410–POLI–7B]

RIN 1018–BA33

#### Financial Assistance: Wildlife Restoration, Sport Fish Restoration, Hunter Education and Safety

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), are proposing to update regulations for the Pittman-Robertson Wildlife Restoration and the Dingell-Johnson Sport Fish Restoration programs and subprograms, based on comments we received during the last rulemaking that were never resolved, existing guidance that we intend to move to regulation, and updates requested by States to improve the processes under license certification. We believe these changes will clarify and simplify the regulations and help ensure consistency in administering the programs across the Nation.

**DATES:** We will accept comments received or postmarked on or before February 13, 2018.

**ADDRESSES:** *Comment submission:* You may submit comments, identified by docket number FWS–HQ–WSR–2017–0002, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments to docket number FWS–HQ–WSR–2017–0002.

- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–HQ–WSR–2017–0002; U.S. Fish and Wildlife Service; Division of Policy, Performance, and Management Programs; MS: BPHC; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

- *Hand Delivery/Courier:* U.S. Fish and Wildlife Service; Division of Policy, Performance, and Management Programs; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We will not accept email or faxes. All submissions received must include the agency name and docket number or Regulation Identifier Number (RIN) for this rulemaking. We will post all comments received without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and other information on the

rulemaking process, see the “Public Comments” heading below in **SUPPLEMENTARY INFORMATION**.

**Background information:** For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> and search for docket number FWS-HQ-WSR-2017-0002.

**FOR FURTHER INFORMATION CONTACT:** Lisa Van Alstyne, Wildlife and Sport Fish Restoration Program, Division of Policy and Programs, U.S. Fish and Wildlife Service, 703-358-1942.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The U.S. Fish and Wildlife Service’s (Service) Wildlife and Sport Fish Restoration Program (WSFR) annually apportion to States more than \$1 billion for programs and subprograms under the Pittman-Robertson Wildlife Restoration Act (50 Stat. 917, as amended; 16 U.S.C. 669-669k), and the Dingell-Johnson Sport Fish Restoration Act (64 Stat. 430, as amended; 16 U.S.C. 777-777n, except 777e-1 and g-1) (Acts). We are proposing to update the regulations at title 50 part 80 of the Code of Federal Regulations (CFR), which is “Financial Assistance: Wildlife Restoration, Sport Fish Restoration, Hunter Education and Safety.” We published the last revision of these regulations in 2011. In conducting the rulemaking process for the 2011 rule, we received comments from the proposed rule that we did not resolve in the final rule. Since the 2011 update to the regulations, we have also worked with States and other partners to identify information from Service Manual chapters, Memoranda, Director’s Orders, interim guidance, and other guidance that we intend to include, as appropriate, in regulation.

This proposed rule is the first of several rulemaking documents that we will publish over an extended period, based on a phased plan developed by a team of Federal and State representatives. The phased-approach will allow us to make changes and address topics while giving States and the public additional opportunities for review and comment. The primary users of these regulations are the fish and

wildlife agencies of the 50 States; the Commonwealths of Puerto Rico and the Northern Mariana Islands; the territories of Guam, the U.S. Virgin Islands, and American Samoa; and the District of Columbia (DC). We use “State” or “States” in this document to refer to any or all of these jurisdictions, except that the District of Columbia receives funds only under the Dingell-Johnson Sport Fish Restoration Act. The Pittman-Robertson Wildlife Restoration Act does not authorize funding for the District of Columbia. The term “the 50 States” applies only to the 50 States of the United States.

The Acts established a hunting- and angling-based user-pay and public-benefit system in which the State fish and wildlife agencies receive formula-based funding from a continuing appropriation. Industry partners pay excise taxes on equipment and gear manufactured for purchase by hunters, anglers, boaters, archers, and recreational shooters. The Service apportions funds to the State fish and wildlife agencies, and the agencies contribute matching funds. These regulations tell States how they may receive annual apportionments from the Wildlife Restoration Account (16 U.S.C. 669(b)) and the Sport Fish Restoration and Boating Trust Fund (26 U.S.C. 9504), how they may use hunting and fishing license fees, and what requirements States must follow when participating in the programs under the Acts. We also address the State component of the Outreach and Communications subprogram. The programs and subprograms under the Acts give financial assistance to State fish and wildlife agencies to restore or manage wildlife and sport fish; offer hunter-education, hunter-development, hunter-recruitment, and hunter-safety programs; develop and increase recreational boating access; enhance the public’s understanding of water resources, aquatic-life forms, and sport fishing; and develop responsible attitudes and ethics toward aquatic and related environments.

The Catalog of Federal Domestic Assistance at <http://www.cfda.gov> describes these programs under 15.605, 15.611, and 15.626.

##### **Phased Approach to Rulemaking**

We published a proposed revision to the regulations at 50 CFR part 80 on June 10, 2010 (75 FR 32877). We published the final rule on August 1, 2011 (76 FR 46150). In 2015, we shared with our State partners a list of topics that we generated from unresolved comments on that prior rulemaking and other non-regulatory guidance. From June through September 2015, we hosted 12 webinars that were open to States, Service Regions, and other interested parties. Each webinar addressed a few topics from the list and gave participants an opportunity to learn more about the reasons the topics are of concern, offer opinions on approaches we have considered, and share their knowledge and experiences. WSFR used information gathered from these webinars to help guide development of a draft proposed rule. In November 2015, we posted the draft proposed rule for informal comments prior to official rulemaking. States informed us that the volume of changes and the level of complexity of many of the topics made it difficult for them to review and respond effectively. At a meeting in April 2016, WSFR proposed to the Association of Fish & Wildlife Agencies (AFWA), the Joint Federal/State Task Force for Financial Assistance Policy, and the Federal Aid Coordinators Working Group a cooperative approach to scheduling rulemaking, which led to forming a Federal/State 50 CFR part 80 Schedule Development Team.

The result of this effort is a plan to make changes to 50 CFR part 80 through four separate rulemakings. Each round of rulemaking will make changes to the rule to address concerns that have already been vetted and resolved and will now be included in regulation, as well as a few complex topics. This approach will distribute the workload in multiple ways, allowing for more focused involvement and well-developed comments. You may find further information on the schedule and topics at <https://fawiki.fws.gov/display/5C8SDT>. The proposed schedule is:

Round	Year 1												Year 2						
	1*	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	
1	PR				FR														
2			PR					FR											
3									PR					FR					

Round	Year 1												Year 2						
	1*	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	
4												PR							FR

PR means proposed rule; FR means final rule.

\*“1” indicates the month the proposed rule publishes, not necessarily January. The pattern will follow as closely as possible, considering sufficient time for States to comment and the Service to respond, while ensuring no overlap in rulemakings.

### Topics Under Consideration as Part of Phased Rulemaking

In addition to the specific amendments that we are proposing elsewhere in this document, we are also requesting comments and information on some topics identified as being more complex or having the potential to elicit a wide range of opinion or approaches that could impact the proposed rules we issue later in this phased rulemaking process. The Service is asking you to respond to the questions we ask or suggestions we make. This will help us to understand how your State addresses the associated issues and how we can make changes that will improve the ability of fish and wildlife agencies to implement successful projects. We ask you to tell us if you support a suggested change or approach, as well as comment on suggested changes or approaches you do not support. When responding, we ask you to give the reasoning behind your comments to help us better understand your position. When your comments include a legal reference, please specifically cite the legal document. We recommend you use citation formats in *Association of Legal Writing Directors (ALWD) Guide to Legal Citation* or *Bluebook: A Uniform System of Citation* as your guide. If possible, please give a location where we may access the document electronically.

The terms *you*, *your*, and *I* refer to a State fish and wildlife agency that applies for or receives a grant under the Acts, their subgrantees, or interested members of the public who comment. The terms *we*, *us*, and *our* refer to the Service or the Service’s Wildlife and Sport Fish Restoration Program (WSFR).

Our focus audience for these topics consists of the State fish and wildlife agencies who receive funding under the Wildlife Restoration and Sport Fish Restoration Act (Acts) and those interested in the activities of these agencies. We offer definitions and approaches to address a certain topic as a starting point to allow you to know what we are considering and to respond. We ask you to (1) tell us if you agree with an approach, (2) suggest alternatives, (3) advise us of potential obstacles or concerns, (4) give examples of scenarios that would help inform us, and (5) offer your knowledge and

experience to assist us in understanding how our rulemaking can best support wildlife management goals and objectives.

We have posted pertinent information about these topics and the development of 50 CFR part 80 at <https://fawiki.fws.gov/display/5C8SDT/50+CFR+80+Update>. This website includes copies of documents that we reference and information about scheduled webinars. These topics are open for discussion and you may contact the WSFR Policy Branch ([Lisa\\_Van\\_Alstyne@fws.gov](mailto:Lisa_Van_Alstyne@fws.gov)) or other WSFR staff with whom you work prior to or after making comments. You may view other comments at [www.regulations.gov](http://www.regulations.gov) by searching for docket number FWS–HQ–WSR–2017–0002.

### Definitions

#### Wildlife

A definition for “wildlife” is not in the Act and was not in the regulations until 1960, at which time the term was simply defined as “wild birds and wild mammals.” The definition did not appear in the 2008 final rule (73 FR 43120, July 24, 2008), but the Service reintroduced the term with a new definition in the 2010 proposed rule (75 FR 32877, June 10, 2010), and the term was codified by the 2011 final rule (76 FR 46150, August 1, 2011). The definition of “wildlife” set forth in 2011 remains the definition in 50 CFR 80.2 today.

We received many comments on our proposed rule to revise 50 CFR part 80 in 2010 (75 FR 32877, June 10, 2010). Among those comments were some from States that sell licenses to hunt or fish species that did not meet the definition of wildlife. These comments suggested that we consider adjusting the definition to allow State fish and wildlife agencies to use funds under the Acts for managing these other species. We did not make changes to the proposed definition in the 2011 final rule, as we wanted to gather comments from all State fish and wildlife agencies as to whether we should consider expanding the definition to include other species.

We ask you to consider a possible alternative to the current definition at 50 CFR 80.2 that would include other species for which a State fish and

wildlife agency sells a license to hunt. We ask your response to these questions:

1. Should we expand the definition of “wildlife” to include other species for which a State fish and wildlife agency sells a license to hunt? This would include any indigenous or naturalized species other than birds or mammals that meet the existing criteria and for which a State issues a license for the legal taking of the species.

2. If this option is acceptable, should we consider including a requirement that the hunting of the species does not interfere with or oppose the legal hunting of birds and mammals already in the definition?

3. If this option is acceptable, should we consider including the requirement that the State Director approve the inclusion of that species as meeting the definition of “wildlife” for that State? Should the Service Director approve?

4. If we should expand the definition, do you have comments on the suggested new definition?

5. Are there advantages or concerns we should consider?

#### Law Enforcement

We received a comment during the 2011 rulemaking asking that we define “law enforcement.” Law enforcement is an ineligible activity under the Acts and the current regulations. States have told us that law enforcement officers sometimes conduct activities that do not involve enforcing laws and that are beneficial to the State fish and wildlife agency for fish and wildlife management. Agencies may interpret the current regulations to mean that any activities done by law enforcement personnel are not eligible. Without a definition for law enforcement, agencies do not have clear, consistent direction.

We request your comments on how to define law enforcement and if any activities conducted by law enforcement personnel may be eligible using funds under the Acts. Please note that license revenue may be used for any activities that support the administration of the State fish and wildlife agency as described at 50 CFR 80.10(c), which could include some law enforcement activities. WSFR proposed the following definition for informal comment in

2015, and we offer it in this document for further comment and development. We ask you to comment on whether you think this definition is sufficient to guide States and WSFR regarding eligible and ineligible activities, and if the proposed definition is lacking, please describe what additional considerations you recommend.

*Law enforcement* means the act of developing regulations, issuing punitive citations or tickets for infractions of the law, or assisting with inspections and other enforcement activities that have the potential to result in the issuance of penalties.

### Comprehensive Management System

State fish and wildlife agencies may use one of two methods of operation for managing financial assistance. One method is project-by-project grants, and the other is the Comprehensive Management System (CMS). Currently, five States utilize the CMS method, leaving the majority using the project-by-project method. A CMS grant is not the same as a “block grant,” and Federal compliance requirements apply to eligible projects. States using a comprehensive plan link programs, financial systems, human resources, goals, products, and services in developing a strategic plan and carrying it out through an operational planning process. The process must allow an opportunity for public participation, clearly define projects to the level where grant managers can evaluate for compliance, and include approaches for evaluating results. The plan also assesses the current, projected, and desired status of fish and wildlife.

We intend to define a comprehensive management plan and specify that the planning period must be at least 5 years and use a minimum 15-year projection of the desires and needs of the State’s citizens. We would emphasize requirements for public participation in developing the plan. We would describe that a CMS grant funds all or part of your plan, you receive one grant at the beginning of the grant period, and the grant period consists of segments funded by annual apportionments. We would describe compliance requirements. Some compliance requirements may be completed when the plan is approved, but discrete projects in the plan, changing conditions or considerations, and other factors would require additional compliance prior to projects being initiated. We would describe situations that would require additional compliance actions. Plans will include projects using funding under the Acts and projects using other sources of

funding. Service staff often must conduct extensive compliance for projects that have limited funding under the Acts, so we are considering a funding threshold under which States or other Federal entities will be responsible for compliance.

We request your comments on whether we need to give more detail on the level of public participation required, type of notification to citizens, level of budget detail, compliance, and reporting.

### Loss of Control/Diversion

We often receive questions from States as to what the Service means when we use the term “control” in 50 CFR part 80. We use the term “control” in conjunction with funding under the Acts, license revenues, real and personal property, third-party agreements, and more. States ask us to define the parameters for what constitutes a loss of control and what actions would lead to a diversion of license revenue or grant funds. States also ask us about control of real property when certain real property rights are held by other entities. We address *Loss of Control and Disposal of Real Property* in our Service manual at 522 FW 20, but this information is limited. Our Regional offices routinely respond to issues involving loss of control and diversion of funds under the Acts, which leads us to consider the need for clear information on *control* and *diversion*.

We understand that this topic is complicated and that each State has a different perception of the needs, limits, and use of control under the Acts, and the meaning of control when certain situations present themselves. We intend to address this subject in a future proposed rule and ask State fish and wildlife agencies to comment on how this issue has affected your agency, what challenges you have encountered, and what concerns you wish us to address. We ask that you give us examples of scenarios that could be difficult to manage without further clarification. We ask you to tell us if your State has encountered situations where an outside entity has dictated, or attempted to dictate, the scope of work of the State fish and wildlife agency and what the response has been. We are also interested in hearing about situations that involve oil, gas, and mineral extraction on or under State fish and wildlife agency-owned and -managed lands. We encourage States to discuss this topic with your Regional WSFR offices.

### Allowable Recreational and Commercial Activities

We address allowable recreational and commercial activities at Service manual chapters 522 FW 21 (<https://www.fws.gov/policy/522fw21.html>) and 522 FW 22 (<https://www.fws.gov/policy/522fw22.html>). We intend to move this policy information into regulations for those programs under the Acts. We welcome any comments you have on the information in the chapters, the approach, and making these policy provisions regulatory.

### Proposed Rule

This document is not a full update of the proposed changes we plan to make to the regulations in 50 CFR part 80, but rather we address only certain topics at this time. State and Federal representatives proposed and accepted the list of topics we address in this proposed update to the regulations.

#### Definitions

- We define the terms “asset” and “obligation” in response to requests for clarifying these terms.
- We revise the definition of “capital improvement” to raise the monetary threshold from \$10,000 to \$25,000.
- We add definitions for the terms “geographic location,” “structure,” and “technical assistance.”
- We revise the definition for the term “match” to include that match may be from a Federal source if a statute authorizes it. We revise the definition for the term “real property” to make the definition consistent with other guidance.

#### License Certification

We collaborated with the Association of Fish and Wildlife Agencies (AFWA) to recommend changes to the regulations at Subpart D—Certification of License Holders that would address States’ concerns over the current language. In September 2016, AFWA voted in support of the changes. In November 2016, the Joint Federal/State Task Force for Federal Assistance Policy proposed changes to the draft that will encourage all States to adopt the new method for all licenses as soon as possible. In December 2016, AFWA again voted in support of the changes.

The major proposed change is in the method for determining the minimum standard needed to count a license holder. The current method requires a minimum of \$1 of net revenue per year. State fish and wildlife agencies determine this amount through various cost accounting methods, tracking costs of multiple types of licenses, tracking and applying administrative costs, and



comparing multiyear licenses to annual licenses. The proposed method simply requires a minimum of \$2 of revenue (no net) to the State fish and wildlife agency for each privilege to hunt or fish, for each year the license is valid. The major effect is in how States count multiyear licenses. The proposed changes will allow a State to count a multiyear license for each year that it meets the standard and all other requirements of the subpart.

#### Eligible Activities

We propose to revise §§ 80.50 and 80.51 to:

- a. Add “technical assistance” as an eligible activity.
- b. Add information on payments in lieu of taxes.
- c. Expand the guidance on leased vs. purchased equipment.
- d. Add at § 80.50(c)(6) that buying real property for firearm and archery ranges is eligible under the Enhanced Hunter Education and Safety program.

#### Other

Additional proposed changes to 50 CFR part 80 in this document include the following:

- a. We revise § 80.56 to clarify that projects may have different components and still be substantial in character and design.
- b. We revise § 80.82 to separate “Purpose” and “Objectives.”
- c. We add a new section (at § 80.97) to incorporate guidance on how grantees and subgrantees may charge equipment-use costs to a WSFR grant.
- d. We update § 80.120 to include hunter education course fees as program income.
- e. We update §§ 80.123 and 80.124 to address program income banking.
- f. We add a new section (at § 80.134) to state that a lease is real property.
- g. We add a new section (at § 80.136) to address prescribed fires on land acquired under the Acts. (This proposed change is in response to requests from States to clarify the standards.)
- h. We revise current § 80.137 (proposed to be moved to § 80.139) to remove the reference to 43 CFR 12.71, which no longer exists as 43 CFR part 12 has been removed and reserved from the CFR.
- i. We add § 80.140 to replace the reference to 43 CFR 12.71 at current § 80.137 (proposed § 80.139).
- j. We update § 80.160 for terms and references.

#### Public Comments

We will accept comments on all the issues addressed that we describe in this preamble and that are set forth in the

amendatory instructions. Prior to issuing a final rule on this proposed action, we will take into consideration all comments and any additional information we receive. Such information may lead to a final rule that differs from this proposal. All comments and recommendations, including names and addresses, will become part of the administrative record.

You may submit your comments and materials by one of the methods listed in **ADDRESSES**. Comments must be submitted to <http://www.regulations.gov> before 11:59 p.m. (Eastern Time) on the date specified in **DATES**. We will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in **DATES**. Please note that comments posted to <http://www.regulations.gov> are not immediately viewable. When you submit a comment, the system receives it immediately. However, the comment will not be publicly viewable until we post it, which might not occur until several days after submission.

We will post your entire comment on <http://www.regulations.gov>. Before including personal identifying information in your comment, you should be aware that we may make your entire comment—including your personal identifying information—publicly available at any time. While you can ask us in your hardcopy comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Comments submitted electronically to <http://www.regulations.gov> will be posted in their entirety.

In addition, comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection in two ways:

(1) You can view them on <http://www.regulations.gov>. In the Search box, enter FWS-HQ-WSR-2017-0002, which is the docket number for this rulemaking.

(2) You can make an appointment, during normal business hours, to view the comments and materials in person at the U.S. Fish and Wildlife Service’s headquarters office in Falls Church, VA (contact the person listed under **FOR FURTHER INFORMATION CONTACT**).

#### Required Determinations

##### *Regulatory Planning and Review* (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant

rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation’s regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

##### *Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

The Regulatory Flexibility Act requires an agency to consider the impact of rules on small entities, *i.e.*, small businesses, small organizations, and small government jurisdictions. If there is a significant economic impact on a substantial number of small entities, the agency must perform a regulatory flexibility analysis. This analysis is not required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The Small Business Regulatory Enforcement Fairness Act (SBREFA) amended the Regulatory Flexibility Act to require Federal agencies to state the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

We have examined this proposed rule’s potential effects on small entities as required by the Regulatory Flexibility Act. We have determined that this proposed rule does not have a significant impact and does not require a regulatory flexibility analysis because it:

a. Gives information to State fish and wildlife agencies that allows them to apply for and administer financial assistance more easily, more efficiently, and with greater flexibility. Only State fish and wildlife agencies may receive Wildlife Restoration, Sport Fish Restoration, and Hunter Education program and subprogram grants.

b. Addresses changes in law and regulation. This helps applicants and grantees by making the regulations



consistent with current authorities and standards.

c. Rewords and reorganizes the regulations to make them easier to understand.

d. Allows small entities to voluntarily become subgrantees of agencies, and any impact on these subgrantees would be beneficial.

The Service has determined that the proposed changes primarily affect State governments and any small entities affected by the changes voluntarily enter into mutually beneficial relationships with a State agency. They are primarily concessioners and subgrantees, and the impact on these small entities will be very limited and beneficial in all cases.

Consequently, we certify that because this proposed rule will not have a significant economic effect on a substantial number of small entities, a regulatory flexibility analysis is not required.

In addition, this proposed rule is not a major rule under SBREFA (5 U.S.C. 804(2)) and will not have a significant impact on a substantial number of small entities because it will not:

a. Have an annual effect on the economy of \$100 million or more;

b. Cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

c. Have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. The Act requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of proposed regulations with Federal mandates that may result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any 1 year. We have determined the following under the Unfunded Mandates Reform Act:

a. As discussed in the determination for the Regulatory Flexibility Act, this proposed rule will not have a significant economic effect on a substantial number of small entities.

b. The regulation does not require a small government agency plan or any

other requirement for expending local funds.

c. The programs governed by the current regulations and enhanced by the proposed changes potentially assist small governments financially when they occasionally and voluntarily participate as subgrantees of an eligible agency.

d. The proposed rule clarifies and improves upon the current regulations allowing State, local, and tribal governments and the private sector to receive the benefits of financial assistance funding in a more flexible, efficient, and effective manner.

e. Any costs incurred by a State, local, or tribal government or the private sector are voluntary. There are no mandated costs associated with the proposed rule.

f. The benefits of grant funding outweigh the costs. The Federal Government may legally provide up to 100 percent for Puerto Rico and DC. The Federal Government will also waive the first \$200,000 of match for each grant to the Commonwealth of the Northern Mariana Islands and the territories of Guam, the U.S. Virgin Islands, and American Samoa. Of the 50 States and 6 other jurisdictions that voluntarily are eligible to apply for grants in these programs each year, all participate. This is clear evidence that the benefits of this grant funding outweigh the costs.

g. This proposed rule will not produce a Federal mandate of \$100 million or greater in any year, *i.e.*, it is not a “significant regulatory action” under the Unfunded Mandates Reform Act.

#### Takings

This proposed rule will not have significant takings implications under E.O. 12630 because it will not have a provision for taking private property. Therefore, a takings implication assessment is not required.

#### Federalism

This proposed rule will not have sufficient Federalism effects to warrant preparing a federalism summary impact statement under E.O. 13132. It would not interfere with the States’ ability to manage themselves or their funds. We work closely with the States administering these programs. They helped us identify those sections of the current regulations needing further consideration and new issues that prompted us to develop a regulatory response.

#### Civil Justice Reform

The Office of the Solicitor has determined under E.O. 12988 that the

rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The proposed rule will help grantees because it:

a. Updates the regulations to reflect changes in policy and practice and recommendations received during the past 5 years;

b. Makes the regulations easier to use and understand by improving the organization and using plain language;

c. Modifies the final rule to amend 50 CFR part 80 published in the **Federal Register** at 76 FR 46150 on August 1, 2011, based on subsequent experience; and

d. Adopts recommendations on new issues received from State fish and wildlife agencies. We will review all comments on this proposed rule and consider all suggestions when preparing the final rule for publication.

#### Paperwork Reduction Act (PRA)

This proposed rule does not contain new information collection requirements that require approval under the PRA (44 U.S.C. 3501 *et seq.*). OMB reviewed and approved the U.S. Fish and Wildlife Service application and reporting requirements associated with the Wildlife Restoration, Sport Fish Restoration, and Hunter’s Education financial assistance programs and assigned OMB Control Number 1018–0109, which expires November 30, 2018. An agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

#### National Environmental Policy Act

We have analyzed this proposed rule under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), 43 CFR part 46, and part 516 of the Departmental Manual. This rule is not a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/assessment is not required due to the categorical exclusion for administrative changes given at 43 CFR 46.210(i).

#### Government-to-Government Relationship With Tribes

We have evaluated potential effects on federally recognized Indian tribes under the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951), E.O. 13175, and 512 DM 2. We have determined that there are no potential effects. This proposed rule

will not interfere with the tribes' ability to manage themselves or their funds.

**Energy Supply, Distribution, or Use (E.O. 13211)**

E.O. 13211 addresses regulations that significantly affect energy supply, distribution, and use, and requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not a significant regulatory action under E.O. 12866 and does not affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

**List of Subjects in 50 CFR Part 80**

Fish, Grant programs, Natural resources, Reporting and recordkeeping requirements, Signs and symbols, Wildlife.

**Proposed Regulation Promulgation**

For the reasons discussed in the preamble, we propose to amend title 50 of the Code of Federal Regulations, part 80, as follows:

**PART 80—ADMINISTRATIVE REQUIREMENTS, PITTMAN-ROBERTSON WILDLIFE RESTORATION AND DINGELL-JOHNSON SPORT FISH RESTORATION ACTS**

■ 1. The authority citation for part 80 is revised to read as follows:

**Authority:** 16 U.S.C. 669–669k and 777–777n, except 777e–1 and g–1.

**Subpart A—General**

- 2. Amend § 80.2 by:
  - a. Adding a definition for “Asset”;
  - b. Revising the definition of “Capital improvement”;
  - c. Adding a definition for “Geographic location”;
  - d. Revising the definition of “Match”;
  - e. Adding a definition for “Obligation”;
  - f. Revising the definition of “Real property”;
  - g. Adding a definition for “Structure”;
  - and
  - h. Adding a definition for “Technical assistance”.

The additions and revisions read as follows:

**§ 80.2 What terms do I need to know?**

\* \* \* \* \*

*Asset* means all tangible and intangible real and personal property of monetary value.

*Capital improvement* means:

- (1) A structure that costs at least \$25,000 to build or install; or

- (2) The alteration or repair of a structure or the replacement of a structural component, if it increases the structure's useful life by at least 10 years or its market value by at least \$25,000.

\* \* \* \* \*

*Geographic location* means an area defined with enough specificity for a reviewer to find the parcel location on a United States Geological Survey quadrangle map or its equivalent.

\* \* \* \* \*

*Match* means the value of any non-Federal in-kind contributions and the portion of the costs of a grant-funded project or projects not borne by the Federal Government, unless a Federal statute authorizes match using Federal funds.

*Obligation* has two meanings depending on the context:

- (1) When a grantee of Federal financial assistance obligates funds by incurring costs for purposes of the grant, the definition at 2 CFR 200.71 applies.
- (2) When the Service sets aside funds for disbursement immediately or at a later date in the formula-based programs under the Acts, the definition at 50 CFR 80.91 applies.

\* \* \* \* \*

*Real property* means one, several, or all interests, benefits, and rights inherent in the ownership of a parcel of land or water. Examples of real property include fee and some leasehold interests, conservation easements, and mineral rights.

- (1) A parcel includes (unless limited by its legal description) the space above and below it and anything physically and firmly attached to it by a natural process or human action. Examples include standing timber, other vegetation (except annual crops), buildings, roads, fences, and other structures.

- (2) A parcel may also have rights attached to it by a legally prescribed procedure. Examples include water rights or an access easement that allows the parcel's owner to travel across an adjacent parcel.

- (3) The legal classification of an interest, benefit, or right depends on its attributes rather than the name assigned to it. For example, a grazing “lease” is often a type of personal property known as a license, which is described in the definition of “personal property” in this section.

\* \* \* \* \*

*Structure* means a building or anything permanently attached to the land by human action so that removal would cause material damage to the land or the structure itself.

\* \* \* \* \*

*Technical assistance* means providing fish, wildlife, and habitat information and advice to target segments of the public, including landowners or other citizens and beneficiaries. This may include collecting or distributing information on fish and wildlife presence and activities, advising on appropriate public response to fish and wildlife interactions, and directing landowners on how they may support fish and wildlife practices on private lands. Technical assistance does not include actual on-the-ground management activities.

\* \* \* \* \*

- 3. Revise subpart D, including the heading, to read as follows:

**Subpart D—License Holder Certification**

Sec.

- 80.30 Why must an agency certify the number of paid license holders?
- 80.31 How does an agency certify the number of paid license holders?
- 80.32 What is the certification period?
- 80.33 How does an agency decide who to count as paid license holders in the annual certification?
- 80.34 Must a State fish and wildlife agency receive a minimum amount of revenue for each license holder counted?
- 80.35 What additional requirements apply to multiyear licenses?
- 80.36 May an agency count license holders in the annual certification if the agency receives funds from the State or another entity to cover their license fees?
- 80.37 May the State fish and wildlife agency offer a discount on a license when combined with another license or privilege?
- 80.38 May an entity other than the State fish and wildlife agency offer a discount on a license or offer a free license under any circumstances?
- 80.39 What must an agency do if it becomes aware of errors in its certified license data?
- 80.40 May the Service recalculate an apportionment if an agency submits revised data?
- 80.41 May the Director correct a Service error in apportioning funds?

**Subpart D—License Holder Certification**

**§ 80.30 Why must an agency certify the number of paid license holders?**

A State fish and wildlife agency must certify the number of people having paid licenses to hunt and paid licenses to fish because the Service uses these data in statutory formulas to apportion funds in the Wildlife Restoration and Sport Fish Restoration programs among the States.

**§ 80.31 How does an agency certify the number of paid license holders?**

(a) A State fish and wildlife agency certifies the number of paid license holders by responding to the Director's annual request for the following information:

(1) The number of people who have paid licenses to hunt in the State during the State-specified certification period (certification period); and

(2) The number of people who have paid licenses to fish in the State during the certification period.

(b) The agency director or his or her designee:

(1) Must certify the information at paragraph (a) of this section in the format that the Director specifies;

(2) Must provide documentation to support the accuracy of this information at the Director's request;

(3) Is responsible for eliminating multiple counting of the same individuals in the information that he or she certifies; and

(4) May use statistical sampling, automated record consolidation, or other techniques approved by the Director for this purpose.

(c) If an agency director uses statistical sampling to eliminate multiple counting of the same individuals, he or she must ensure that the sampling is complete by the earlier of the following:

(1) Five years after the last statistical sample; or

(2) Before completing the first certification following any change in the licensing system that could affect the number of license holders.

**§ 80.32 What is the certification period?**

A certification period must:

(a) Be 12 consecutive months;

(b) Correspond to the State's fiscal year or license year;

(c) Be consistent from year to year unless the Director approves a change; and

(d) End at least 1 year and no more than 2 years before the beginning of the Federal fiscal year in which the apportioned funds first become available for expenditure.

**§ 80.33 How does an agency decide who to count as paid license holders in the annual certification?**

(a) A State fish and wildlife agency must count only those people who have a license issued:

(1) In the license holder's name; or

(2) With a unique identifier that is traceable to the license holder, who must be verifiable in State records.

(b) A State fish and wildlife agency must count a person holding a single-

year license only once in the certification period in which the license is sold. (Single-year licenses are valid for any length of time less than 2 years.)

(c) A person is counted as a license holder even if the person is not required to have a paid license or is unable to hunt or fish.

(d) A person having more than one license to hunt or to fish because the person either voluntarily obtained them or was required to in order to obtain a different privilege may be counted only once each certification period as either a hunter or an angler, or both.

(e) A person who has a license that allows the license holder only to trap animals or only to engage in commercial fishing or other commercial activities must not be counted.

**§ 80.34 Must a State fish and wildlife agency receive a minimum amount of revenue for each license holder counted?**

(a) For the State fish and wildlife agency to count a license holder, the agency must establish that it receives:

(1) A minimum of \$2 for each year the license is valid, for either the privilege to hunt or the privilege to fish; and

(2) A minimum of \$4 for each year the license is valid for a combination license that gives privileges to both hunt and fish.

(b) A State fish and wildlife agency must follow the requirement in paragraph (a) of this section for all licenses sold as soon as practical, but by no later than July 1, 2018.

**§ 80.35 What additional requirements apply to multiyear licenses?**

The following additional requirements apply to multiyear licenses:

(a) A State fish and wildlife agency must follow the requirement at § 80.34(a) for all multiyear licenses sold before and after the date that the agency adopts the new standard, unless following the exception at paragraph (d) of this section.

(b) If a valid license was not eligible to be counted in the annual license certification the year before adopting the standard at § 80.34(a), it must not be counted in any future certification.

(c) If an agency is using an investment, annuity, or similar method to fulfill the net-revenue requirements of the version of § 80.33 that was effective from August 31, 2011, until [EFFECTIVE DATE OF THE FINAL RULE], the agency may discontinue that method and convert to the new method.

(1) If the amount collected at the time of sale has not been spent, the agency must begin to use the new standard by applying the total amount the agency received at the time of sale.

(2) If the amount collected at the time of sale has been spent, the agency must apply the new standard as if it were applicable at the time of sale. For example, if a single-privilege, multiyear license sold for \$100 in 2012, and the agency adopts the new standard in 2018, then 4 years have been used toward the amount received by the agency (4 years × \$2 = \$8) and the license holder may be counted for up to 46 more years (\$100 - \$8 = \$92/\$2 = 46).

(d) An agency may continue to follow the requirements of the version of § 80.33 that was effective from August 31, 2011, until [EFFECTIVE DATE OF THE FINAL RULE], for those multiyear licenses that were sold before the date specified at § 80.34(b) if the agency:

(1) Notifies the Director of the agency's intention to do so;

(2) Describes how the new requirement will cause financial or operational harm to the agency when applied to licenses sold before the effective date of these regulations; and

(3) Commits to follow the current standard for those multiyear licenses sold after the date specified at § 80.34(b).

(e) A multiyear license may be valid for either a specific or indeterminate number of years, but it must be valid for at least 2 years.

(f) The agency may count the license for all certification periods for which it received the minimum required revenue, as long as the license holder meets all other requirements of this subpart. For example, an agency may count a single-privilege, multiyear license that sells for \$25 for 12 certification periods. However, if the license exceeds the life expectancy or the license is valid for only 5 years, it may be counted only for the number of years it is valid.

(g) An agency may spend a multiyear license fee as soon as the agency receives it.

(h) The agency must count only the licenses that meet the minimum required revenue for the license period based on:

(1) The duration of the license in the case of a multiyear license with a specified ending date; or

(2) Whether the license holder remains alive.

(i) The agency must obtain the Director's approval of its proposed technique to decide how many multiyear-license holders remain alive in the certification period. Some examples of techniques are statistical sampling, life-expectancy tables, and mortality tables. The agency may

instead use 80 years of age as a default for life expectancy.

**§ 80.36 May an agency count license holders in the annual certification if the agency receives funds from the State or another entity to cover their license fees?**

If a State fish and wildlife agency receives funds from the State to cover fees for some license holders, the agency may count those license holders in the annual certification only under the following conditions:

(a) The State funds to cover license fees must come from a source other than hunting- and fishing-license revenue.

(b) The State must identify funds to cover license fees separately from other funds provided to the agency.

(c) The agency must receive at least the average amount of State-provided discretionary funds that it received for the administration of the State's fish and wildlife agency during the State's 5 previous fiscal years.

(1) State-provided discretionary funds are those from the State's general fund that the State may increase or decrease if it chooses to do so.

(2) Some State-provided funds are from special taxes, trust funds, gifts, bequests, or other sources specifically dedicated to the support of the State fish and wildlife agency. These funds typically fluctuate annually due to interest rates, sales, or other factors. They are not discretionary funds for purposes of this part as long as the State does not take any action to reduce the amount available to its fish and wildlife agency.

(d) The agency must receive and account for the State funds as license revenue.

(e) The agency must issue licenses in the license holder's name or by using a unique identifier that is traceable to the license holder, who is verifiable in State records.

(f) The license fees must meet all other requirements at 50 CFR part 80.

**§ 80.37 May the State fish and wildlife agency offer a discount on a license when combined with another license or privilege?**

Yes. A State fish and wildlife agency may offer a discount on a license when combined with another license or privilege as long as the agency meets the rules for minimum revenue at § 80.34 for each privilege.

**§ 80.38 May an entity other than the State fish and wildlife agency offer a discount on a license or offer a free license under any circumstances?**

(a) An entity other than the agency may offer the public a license that costs less than the regulated price only if:

(1) The license is issued to the individual according to the requirements at § 80.33;

(2) The amount received by the agency meets all other requirements in this subpart; and

(3) The agency agrees to the amount of revenue it will receive.

(b) An entity other than the agency may offer the public a license that costs less than the regulated price without the agency agreeing, but must pay the agency the full cost of the license.

**§ 80.39 What must an agency do if it becomes aware of errors in its certified license data?**

A State fish and wildlife agency must submit revised certified data on paid license holders within 90 days after it becomes aware of errors in its certified data. The State may become ineligible to participate in the benefits of the relevant Act if it becomes aware of errors in its certified data and does not resubmit accurate certified data within 90 days.

**§ 80.40 May the Service recalculate an apportionment if an agency submits revised data?**

The Service may recalculate an apportionment of funds based on revised certified license data under the following conditions:

(a) If the Service receives revised certified data for a pending apportionment before the Director approves the final apportionment, the Service may recalculate the pending apportionment.

(b) If the Service receives revised certified data for an apportionment after the Director has approved the final version of the apportionment, the Service may recalculate the apportionment only if doing so would not reduce funds to other State fish and wildlife agencies.

**§ 80.41 May the Director correct a Service error in apportioning funds?**

Yes. The Director may correct any error that the Service makes in apportioning funds.

**Subpart E—Eligible Activities**

■ 4. Amend § 80.50 by adding paragraphs (a)(9) through (11) and (c)(6) to read as follows:

**§ 80.50 What activities are eligible for funding under the Pittman-Robertson Wildlife Restoration Act?**

(a) \* \* \*

(9) Give technical assistance.

(10) Make payments in lieu of taxes on real property under the control of the State fish and wildlife agency when the payment is:

(i) Required by State or local law; and

(ii) Required for all State lands including those acquired with Federal funds and those acquired with non-Federal funds.

(11) Acquire the use of equipment by leasing it, but purchase may be eligible if:

(i) The grantee can justify that it is cost effective and that the equipment will be used for project purposes for its useful life; or if

(ii) Leasing the equipment is not feasible.

\* \* \* \* \*

(c) \* \* \*

(6) Buy real property for firearm or archery ranges.

■ 5. Amend § 80.51(a) by adding paragraphs (a)(12) through (14) to read as follows:

**§ 80.51 What activities are eligible for funding under the Dingell-Johnson Sport Fish Restoration Act?**

\* \* \* \* \*

(a) \* \* \*

(12) Give technical assistance.

(13) Make payments in lieu of taxes on real property under the control of the State fish and wildlife agency when the payment is:

(i) Required by State or local law; and  
(ii) Required for all State lands including those acquired with Federal funds and those acquired with non-Federal funds.

(14) Acquire the use of equipment by leasing it, but purchase may be eligible if:

(i) The grantee can justify that it is cost effective and that the equipment will be used for project purposes for its useful life; or if

(ii) Leasing the equipment is not feasible.

\* \* \* \* \*

■ 6. Revise § 80.56 including the heading to read as follows:

**§ 80.56 What does it mean for a project to be substantial in character and design?**

(a) Projects may have very different components and still be substantial in character and design.

(b) A proposed project qualifies as substantial in character and design if it:

(1) Describes a need consistent with the Acts;

(2) States a purpose and sets measurable objectives, both of which you base on the need;

(3) Uses a planned approach, appropriate procedures, and accepted principles of fish and wildlife conservation and management, research, or education; and

(4) Is cost effective.

**Subpart G—Application for a Grant**

■ 7. Amend § 80.82 by:

- a. Revising paragraph (c)(2) to read as set forth below;
- b. Redesignating paragraphs (c)(3) through (13) as paragraphs (c)(4) through (14);
- c. Adding a new paragraph (c)(3) to read as set forth below; and
- d. Revising newly designated paragraphs (c)(9)(iv) and (v) and (10) to read as set forth below.

**§ 80.82 What must an agency submit when applying for a project-by-project grant?**

\* \* \* \* \*

(c) \* \* \*

(2) *Purpose.* State the purpose and base it on the need. The purpose states the desired outcome of the proposed project in general or abstract terms.

(3) *Objectives.* State the objectives and base them on the need. The objectives state the desired outcome of the proposed project in terms that are specific and quantified.

\* \* \* \* \*

(9) \* \* \*

(iv) Indicate whether the agency wants to treat program income that it earns after the grant period as license revenue or additional funding for purposes consistent with the grant terms and conditions or program regulations.

(v) Indicate whether the agency wants to treat program income that the subgrantee earns as license revenue, additional funding for the purposes consistent with the grant or subprogram, or income subject only to the terms of the subgrant agreement.

(10) *Budget narrative.*

(i) Provide costs by project and subaccount with additional information sufficient to show that the project is cost effective. Agencies may obtain the subaccount numbers from the Service's Regional Division of Wildlife and Sport Fish Restoration.

(ii) Describe any item that requires the Service's approval and estimate its cost. Examples are preaward costs, capital improvements, and acquiring land or equipment.

(iii) Include a schedule of payments to finish the project if an agency proposes to use funds from two or more annual apportionments.

\* \* \* \* \*

- 8. Amend § 80.85 by revising paragraph (b)(2) to read as follows:

**§ 80.85 What requirements apply to match?**

\* \* \* \* \*

(b) \* \* \*

(2) Use the cost or value of an in-kind contribution to satisfy a match requirement if the cost or value has been or will be used to satisfy a match

requirement of another Federal grant, cooperative agreement, or contract.

\* \* \* \* \*

■ 9. Amend subpart H by:

- a. Redesignating §§ 80.97 through 80.100 as §§ 80.98 through 80.101;
- b. Adding a new § 80.97 to read as follows; and
- c. Revising newly designated § 80.98 to read as follows:

**Subpart H—General Grant Administration**

\* \* \* \* \*

**§ 80.97 How may a grantee charge equipment use costs to a WSFR-funded project?**

(a) A State fish and wildlife agency must establish and use equipment rates that reflect the local market, the type of equipment used on a project, and actual costs to own and operate the equipment. Agencies must calculate their own rates and not use general State rates.

(b) State fish and wildlife agencies must not use a predetermined rate or schedule published by a Federal agency for equipment used on a WSFR grant. However, States may allow subgrantees to use either the agency equipment rate schedule or a regional rate schedule published by a Federal agency if WSFR approves the rate schedule and if the schedule reflects the standards at paragraph (a) of this section.

(c) States may choose from three methods to recover the cost of the equipment it owns when used on a grant. You may use only one method for the same equipment use.

(1) *Indirect.* Grantees may apply costs to the pool of indirect costs that are included either as part of the Negotiated Indirect Cost Rate Agreement or an allowed de minimis rate.

(2) *Direct.* Using one of these approaches:

(i) *Direct cost to the grant.* Grantees may charge the total cost of acquiring and operating equipment directly to a grant. Once the cost of acquiring equipment is recovered through a Federal grant, the grantee has been paid in full and cannot charge to any other Federal grant through any method. Operating costs may be charged to future grants. This practice may require States to establish separate use rates for equipment acquired as a direct cost to a Federal grant.

(ii) *Allocation to the grant using an internally developed rate.* The grantee uses depreciation to develop a rate considering acquisition cost of the equipment and the cost to operate the equipment. The allocation must be based on a methodology that properly

allocates costs based on benefits received.

(3) *Match/cost share.* The grantee may charge costs as match. The guidance for properly applying equipment as match is at 2 CFR 200.306(g)–(j) and 2 CFR 200.434. Guidance on operating cost items can be found at 2 CFR part 200, subpart E—Cost Principles.

**§ 80.98 May an agency barter goods or services to carry out a grant-funded project?**

Yes. A State fish and wildlife agency may barter to carry out a grant-funded project. A barter transaction is the exchange of goods or services for other goods or services without the use of cash. Barter transactions are subject to the cost principles at 2 CFR part 200.

\* \* \* \* \*

**Subpart I—Program Income**

- 10. Amend § 80.120 by:
  - a. Redesignating paragraphs (b)(5) and (6) as paragraphs (b)(6) and (7);
  - b. Adding a new paragraph (b)(5) to read as set forth below;
  - c. Removing paragraph (c)(3); and
  - d. Redesignating paragraphs (c)(4) and (5) as paragraphs (c)(3) and (4).

**§ 80.120 What is program income?**

\* \* \* \* \*

(b) \* \* \*

(5) Hunter-education course fees;

\* \* \* \* \*

- 11. Amend § 80.123(a) by revising the last sentence to read as follows:

**§ 80.123 How may an agency use program income?**

(a) \* \* \* Program income must be spent within the grant period that it is earned and before requesting additional Federal funds.

\* \* \* \* \*

- 12. Revise § 80.124 to read as follows:

**§ 80.124 How may an agency use unexpended program income?**

If a State fish and wildlife agency has unexpended program income on its final Federal financial report, it may use the income under a subsequent grant for any activity eligible for funding in the grant program that generated the income. The agency must spend program income before requesting additional payments for these activities.

- 13. Amend subpart J by:
  - a. Redesignating § 80.134 as § 80.135;
  - b. Adding a new § 80.134 to read as set forth below;
  - c. Redesignating §§ 80.136 through 80.138 as §§ 80.137 through 80.139;
  - d. Adding a new § 80.136 to read as set forth below;
  - e. Revising newly designated § 80.139 to read as set forth below; and

■ f. Adding new § 80.140 to read as set forth below:

**Subpart J—Real Property**

\* \* \* \* \*

**§ 80.134 Is a lease considered real property or personal property?**

A lease of real property is a contract in which the fee owner transfers to a lessee the right of exclusive possession and is, therefore, treated as real property.

\* \* \* \* \*

**§ 80.136 What standards must an agency follow when conducting prescribed fire on land acquired with financial assistance under the Acts?**

The State fish and wildlife agency:

(a) Must comply with existing State laws that require compliance with Federal, State, and local laws; and

(b) Does not have to comply with the Federal National Wildfire Coordinating Group (NWCG) requirements unless the Service has substantial involvement in the project or these requirements are contained in State or local laws. The NWCG provides national leadership to develop, maintain, and communicate standards, guidelines, qualifications, training, and other capabilities that enable common operations on wildland fires among Federal and non-Federal entities.

\* \* \* \* \*

**§ 80.139 What if real property is no longer useful or needed for its original purpose?**

If the director of the State fish and wildlife agency and the Regional Director jointly decide that grant-funded real property is no longer useful or needed for its original purpose under the grant, the director of the agency must:

(a) Propose another eligible purpose for the real property under the grant program and ask the Regional Director to approve this proposed purpose; or

(b) Follow the regulations at 2 CFR 200.311 through 200.315 and § 80.140 for instructions on treating proceeds from the disposition of real or personal property.

**§ 80.140 When the Service approves the disposition of real property, equipment, intangible property, and excess supplies, what must happen to the proceeds of the disposition?**

(a) A grantee must refer to the regulations at 2 CFR 200.311 through 200.315 before depositing, allocating, or using any proceeds of the disposition of real property, equipment, unused supplies exceeding \$5,000 in total aggregate value, or intangible property.

(b) A grantee must treat the proceeds of the disposition of real and personal property as license revenue if the grantee acquired the property with:

- (1) License revenue; or
- (2) Federal financial assistance funds matched by license revenue.

(c) A grantee must use its share of the proceeds under a subsequent grant for any activity eligible for funding in the grant program that generated the

income. The agency must spend proceeds of the disposition of real or personal property before requesting additional Federal payments for these activities.

(d) A grantee must credit the Service, through that State’s Regional Office, with the Federal share of the proceeds. The Regional Office determines how the Federal share of the proceeds will be allocated.

**Subpart L—Information Collection**

■ 14. Amend § 80.160 by revising paragraphs (b) and (c) to read as follows:

**§ 80.160 What are the information collection requirements of this part?**

\* \* \* \* \*

(b) The authorizations for information collection under this part are in the Acts and in 2 CFR part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.”

(c) Send comments on the information collection requirements to: U.S. Fish and Wildlife Service, Information Collection Clearance Officer, 5275 Leesburg Pike, Falls Church, Virginia 22041–3803.

Dated: December 5, 2017.

**Jason Larrabee,**

*Principal Deputy Assistant Secretary for Fish and Wildlife and Parks, Exercising the Authority of the Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2017–26762 Filed 12–14–17; 8:45 am]

**BILLING CODE 4333–15–P**

# Notices

Federal Register

Vol. 82, No. 240

Friday, December 15, 2017

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### Designation for the Aberdeen, South Dakota; Hastings, Nebraska; and Missouri Areas

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice of designation.

**SUMMARY:** AMS is announcing the designations of Aberdeen Grain Inspection, Inc. (Aberdeen); Hastings Grain Inspection, Inc. (Hastings); and the Missouri Department of Agriculture (Missouri) to provide official services under the United States Grain Standards

Act (USGSA), as amended. The realignment of offices within the U.S. Department of Agriculture authorized by the Secretary's Memorandum dated November 14, 2017, eliminates the Grain Inspection, Packers and Stockyard Administration (GIPSA) as a standalone agency. The grain inspection activities formerly part of GIPSA are now organized under the Agricultural Marketing Service (AMS).

**DATES:** October 1, 2017.

**ADDRESSES:** Jacob Thein, Compliance Officer, USDA, AMS, FGIS, QACD, 10383 North Ambassador Drive, Kansas City, MO 64153.

**FOR FURTHER INFORMATION CONTACT:**

Jacob Thein, 816-866-2223, *Jacob.D.Thein@usda.gov* or *FGIS.QACD@usda.gov*. Read applications: All applications and comments are available for public inspection at the office above during regular business hours (7 CFR 1.27(c)).

**SUPPLEMENTARY INFORMATION:** In the May 22, 2017, and May 30, 2017, **Federal Register** (82 FR 23174) and (82 FR 24671-24673), GIPSA requested

applications for designation to provide official services in the geographic areas presently serviced by Aberdeen, Hastings, and Missouri. Applications for Missouri were due by June 21, 2017. Applications for Aberdeen and Hastings were due by June 29, 2017.

Because the current official agencies, Aberdeen, Hastings, and Missouri were the only applicants for designation to provide official services in these areas, GIPSA did not seek additional comments.

GIPSA evaluated the designation criteria in section 7(f) of the USGSA (7 U.S.C. 79(f)) and determined that Aberdeen, Hastings, and Missouri are qualified to provide official services in the geographic areas specified in the **Federal Register** on May 22 and May 30, 2017. These designations to provide official services in the specified areas of Aberdeen, Hastings, and Missouri became effective October 1, 2017, and expire September 30, 2022.

Interested persons may obtain official services by contacting these agencies at the following telephone number:

Official agency	Headquarters location and telephone	Designation start	Designation end
Aberdeen .....	Aberdeen, SD, 605-225-8432 .....	10/1/2017	9/30/2022
Hastings .....	Hastings, NE, 402-462-4254 .....	10/1/2017	9/30/2022
Missouri .....	Jefferson City, MO, 573-751-5515 .....	10/1/2017	9/30/2022

Section 7(f) of the USGSA authorizes the Secretary to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services (7 U.S.C. 79(f)).

**Bruce Summers,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2017-27061 Filed 12-14-17; 8:45 am]

**BILLING CODE 3410-KD-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Research Service

#### Notice of Intent To Grant Exclusive License

**AGENCY:** Agricultural Research Service, USDA.

**ACTION:** Notice of intent.

**SUMMARY:** Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Oregon State University of Corvallis, Oregon, an exclusive license to the variety of blackberry described in U.S. Plant Patent Application Serial No. 15/731,505, "BLACKBERRY PLANT NAMED 'GALAXY,'" filed on June 20, 2017.

**DATES:** Comments must be received on or before January 16, 2018.

**ADDRESSES:** Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4-1174, Beltsville, Maryland 20705-5131.

**FOR FURTHER INFORMATION CONTACT:**

Brian T. Nakanishi of the Office of Technology Transfer at the Beltsville address given above; telephone: 301-504-5989.

**SUPPLEMENTARY INFORMATION:** The Federal Government's patent rights in this plant variety are assigned to the

United States of America, as represented by the Secretary of Agriculture. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

**Mojdeh Bahar,**

*Assistant Administrator.*

[FR Doc. 2017-27053 Filed 12-14-17; 8:45 am]

**BILLING CODE 3410-03-P**

**DEPARTMENT OF AGRICULTURE****Agricultural Research Service****Notice of Intent To Grant Exclusive License**

**AGENCY:** Agricultural Research Service, USDA.

**ACTION:** Notice of intent.

**SUMMARY:** Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Oregon State University of Corvallis, Oregon, an exclusive license to the variety of blackberry described in U.S. Plant Patent Application Serial No. 15/731,503, "BLACKBERRY PLANT NAMED 'ECLIPSE'," filed on June 20, 2017.

**DATES:** Comments must be received on or before January 16, 2018.

**ADDRESSES:** Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4-1174, Beltsville, Maryland 20705-5131.

**FOR FURTHER INFORMATION CONTACT:** Brian T. Nakanishi of the Office of Technology Transfer at the Beltsville address given above; telephone: 301-504-5989.

**SUPPLEMENTARY INFORMATION:** The Federal Government's patent rights in this plant variety are assigned to the United States of America, as represented by the Secretary of Agriculture. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

**Mojdeh Bahar,**

*Assistant Administrator.*

[FR Doc. 2017-27054 Filed 12-14-17; 8:45 am]

**BILLING CODE 3410-03-P**

**DEPARTMENT OF AGRICULTURE****Food Safety and Inspection Service**

[Docket No. FSIS-2017-0046]

**Codex Alimentarius Commission: Meeting of the Codex Committee on Food Additives**

**AGENCY:** Office of the Deputy Under Secretary for Food Safety, USDA.

**ACTION:** Notice of public meeting and request for comments.

**SUMMARY:** The Office of the Deputy Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), and the Food and Drug Administration (FDA), U.S. Department of Health and Human Services are sponsoring a public meeting on February 13, 2018. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions to be discussed at the 50th Session of the Codex Committee on Food Additives (CCFA) of the Codex Alimentarius Commission (Codex), taking place in Xiamen, Fujian, Province China, March 26-30, 2018. The Deputy Under Secretary for Food Safety and the FDA recognize the importance of providing interested parties with the opportunity to obtain background information on the 50th Session of the CCFA and to address items on the agenda.

**DATES:** The public meeting is scheduled for Tuesday, February 13, 2018, from 9:00 a.m.-12:00 p.m.

**ADDRESSES:** The public meeting will take place at the Food and Drug Administration (FDA), Harvey Wiley Federal Building, 5001 Campus Drive, Rooms 1A-001 and 1A-002, College Park, MD 20740.

Documents related to the 50th Session of the CCFA will be accessible via the internet at the following address: <http://www.codexalimentarius.org/meetings-reports/en/>.

Paul Honigfort, U.S. Delegate to the 50th Session of the CCFA and the FDA invite U.S. interested parties to submit their comments electronically to the following email address: [ccfa@fda.hhs.gov](mailto:ccfa@fda.hhs.gov).

**Registration:** Attendees may register to attend the public meeting by emailing [ccfa@fda.hhs.gov](mailto:ccfa@fda.hhs.gov) by February 9, 2018. Early registration is encouraged as it will expedite entry into the building and parking area. If you require parking, please include the vehicle make and tag number when you register. The meeting will be held in a Federal building. Attendees should bring photo identification and plan for adequate time to pass through the security screening systems. Attendees who are not able to attend the meeting in person, but wish to participate, may do so by phone. Attendees who plan to participate by phone should request the call-in number and participant code when they register for the meeting.

**For Further Information About the 50th Session of the CCFA Contact:**

Paul Honigfort, Ph.D., Consumer Safety Officer, Division of Food Contact

Notifications, Office of Food Additive Safety, FDA, 5001 Campus Drive, College Park, MD 20740, Telephone: (240) 402-1206, Fax: (301) 436-2965, Email: [Paul.Honigfort@fda.hhs.gov](mailto:Paul.Honigfort@fda.hhs.gov).

**For Further Information About the Public Meeting Contact:** Daniel E. Folmer, Ph.D., Review Chemist, Division of Petition Review, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition, FDA, HFS-265, 5001 Campus Drive, College Park, MD 20740, Telephone: (240) 402-1269, Fax: (301) 436-2972, Email: [daniel.folmer@fda.hhs.gov](mailto:daniel.folmer@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:****Background**

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure that fair practices are used in trade.

The CCFA establishes or endorses permitted maximum levels for individual food additives; prepares priority lists of food additives for risk assessment by the Joint FAO/WHO Expert Committee on Food Additives (JECFA); assigns functional classes and International Numbering System (INS) numbers to individual food additives; recommends specifications of identity and purity for food additives for adoption by Codex; considers methods of analysis for the determination of additives in food; and considers and elaborates standards or codes for related subjects, such as labeling of food additives when sold as such. The CCFA is hosted by China.

**Issues To Be Discussed at the Public Meeting**

The following items on the agenda for the 50th Session of the CCFA will be discussed during the public meeting:

- Matters referred by the Codex and other subsidiary bodies;
- Matters of Interest arising from FAO/WHO and from the 84th Meeting of the Joint FAO/WHO Expert Committee on Food Additives (JECFA)
- Proposed draft specifications for identity and purity of food additives arising from the 84th JECFA meeting
  - Endorsement and/or revision of maximum levels for food additives and processing aids in Codex Standards
  - Alignment of the food additive provisions of commodity standards/ Report of the EWG on Alignment;



- General Standard for Food Additives (GSFA): Report of the EWG on the GSFA;
  - General Standard for Food Additives (GSFA): Proposals for new and/or revision of food additive provisions
  - Discussion paper on the use of nitrates and nitrites
  - Discussion paper on the use of the terms “unprocessed” and “plain” in the GSFA
  - Proposed draft revision to the International Numbering System (INS) for Food Additives
  - Proposals for additions and changes to the Priority List of Substances Proposed for evaluation by JECFA
  - Discussion paper on “Future Strategies for CCFA”
  - Other Business and Future Work.
- Each issue listed will be fully described in documents distributed, or to be distributed, by the Codex Secretariat before the meeting. Members of the public may access these documents at <http://www.fao.org/fao-who-codexalimentarius/meetings-reports>.

#### Public Meeting

At the February 13, 2018 public meeting, draft U.S. positions on the agenda items will be described, discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate for the 50th Session of the CCFA, Paul Honigfort, Ph.D. at the following address: [ccfa@fda.hhs.gov](mailto:ccfa@fda.hhs.gov). Written comments should state that they relate to activities of the 50th Session of the CCFA.

#### Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: <http://www.fsis.usda.gov/federal-register>.

FSIS also will make copies of this publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Update is available on the FSIS web page. Through the web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to

selected food safety news and information. This service is available at: <http://www.fsis.usda.gov/subscribe>. Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

#### USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

#### How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at [http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain\\_combined\\_6\\_8\\_12.pdf](http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf), or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

**Mail:** U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410.

**Fax:** (202) 690–7442.

**Email:** [program.intake@usda.gov](mailto:program.intake@usda.gov).

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA’s TARGET Center at (202) 720–2600 (voice and TDD).

Done at Washington, DC, on: December 12, 2017.

**Paulo Almeida,**

*Acting U.S. Manager for Codex Alimentarius.*

[FR Doc. 2017–27096 Filed 12–14–17; 8:45 am]

**BILLING CODE 3410–DM–P**

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

[Docket No. FSIS–2017–0050]

#### Notice of Request for Renewal of an Approved Information Collection (Marking, Labeling and Packaging)

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, the Food Safety and Inspection Service (FSIS) is announcing its intention to renew an approved information collection regarding the regulatory requirements for marking, labeling, and packaging of meat, poultry, and egg products and for establishments that produce mechanically separated poultry. This approval covers the labeling approval process whereby establishments are to submit their labels to FSIS for approval or maintain files related to generic labeling. This collection also covers the recordkeeping burden for packaging material letters of guarantee for safety. Lastly, this collection contains the recordkeeping burden imposed on establishments that produce mechanically separated poultry. There are no changes to the existing information collection.

**DATES:** Submit comments on or before February 13, 2018.

**ADDRESSES:** FSIS invites interested persons to submit comments on this information collection. Comments may be submitted by one of the following methods:

- **Federal eRulemaking Portal:** This website provides the ability to type short comments directly into the comment field on this web page or attach a file for lengthy comments. Go to <http://www.regulations.gov>. Follow the on-line instructions at that site for submitting comments.

- **Mail, including CD-ROMs, etc.:** Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Docket Clerk, Patriots Plaza 3, 1400 Independence Avenue SW, Mailstop 3782, Room 8–163A, Washington, DC 20250–3700.

- **Hand- or courier-delivered submittals:** Deliver to Patriots Plaza 3, 355 E Street SW, Room 8–163A, Washington, DC 20250–3700

**Instructions:** All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2017–0050. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to <http://www.regulations.gov>.

**Docket:** For access to background documents or comments received, go to the FSIS Docket Room at Patriots Plaza 3, 355 E Street SW, Room 8–164, Washington, DC 20250–3700 between 8:00 a.m. and 4:30 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Room 6065, South Building, Washington, DC 20250-3700; (202) 720-5627.

**SUPPLEMENTARY INFORMATION:**

*Title:* Marking, Labeling, and Packaging of Meat, Poultry, and Egg Products.

*OMB Number:* 0583-0092.

*Expiration Date of Approval:* 04/30/2018.

*Type of Request:* Renewal of an approved information collection.

*Abstract:* FSIS has been delegated the authority to exercise the functions of the Secretary (7 CFR 2.18, 2.53) as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). FSIS protects the public by verifying that meat, poultry, and egg products are safe, wholesome, not adulterated, and correctly labeled and packaged.

FSIS is requesting renewal of an approved information collection addressing paperwork requirements specified in the regulations related to marking, labeling, and packaging of meat, poultry, and egg products.

To control the manufacture of marking devices bearing official marks, FSIS requires official meat and poultry establishments and the manufacturers of such devices to submit an Authorization Certificate to the Agency (FSIS Form 5200-7). Such certification is necessary to help prevent the manufacture and use of counterfeit marks of inspection (9 CFR 312.1, 317.3, 381.96 & 381.131).

Meat and poultry establishments and egg products plants must develop labels in accordance with FSIS regulations (9 CFR 317.1, 381.115, & 590.410). Unless its labels are generically approved, establishments must complete an application for approval ("Application for Approval of Labels, Marking or Device," FSIS Form 7234-1). Respondents must submit duplicate copies of the labels when submitting the applications by paper. Establishments may also submit labels through the Label Submission and Approval System or LSAS. LSAS is an internet-based application that allows respondents to gain label approval through a secure website. The establishment must maintain a copy of all the labeling used, along with product formulation and processing procedures (9 CFR 320.1(b)(11) and 381.175(b)(6)). Additionally, establishments requesting

reconsideration of a label application that the Agency has modified or rejected must use the "Request for Label Reconsideration," FSIS Form 8822-4.

Labels that FSIS has approved but change for such reasons as, holiday season designs, addition or deletion of coupons, UPC production codes, or recipe suggestions; newly assigned or revised establishment numbers; changes in the arrangement or language of directions for opening containers or serving the product; or the substitution of abbreviations for words or vice versa, do not need additional FSIS approval (9 CFR 317.5). Establishments must keep a copy of the labeling used, along with the product formulation and processing procedures on file.

FSIS has made the following estimates based upon an information collection assessment:

*Estimate of Burden:* FSIS estimates that it will take respondents an average of 4 minutes per response related to marking; 75 minutes per response related to labeling applications and recordkeeping; 120 minutes per response related to labeling reconsideration requests; 15 minutes per response related to generically approved labeling recordkeeping; 2 minutes per response related to packaging materials recordkeeping; and 5 minutes per response related to mechanically separated poultry recordkeeping.

*Respondents:* Official meat and poultry establishments, official egg plants, and foreign establishments.

*Estimated No. of Respondents:* 5,736 related to marking; 3,682 related to labeling applications and recordkeeping; 74 related to labeling reconsideration requests; 6,333 related to generically approved labeling recordkeeping; 5,735 related to packaging materials recordkeeping; and 82 related to mechanically separated poultry recordkeeping.

*Estimated No. of Annual Responses per Respondent:* 1 related to marking; 20 related to labeling applications and recordkeeping; 2 related to labeling reconsideration requests; 20 related to generically approved labeling recordkeeping; 2 related to packaging materials recordkeeping; and 455 related to mechanically separated poultry recordkeeping.

*Estimated Total Annual Burden on Respondents:* 128,267 hours. Copies of this information collection assessment can be obtained from Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence SW, Room 6077, South Building, Washington, DC 20250, (202)690-6510.

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS's estimate of the burden of the proposed collection of information, including the validity of the method and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

Responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

**Additional Public Notification**

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: <http://www.fsis.usda.gov/federal-register>.

FSIS also will make copies of this publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Update is available on the FSIS web page. Through the web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: <http://www.fsis.usda.gov/subscribe>. Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

**USDA Non-Discrimination Statement**

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/

parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

### How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at [http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain\\_combined\\_6\\_8\\_12.pdf](http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf), or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

*Mail:* U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250-9410, Fax: (202) 690-7442, Email: [program.intake@usda.gov](mailto:program.intake@usda.gov).

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

Done at Washington, DC, on December 12, 2017.

**Paul Kiecker,**

*Acting Administrator.*

[FR Doc. 2017-27097 Filed 12-14-17; 8:45 am]

BILLING CODE 3410-DM-P

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Revision of the Land Management Plan for the Flathead National Forest and Amending the Land Management Plans of the Helena-Lewis and Clark, Kootenai, and Lolo National Forests

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of opportunity to object to the Revised Land and Resource Management Plan and to forest plan amendments.

**SUMMARY:** The Forest Service is revising the Flathead National Forest's Land and Resource Management Plan (forest plan). The Forest Service is concurrently amending the forest plans of the Helena-Lewis and Clark, Kootenai, and Lolo National Forests to incorporate habitat management direction for the Northern Continental Divide Ecosystem (NCDE) grizzly bear population. The Flathead National Forest is proposing to incorporate the NCDE grizzly bear habitat management direction as part of its plan revision process. The Forest Service has

prepared a single Final Environmental Impact Statement (FEIS) for its revised forest plan and the forest plan amendments, a draft Record of Decision (ROD) for the revised forest plan, and a draft ROD for the forest plan amendments.

This notice is to inform the public that a 60-day period is being initiated where individuals or entities with specific concerns on the Flathead National Forest's Revised Land Management Plan and the Northern Continental Divide Ecosystem Grizzly Bear Conservation Strategy forest plan amendments for the Helena-Lewis and Clark, Kootenai, and Lolo National Forests and its associated FEIS may file objections for Forest Service review prior to the approval of the Revised Land Management Plan and forest plan amendments. This is also an opportunity to object to the Regional Forester's list of species of conservation concern for the Flathead National Forest.

**DATES:** The FEIS, Flathead National Forest revised forest plan, other supporting documentation, and the draft RODs are available for review starting December 1, 2017 on the forest plan revision web page: [www.fs.usda.gov/goto/flathead/fpr](http://www.fs.usda.gov/goto/flathead/fpr); on the forest plan amendments web page: [www.fs.usda.gov/goto/flathead/gba](http://www.fs.usda.gov/goto/flathead/gba); and the Northern Region species of conservation concern web page: <http://bit.ly/NorthernRegion-SCC>.

**ADDRESSES:** The following address should be used for objections submitted by regular mail, private carrier, or hand delivery: Objection Reviewing Officer, USDA Forest Service, Northern Region, 26 Fort Missoula Road, Missoula, MT 59804. Office hours are Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays. Please be explicit as to whether the objection is for the Flathead Forest Plan, the NCDE Grizzly Bear Forest Plan Amendments, or the Flathead Species of Conservation Concern.

Objections can be faxed to the Objection Reviewing Officer at (406) 329-3411. The fax coversheet must include a subject line with "Flathead Forest Plan Objection," "NCDE Grizzly Bear Forest Plan Amendments," or "Flathead Species of Conservation Concern" and should specify the number of pages being submitted. Electronic objections must be submitted to the Objection Reviewing Officer via email to [appeals-northern-regional-office@fs.fed.us](mailto:appeals-northern-regional-office@fs.fed.us), with "Flathead Forest Plan Objection," "NCDE Grizzly Bear Forest Plan Amendments," or "Flathead Species of Conservation Concern" in the

subject line. Electronic submissions must be submitted in a format that is readable with optical character recognition software (e.g. Word, PDF, Rich Text) and be searchable. An automated response should confirm your electronic objection has been received.

### FOR FURTHER INFORMATION CONTACT:

Project Leader, Joe Krueger, 650 Wolfpack Way, Kalispell, MT 59901, (406) 758-5243. Additional information concerning the draft RODs may be obtained on the internet at the websites listed in the **ADDRESSES** section of this document.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** A legal notice of the initiation of the 60-day objection period is being published in the Flathead, Helena-Lewis and Clark, Kootenai, and Lolo National Forests' newspapers of record: Daily Interlake, Great Falls Tribune, Missoulian, and Helena Independent. The date of the publication of the legal notices will determine the actual date of initiation of the 60-day objection period. A copy of the legal notices published in the newspapers of record will be posted on the websites listed above.

The decisions to approve the revised forest plan for the Flathead National Forest, the NCDE Grizzly Bear Forest Plan Amendments, and the Regional Forester's list of species of conservation concern will be subject to the objection process identified in 36 CFR part 219 subpart B (219.50 to 219.62). An objection must include the following (36 CFR 219.54(c)):

(1) The objector's name and address along with a telephone number or email address if available. In cases where no identifiable name is attached to an objection, the Forest Service will attempt to verify the identity of the objector to confirm objection eligibility;

(2) Signature or other verification of authorship upon request (a scanned signature for electronic mail may be filed with the objection);

(3) Identification of the lead objector, when multiple names are listed on an objection. The Forest Service will communicate to all parties to an objection through the lead objector. Verification of the identity of the lead objector must also be provided if requested;

(4) The name of the plan revision or forest plan amendment being objected

to, and the name and title of the responsible official;

(5) A statement of the issues and/or parts of the plan revision to which the objection applies;

(6) A concise statement explaining the objection and suggesting how the proposed plan decision may be improved. If the objector believes that the plan revision is inconsistent with law, regulation, or policy, an explanation should be included;

(7) A statement that demonstrates the link between the objector's prior substantive formal comments and the content of the objection, unless the objection concerns an issue that arose after the opportunities for formal comment; and

(8) All documents referenced in the objection (a bibliography is not sufficient), except that the following need not be provided:

- a. All or any part of a Federal law or regulation,
- b. Forest Service Directive System documents and land management plans or other published Forest Service documents,
- c. Documents referenced by the Forest Service in the planning documentation related to the proposal subject to objection, and
- d. Formal comments previously provided to the Forest Service by the objector during the plan revision comment period.

#### Responsible Official

The responsible official who will approve the ROD for the Flathead National Forest revised forest plan is Chip Weber, Forest Supervisor for the Flathead National Forest, 650 Wolfpack Way, Kalispell, MT 59901, (406) 758-5208.

The Regional Forester is the reviewing officer for the revised plan since the Forest Supervisor is the deciding official (36 CFR 219.56(e)(2)). The Flathead National Forest will provide the Regional Forester with public comments received on species of conservation concern (SCC). The Regional Forester will consider comments received and respond to them in the FEIS and ROD. The decision to approve the SCC list will be subject to a separate objection process. The Chief of the Forest Service is the reviewing officer for SCC identification since the Regional Forester is the deciding official (36 CFR 219.56(e)(2)). Information about species of conservation concern is available at <http://bit.ly/NorthRegion-SCC>.

Dated: November 16, 2017.

**Jeanne M. Higgins,**

*Acting Associate Deputy Chief, National Forest System.*

[FR Doc. 2017-26952 Filed 12-14-17; 8:45 am]

**BILLING CODE 3411-15-P**

## DEPARTMENT OF AGRICULTURE

### National Agricultural Statistics Service

#### Notice of Intent To Request Revision and Extension of a Currently Approved Information Collection

**AGENCY:** National Agricultural Statistics Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection, the Field Crops Objective Yield Surveys. Revision to burden hours will be needed due to changes in the size of the target population, sampling design, and/or questionnaire length. In this renewal the program will be expanded to include several fruit and nut commodities into the Objective Yield program. The title of this renewal will be changed to "Objective Yield Surveys."

**DATES:** Comments on this notice must be received by February 13, 2018 to be assured of consideration.

**ADDRESSES:** You may submit comments, identified by docket number 0535-0088, by any of the following methods:

- *Email:* [ombofficer@nass.usda.gov](mailto:ombofficer@nass.usda.gov).

Include docket number above in the subject line of the message.

- *eFax:* (855) 838-6382.

- *Mail:* Mail any paper, disk, or CD-ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250-2024.

- *Hand Delivery/Courier:* Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250-2024.

**FOR FURTHER INFORMATION CONTACT:**

Renee Picanso, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720-2707. Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS Clearance Officer, at

(202) 690-2388 or at [ombofficer@nass.usda.gov](mailto:ombofficer@nass.usda.gov).

**SUPPLEMENTARY INFORMATION:**

*Title:* Objective Yield Surveys.

*OMB Control Number:* 0535-0088.

*Expiration Date of Approval:* July 31, 2018.

*Type of Request:* To revise and extend a currently approved information collection for a period of three years.

*Abstract:* The primary objective of the National Agricultural Statistics Service (NASS) is to collect, prepare and issue State and national estimates of crop and livestock production, prices and disposition as well as economic statistics, farm numbers, land values, on-farm pesticide usage, pest crop management practices, as well as the Census of Agriculture. The field crops Objective Yield Surveys objectively predict yields for corn, cotton, potatoes, soybeans, and wheat. Sample fields are randomly selected for these crops, plots are laid out, and periodic counts and measurements are taken and then used to forecast production during the growing season. Production forecasts are published in USDA Crop Production reports.

In this approval request, NASS will be including a new group of fruit and nut objective yield surveys. These surveys will be conducted under cooperative agreements with several State Departments of Agriculture. The individual States will be reimbursing NASS for the costs associated with these additional surveys. The surveys will include: California citrus, almonds and walnuts; Florida citrus; and Oregon hazelnuts.

The increased burden hours and sample sizes reported below include these additional surveys.

*Authority:* These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3501, *et seq.*) and Office of Management and Budget regulations at 5 CFR part 1320.

NASS also complies with OMB Implementation Guidance, "Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA)," **Federal Register**, Vol. 72, No. 115, June 15, 2007, p. 33362.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average between 15 and 30 minutes per respondent.

*Respondents:* Farmers, ranchers, or farm managers.

*Estimated Number of Respondents:* 16,000.

*Estimated Total Annual Burden on Respondents:* 4,800 hours.

*Comments:* Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, through the use of appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, November 29, 2017.

**R. Renee Picanso,**

*Associate Administrator.*

[FR Doc. 2017-27052 Filed 12-14-17; 8:45 am]

**BILLING CODE 3410-20-P**

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Delaware Advisory Committee

**AGENCY:** Commission on Civil Rights.

**ACTION:** Announcement of monthly planning meetings.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Delaware State Advisory Committee to the Commission will convene by conference call, on Monday, January 22, 2018 at 10:00 a.m. (EST). The purpose of the meeting is to review/discuss the panel summaries that were prepared by several Committee members. This review will help the Committee focus on next steps, as it moves toward drafting the Committee report.

**DATES:** Monday, January 22, 2018, at 10:00 a.m. (EST).

*Public Call-In Information:* Conference call number: 1-800-210-9006 and conference call ID: 4124362. **FOR FURTHER INFORMATION CONTACT:** Ivy L. Davis, at [ero@usccr.gov](mailto:ero@usccr.gov) or by phone at 202-376-7533.

**SUPPLEMENTARY INFORMATION:** Interested members of the public may listen to the discussion by calling the following toll-free conference call number: 1-800-210-9006 and conference call ID: 4124362. Please be advised that before placing them into the conference call, the conference call operator may ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number herein.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1-888-364-3109 and providing the operator with the toll-free conference call number: 1-800-210-9006 and conference call ID: 4124362.

Members of the public are invited to submit written comments; the comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, or emailed to Evelyn Bohor at [ero@usccr.gov](mailto:ero@usccr.gov). Persons who desire additional information may contact the Eastern Regional Office at (202) 376-7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at <http://facadatabase.gov/committee/meetings.aspx?cid=240>; click the "Meeting Details" and "Documents" links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's website, [www.usccr.gov](http://www.usccr.gov), or to contact the Eastern Regional Office at the above phone number, email or street address.

*Agenda:* Monday, January 22, 2018 at 10:00 a.m.

- I. Welcome and Introductions
- Rollcall
- II. Planning Meeting

Review/Discuss Panel Summaries  
III. Other Business  
IV. Open Comment  
V. Adjournment

Dated: December 11, 2017.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2017-26986 Filed 12-14-17; 8:45 am]

**BILLING CODE P**

## COMMISSION ON CIVIL RIGHTS

### Sunshine Act Meeting Notice

**AGENCY:** United States Commission on Civil Rights.

**ACTION:** Notice of Commission telephonic business meeting.

**DATES:** Thursday, December 21, 2017, at 3:30 p.m. EST.

**ADDRESSES:** Meeting to take place by telephone.

**FOR FURTHER INFORMATION CONTACT:** Brian Walch, (202) 376-8371, [publicaffairs@usccr.gov](mailto:publicaffairs@usccr.gov).

**SUPPLEMENTARY INFORMATION:** This business meeting is open to the public by telephone only.

**PARTICIPANT ACCESS INSTRUCTIONS:** Listen Only, Toll Free: 1-888-219-1420; Conference ID: 5586588. Please dial in 5-10 minutes prior to the start time.

### Meeting Agenda

- I. Approval of Agenda
- II. Program Planning
  - Discussion and Vote on Commission's Strategic Plan for Fiscal Years 2019-2022
  - Discussion and Vote on Revised Report: Public Education Funding Inequity in an Era of Increasing Concentration of Poverty and Resegregation
  - Discussion and Vote on Timeline, Discovery Plan, and Outline for the Commission's FY19 Report on Federal Civil Rights Enforcement Efficacy

### V. Adjourn Meeting

Dated: December 12, 2017.

**Brian Walch,**

*Director, Communications and Public Engagement.*

[FR Doc. 2017-27138 Filed 12-13-17; 11:15 am]

**BILLING CODE 6335-01-P**

## COMMISSION ON CIVIL RIGHTS

### Sunshine Act Meeting Notice

**AGENCY:** United States Commission on Civil Rights.

**ACTION:** Notice of Commission telephonic business meeting.

**DATES:** Thursday, December 21, 2017, at 3:30 p.m. EST.

**ADDRESSES:** Meeting to take place by telephone.

**FOR FURTHER INFORMATION CONTACT:** Brian Walch, (202) 376-8371, [publicaffairs@usccr.gov](mailto:publicaffairs@usccr.gov).

**SUPPLEMENTARY INFORMATION:** This business meeting is open to the public by telephone only.

**PARTICIPANT ACCESS INSTRUCTIONS:** Listen Only, Toll Free: 1-888-219-1420; Conference ID: 5586588. Please dial in 5-10 minutes prior to the start time.

### Meeting Agenda

I. Approval of Agenda

II. Program Planning

- Discussion and Vote on Commission's Strategic Plan for Fiscal Years 2019-2022
- Discussion and Vote on Revised Report: Public Education Funding Inequity in an Era of Increasing Concentration of Poverty and Resegregation
- Discussion and Vote on Timeline, Discovery Plan, and Outline for the Commission's FY19 Report on Federal Civil Rights Enforcement Efficacy

V. Adjourn Meeting

Dated: December 12, 2017.

**Brian Walch,**

*Director, Communications and Public Engagement.*

[FR Doc. 2017-27139 Filed 12-13-17; 11:15 am]

**BILLING CODE 6335-01-P**

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the District of Columbia Advisory Committee

**AGENCY:** Commission on Civil Rights.

**ACTION:** Announcement of monthly planning meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the District of Columbia Advisory Committee to the Commission will convene at 11:30 a.m. (EST) Tuesday, January 9, 2018 at the offices of the U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue NW, Suite 1150, Washington, DC 20425. The purpose of the meeting is to discuss and vote on the

project proposal on the mental health court in DC that will be submitted to the staff director for approval.

**DATES:** January 9, 2018 at 11:30 a.m. (EST).

**ADDRESSES:** 1331 Pennsylvania Avenue NW, Suite 1150, Washington, DC 20425.

**FOR FURTHER INFORMATION CONTACT:** Ivy Davis, DFO, at [ero@usccr.gov](mailto:ero@usccr.gov) or 202-376-7533.

**SUPPLEMENTARY INFORMATION:** Persons with accessibility needs should contact the Eastern Regional Office no later than 10 working days before the scheduled meeting by sending an email to the following email address at [ero@usccr.gov](mailto:ero@usccr.gov).

Members of the public are entitled to attend or submit written comments. The comments must be received in the regional office by February 9, 2018. Comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425 or emailed to Evelyn Bohor at [ero@usccr.gov](mailto:ero@usccr.gov). Persons who desire additional information may contact the Eastern Regional Office at 202-376-7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at <http://facadatabase.gov/committee/meetings.aspx?cid=241>; click the "Meeting Details" and "Documents" links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's website, [www.usccr.gov](http://www.usccr.gov), or to contact the Eastern Regional Office at the above phone numbers, email or street address.

*Agenda:* Tuesday, January 9, 2018

I. Welcome and Introductions

—Rollcall

II. Planning Meeting

—Discuss/Review Project Proposal

—Identify Committee Members for Planning Workgroup

III. Other Business

IV. Open Comment

V. Adjournment

Dated: December 11, 2017.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2017-26985 Filed 12-14-17; 8:45 am]

**BILLING CODE 6335-01-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-992]

### Monosodium Glutamate From the People's Republic of China: Notice of Court Decision Not in Harmony With Second Amended Final Determination in Less Than Fair Value Investigation and Notice of Third Amended Final Determination

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

**SUMMARY:** On November 3, 2017, the Court of International Trade (CIT or Court) sustained the final remand results pertaining to the less than fair value investigation of monosodium glutamate (MSG) from the People's Republic of China (PRC). The Department of Commerce (the Department) is notifying the public that the final judgment in this case is not in harmony with the second amended final determination of the less than fair value investigation and that the Department is amending the second amended final determination with respect to the dumping margins assigned to Langfang Meihua Bio-Technology Co., Ltd.'s (Meihua).

**DATES:** Effective November 13, 2017.

**FOR FURTHER INFORMATION CONTACT:** Jun Jack Zhao, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-1396.

### SUPPLEMENTARY INFORMATION:

#### Background

On September 29, 2014, the Department issued the *Final Determination*.<sup>1</sup> On November 26, 2014, in response to ministerial error allegations, the Department issued the *Amended Final Determination* and on January 6, 2015, in response to additional comments concerning inadvertent errors in the *Amended Final Determination*, the Department issued the *Second Amended Final*

<sup>1</sup> See *Monosodium Glutamate from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and the Final Affirmative Determination of Critical Circumstances*, 79 FR 58326 (September 29, 2014) (*Final Determination*).

*Determination and Order.*<sup>2</sup> Meihua<sup>3</sup> is a Chinese producer/exporter of MSG and was a mandatory respondent in the underlying less than fair value investigation. In the *Second Amended Final Determination and Order*, the Department assigned a dumping margin of 21.28 percent to Meihua.

On April 25, 2017, the Court issued its *Remand Order*<sup>4</sup> and directed the Department to: (1) Reconsider the Department's selection of the best available information in setting the distance used to calculate a surrogate value for inland freight and (2) reconsider petitioner's, Ajinomoto North America, Inc.'s, (Ajinomoto) argument to calculate the corn factor of production (FOP) based upon the respondent Meihua's actual production experience.

Pursuant to the *Remand Order*, the Department issued its Final Redetermination, which addressed the Court's *Remand Order* and revised the weighted-average dumping margin for Meihua to 34.15 percent.<sup>5</sup> On November 3, 2017, the CIT sustained in whole the Department's Final Redetermination.<sup>6</sup>

<sup>2</sup> See *Monosodium Glutamate from the People's Republic of China, and the Republic of Indonesia: Antidumping Duty Orders and Monosodium Glutamate From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value*, 79 FR 70505 (November 26, 2014) (*Amended Final Determination*), and, *Monosodium Glutamate from the People's Republic of China: Second Amended Final Determination of Sales at Less Than Fair Value and Amended Antidumping Duty Order*, 80 FR 487 (January 6, 2015) (*Second Amended Final Determination and Order*), respectively.

<sup>3</sup> Meihua, or Meihua Group, consists of Langfang Meihua Bio-Technology Co., Ltd., Tongliao Meihua Biological SCL-TECH Co., Ltd., Meihua Group International Trading (Hong Kong) Limited, and Meihua Holdings Group Co., Ltd, Bazhou Branch. See the Department's preliminary decision memorandum, "Decision Memorandum for the Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination of the Antidumping Duty Investigation of Monosodium Glutamate from the People's Republic of China," dated May 1, 2014, at 8–9, unchanged in *Amended Final Determination*.

<sup>4</sup> See *Ajinomoto North America, Inc. v. United States*, Court No. 14–00351, Slip Op. 17–48 (April 25, 2017) (*Remand Order*).

<sup>5</sup> See Department Memorandum dated August 30, 2017, "Final Results of Redetermination Pursuant to Court Remand Monosodium Glutamate from the People's Republic of China Ajinomoto North America, Inc. v. United States Court No. 14–00351, Slip Op. 17–48 (CIT April 25, 2017)," (Final Redetermination).

<sup>6</sup> See *Ajinomoto North America, Inc. v. United States*, Court No. 14–00351, Slip Op. 17–150 (CIT 2017).

## Timken Notice

In its decision in *Timken*,<sup>7</sup> as clarified by *Diamond Sawblades*,<sup>8</sup> the United States Court of Appeals for the Federal Circuit held that, pursuant to sections 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is not "in harmony" with a Department determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's November 3, 2017, final judgment sustaining the Department's Final Redetermination constitutes a final decision of the Court that is not in harmony with the *Second Amended Final Determination and Order*. This notice is published in fulfillment of the publication requirements of *Timken*.

## Third Amended Final Determination

Because there is now a final court decision, the Department is amending the *Second Amended Final Determination and Order* with respect to the dumping margin calculated for Meihua. The revised dumping margin for Meihua, is 34.15 percent.<sup>9</sup>

## Cash Deposit Requirements

Since the *Second Amended Final Determination and Order*, the Department has established a new cash deposit rate for Meihua.<sup>10</sup> Therefore, the Department is not amending the cash deposit rate for Meihua.

## Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e)(1), 735(c)(1), and 777(i)(1) of the Act.

Dated: December 11, 2017.

## Gary Taverman,

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2017–27062 Filed 12–14–17; 8:45 am]

**BILLING CODE 3510–DS–P**

<sup>7</sup> See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), at 341.

<sup>8</sup> See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

<sup>9</sup> See Final Redetermination.

<sup>10</sup> See, e.g., *Monosodium Glutamate from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014–2015*, 81 FR 89062 (December 9, 2016).

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Limitation of Duty-Free Imports of Apparel Articles Assembled in Haiti Under the Caribbean Basin Economic Recovery Act (CBERA), as Amended by the Haitian Hemispheric Opportunity through Partnership Encouragement Act (HOPE)

**AGENCY:** International Trade Administration, Department of Commerce.

**ACTION:** Notification of annual quantitative limit on imports of certain apparel from Haiti.

**SUMMARY:** CBERA, as amended, provides duty-free treatment for certain apparel articles imported directly from Haiti. One of the preferences is known as the "value-added" provision, which requires that apparel meet a minimum threshold percentage of value added in Haiti, the United States, and/or certain beneficiary countries. The provision is subject to a quantitative limitation, which is calculated as a percentage of total apparel imports into the United States for each 12-month annual period. For the annual period from December 20, 2017 through December 19, 2018, the quantity of imports eligible for preferential treatment under the value-added provision is 361,603,399 square meters equivalent.

**DATES:** December 20, 2017.

#### FOR FURTHER INFORMATION CONTACT:

Laurie Mease, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

#### SUPPLEMENTARY INFORMATION:

*Authority:* Section 213A of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703a) ("CBERA"), as amended; and as implemented by Presidential Proc. No. 8114, 72 FR 13655 (March 22, 2007), and No. 8596, 75 FR 68153 (November 4, 2010).

*Background:* Section 213A(b)(1)(B) of CBERA, as amended (19 U.S.C. 2703a(b)(1)(B)), outlines the requirements for certain apparel articles imported directly from Haiti to qualify for duty-free treatment under a "value-added" provision. In order to qualify for duty-free treatment, apparel articles must be wholly assembled, or knit-to-shape, in Haiti from any combination of fabrics, fabric components, components knit-to-shape, and yarns, as long as the sum of the cost or value of materials produced in Haiti or one or more beneficiary countries, as described in CBERA, as amended, or any combination thereof, plus the direct



costs of processing operations performed in Haiti or one or more beneficiary countries, as described in CBERA, as amended, or any combination thereof, is not less than an applicable percentage of the declared customs value of such apparel articles. Pursuant to CBERA, as amended, the applicable percentage for the period December 20, 2017 through December 19, 2018, is 60 percent.

For every twelve-month period following the effective date of CBERA, as amended, duty-free treatment under the value-added provision is subject to a quantitative limitation. CBERA, as amended, provides that the quantitative limitation will be recalculated for each subsequent 12 month period. Section 213A (b)(1)(C) of CBERA, as amended (19 U.S.C. 2703a(b)(1)(C)), requires that, for the twelve-month period beginning on December 20, 2017, the quantitative limitation for qualifying apparel imported from Haiti under the value-added provision will be an amount equivalent to 1.25 percent of the aggregate square meter equivalent of all apparel articles imported into the United States in the most recent 12-month period for which data are available.

The aggregate square meters equivalent of all apparel articles imported into the United States is derived from the set of Harmonized System lines listed in the Annex to the World Trade Organization Agreement on Textiles and Clothing (“ATC”), and the conversion factors for units of measure into square meter equivalents used by the United States in implementing the ATC.

For purposes of this notice, the most recent 12-month period for which data are available as of December 20, 2017 is the 12-month period ending on October 31, 2017.

Therefore, for the one-year period beginning on December 20, 2017 and extending through December 19, 2018, the quantity of imports eligible for preferential treatment under the value-added provision is 361,603,399 square meters equivalent. Apparel articles entered in excess of these quantities will be subject to otherwise applicable tariffs.

Dated: December 11, 2017.

**Terry Labat,**

*Senior Advisor, performing the Non-Exclusive Duties of the Deputy Assistant Secretary for Textiles, Consumer Goods and Materials.*

[FR Doc. 2017-27079 Filed 12-14-17; 8:45 am]

**BILLING CODE 3510-DS-P**

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[C-570-068]

**Forged Steel Fittings From the People’s Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation**

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

**DATES:** Applicable December 15, 2017.

**FOR FURTHER INFORMATION CONTACT:** Brian Smith at (202) 482-1766 or Jaron Moore at (202) 482-3640, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

**Background**

On October 25, 2017, the Department of Commerce (the Department) initiated a countervailing duty (CVD) investigation of forged steel fittings from the People’s Republic of China.<sup>1</sup> Currently, the preliminary determination is due no later than December 29, 2017.

**Postponement of Preliminary Determination**

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary determination in a CVD investigation within 65 days after the date on which the Department initiated the investigation. However, section 703(c)(1)(A) of the Act permits the Department to postpone the preliminary determination until no later than 130 days after the date on which the Department initiated the investigation if the petitioners<sup>2</sup> make a timely request for a postponement. Under 19 CFR 351.205(e), the petitioners must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. The Department will grant the request unless it finds compelling reasons to deny the request.

<sup>1</sup> See *Forged Steel Fittings From the People’s Republic of China: Initiation of Countervailing Duty Investigation*, 82 FR 50623 (November 1, 2017) (*Initiation Notice*).

<sup>2</sup> The petitioners are the Bonney Forge Corporation and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW).

On November 24, 2017, the petitioners submitted a timely request that the Department postpone the preliminary CVD determination.<sup>3</sup> Noting the comments filed with respect to respondent selection and the scope of the investigation, the petitioners stated that a postponement is necessary due to the difficulty in determining which companies imported subject merchandise, and the possibility that the Department may find it necessary to select additional respondents or issue quantity and value questionnaires. Finally, the petitioners state that a postponement is necessary to allow them sufficient time to identify additional subsidy benefits not addressed in the Petition once the Department identifies the mandatory respondents.

In accordance with 19 CFR 351.205(e), the petitioners stated the reasons for requesting a postponement of the preliminary determination, and the Department finds no compelling reason to deny the request. Therefore, in accordance with section 703(c)(1)(A) of the Act, the Department is postponing the deadline for the preliminary determination to no later than 130 days after the date on which this investigation was initiated, *i.e.*, March 5, 2018.<sup>4</sup> Pursuant to section 705(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determination of this investigation will continue to be 75 days after the date of the preliminary determination, unless postponed at a later date.

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: November 30, 2017.

**Gary Taverman,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the non-exclusive duties of the Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2017-27081 Filed 12-14-17; 8:45 am]

**BILLING CODE 3510-DS-P**

<sup>3</sup> See the petitioners’ letter, “Re: Forged Steel Fittings from the People’s Republic of China: Request to Postpone Preliminary Determination,” dated November 24, 2017.

<sup>4</sup> Postponing the preliminary determination to 130 days after initiation would place the deadline on Sunday, March 4, 2018. The Department’s practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. See *Notice of Clarification: Application of “Next Business Day” Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).



## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Additions and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed additions to and deletions from the Procurement List.

**SUMMARY:** The Committee is proposing to add products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products previously provided by such agencies.

**DATES:** Comments must be received on or before: January 14, 2018.

**ADDRESSES:** Committee for Purchase from People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202-4149.

**FOR FURTHER INFORMATION CONTACT:** For further information or to submit comments contact: Amy B. Jensen, Telephone: (703) 603-7740, Fax: (703) 603-0655, or email [CMTEFedReg@AbilityOne.gov](mailto:CMTEFedReg@AbilityOne.gov).

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

#### Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following products and services are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

#### Products

##### NSN(s)—Product Name(s):

MR 13100—Baking Value Pack  
 MR 13101—Muffin Pan, 6-Cup  
 MR 13102—Cake Pan, Square, 8" x 8"  
 MR 13103—Cake Pan, Round, 9"  
 MR 13104—Muffin Pan, 12-Cup  
 MR 13105—Muffin Pan, Mini, 24-Cup  
 MR 13106—Cookie Sheet, Large, 11" x 17"  
 MR 13107—Loaf Pan, 9.3" x 5.3"  
 MR 13108—Cookie Sheet, Medium, 10" x 15"  
 MR 13109—Cookie Tool, Scoop N' Cut  
 MR 13110—Cake Cutter, Slice N' Easy  
 MR 13111—Cookie Spatula, Slip N' Serve  
 MR 13112—Cookie Sheet, Small, 9" x 13"  
**Mandatory for:** The requirements of military

commissaries and exchanges in accordance with the Code of Federal Regulations 41 CFR 51-6.4.

**Mandatory Source(s) of Supply:** Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC

**Contracting Activity:** Defense Commissary Agency

**Distribution:** C-List

#### Services

**Service Type:** Grounds Maintenance Service

**Mandatory for:** US Coast Guard Station Atlantic City, 900 Beach Thorofare, Atlantic City, NJ

**Mandatory Source(s) of Supply:** Fedcap Rehabilitation Services, Inc., New York, NY

**Contracting Activity:** Department of Homeland Security, US Coast Guard, TRACEN CAPE MAY (00042)

**Service Type:** Custodial Service

**Mandatory for:** US Customs and Border Protection, 6604 E. Rutter Ave., Hangar 32, Spokane, WA

**Mandatory Source(s) of Supply:** Good Works, Inc., Spokane, WA

**Contracting Activity:** Department of Homeland Security, US Customs and Border Protection, Air and Marine Ctr Div.

#### Deletions

The following products are proposed for deletion from the Procurement List:

#### Products

**NSN—Product Name:** 7510-01-600-8034—Dated 2017 12-Month 2-Sided Laminated Wall Planner, 24" x 37"

**Mandatory Source of Supply:** Chicago Lighthouse Industries, Chicago, IL

**Contracting Activity:** General Services Administration, Philadelphia, PA

**NSN—Product Name:** 3990-00-NSH-0078—Pallet, Treated Wood, 70" x 42"

**Mandatory Source of Supply:** Willamette Valley Rehab Center, Inc., Lebanon, OR

**Contracting Activity:** DEPT OF JUST/FEDERAL PRISON SYSTEM

#### NSNs—Product Names:

8415-01-542-8496—Jacket, Loft, Extreme Cold Weather Level 7, Type 2, PCU, Army, Alpha Green, MR  
 8415-01-542-8497—Jacket, Loft, Extreme Cold Weather Level 7, Type 1, PCU, Army, Alpha Green, LR  
 8415-01-542-8498—Jacket, Loft, Extreme Cold Weather Level 7, Type 2, PCU, Army, Alpha Green, XL  
 8415-01-542-8499—Jacket, Loft, Extreme Cold Weather Level 7, Type 2, PCU, Army, Alpha Green, LL  
 8415-01-542-8500—Jacket, Loft, Extreme Cold Weather Level 7, Type 2, PCU, Army, Alpha Green, XL  
 8415-01-542-8501—Jacket, Loft, Extreme Cold Weather Level 7, Type 2, PCU, Army, Alpha Green, XXLL  
 8415-01-542-8502—Jacket, Loft, Extreme Cold Weather Level 7, Type 2, PCU, Army, Alpha Green, XS  
 8415-01-542-8504—Jacket, Loft, Extreme Cold Weather Level 7, Type 1, PCU, Army, Alpha Green, LL

8415-01-542-8505—Jacket, Loft, Extreme Cold Weather Level 7, Type 2, PCU, Army, Alpha Green, XXXLL

8415-01-543-1605—Jacket, Loft, Extreme Cold Weather Level 7, PCU, Type 1, Army, Alpha Green, XXXL

8415-01-543-1613—Jacket, Loft, Extreme Cold Weather Level 7, Type 1, PCU, Army, Alpha Green, SR

8415-01-543-7042—Jacket, Loft, Extreme Cold Weather Level 7, Type 1, PCU, Army, Alpha Green, ML

8415-01-542-8575—Trousers, Loft Level 7, ECWCS, PCU, Army, Alpha Green, XXLL

8415-01-542-8576—Trousers, Loft Level 7, ECWCS, PCU, Army, Alpha Green, XXXLL

8415-01-542-8577—Trousers, Loft Level 7, ECWCS, PCU, Army, Alpha Green, XXXLL

8415-01-542-8580—Trousers, Loft Level 7, ECWCS, PCU, Army, Alpha Green, LL

8415-01-542-8581—Trousers, Loft Level 7, ECWCS, PCU, Army, Alpha Green, MR

8415-01-542-8582—Trousers, Loft Level 7, ECWCS, PCU, Army, Alpha Green, SR

8415-01-542-8584—Trousers, Loft Level 7, ECWCS, PCU, Army, Alpha Green, XL

8415-01-542-8586—Trousers, Loft Level 7, ECWCS, PCU, Army, Alpha Green, XXL

8415-01-542-8587—Trousers, Loft Level 7, ECWCS, PCU, Army, Alpha Green, XLL

8415-01-542-8588—Trousers, Loft Level 7, ECWCS, PCU, Army, Alpha Green, XS

8415-01-542-8589—Trousers, Loft Level 7, ECWCS, PCU, Army, Alpha Green, LR

8415-01-543-7022—Pants, Loft, Level 7, PCU, Army, Alpha Green, ML

8415-01-543-0377—Vest, Loft, Rainproof, Level 7, PCU, Army, Alpha Green, XXXLL

8415-01-543-0382—Vest, Loft, Rainproof, Level 7, PCU, Army, Alpha Green, XXL

8415-01-543-0384—Vest, Loft, Rainproof, Level 7, PCU, Army, Alpha Green, LR

8415-01-543-0386—Vest, Loft, Rainproof, Level 7, PCU, Army, Alpha Green, XXXLL

8415-01-543-0391—Vest, Loft, Level 7 Epic by Nextec, PCU, Army, Alpha Green, SR

8415-01-543-0392—Vest, Loft, Level 7 Epic by Nextec, PCU, Army, Alpha Green, MR

8415-01-543-0396—Vest, Loft, Rainproof, Level 7, PCU, Army, Alpha Green, LL

8415-01-543-0399—Vest, Loft, Rainproof, Level 7, PCU, Army, Alpha Green, XL

8415-01-543-0401—Vest, Loft, Rainproof, Level 7, PCU, Army, Alpha Green, XLL

8415-01-543-0403—Vest, Loft, Rainproof, Level 7, PCU, Army, Alpha Green, XXXLL

8415-01-543-0404—Vest, Loft, Level 7 Epic by Nextec, PCU, Army, Alpha Green, XS

8415-01-543-7044—PCU Level 7 Loft Vest Alpha Green ML

**Mandatory Source of Supply:** Southeastern Kentucky Rehabilitation Industries, Inc., Corbin, KY

8415-01-576-2044—Jacket, Wet Weather Level 6, PCU, Army, Men's, Desert Camouflage, XSR

8415-01-576-0098—Jacket, Wet Weather Level 6, PCU, Army, Men's, Desert Camouflage, MR

8415-01-576-2048—Jacket, Wet Weather Level 6, PCU, Army, Men's, Desert Camouflage, XXL

*Mandatory Source of Supply:* ReadyOne Industries, Inc., El Paso, TX

*Contracting Activity:* Army Contracting Command—Aberdeen Proving Ground, Natick Contracting Division

**Amy B. Jensen,**

*Director, Business Operations.*

[FR Doc. 2017-27083 Filed 12-14-17; 8:45 am]

**BILLING CODE 6353-01-P**

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Addition and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Addition to and deletions from the Procurement List.

**SUMMARY:** This action adds a product to the Procurement List that will be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities, and deletes products from the Procurement List previously furnished by such agencies.

**DATES:** Date added to and deleted from the Procurement List: January 14, 2018.

**ADDRESSES:** Committee for Purchase from People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202-4149.

**FOR FURTHER INFORMATION CONTACT:** Amy B. Jensen, Telephone: (703) 603-7740, Fax: (703) 603-0655, or email [CMTEFedReg@AbilityOne.gov](mailto:CMTEFedReg@AbilityOne.gov).

### SUPPLEMENTARY INFORMATION:

#### Addition

On 11/3/2017 (82 FR, No. 212), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agency to provide the product and impact of the addition on the current or most recent contractors, the Committee has determined that the product listed below is suitable for procurement by the Federal Government under 41 U.S.C. 8501-8506 and 41 CFR 51-2.4.

#### Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a

substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will furnish the product to the Government.

2. The action will result in authorizing a small entity to furnish the product to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501-8506) in connection with the product proposed for addition to the Procurement List.

#### End of Certification

Accordingly, the following product is added to the Procurement List:

#### Product

NSN—Product Name: 7195-00-NIB-2415—Back Rest, Ergonomic, Adjustable, Black, 17-1/4 x W x 5-1/2" D x 16"H

*Mandatory Source of Supply:* Chicago Lighthouse Industries, Chicago, IL

*Mandatory for:* Total Government Requirement

*Contracting Activity:* GSA/FSS Household and Industrial Furniture, Philadelphia, PA

*Distribution:* A-List

#### Deletions

On 11/3/2017 (82 FR, No. 212), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501-8506 and 41 CFR 51-2.4.

#### Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501-8506) in connection with the products deleted from the Procurement List.

#### End of Certification

Accordingly, the following products are deleted from the Procurement List:

#### Products

NSN(s)—Product Name(s):

8415-01-103-1349—Cover, Helmet, Desert Camouflage

8415-01-327-4824—Cover, Helmet, Parachutists, Army, Desert Camouflage, X Small/Small

*Mandatory Source(s) of Supply:* Chautauqua County Chapter, NYSARC, Jamestown, NY; Human Technologies Corporation, Utica, NY; Mount Rogers Community Services Board, Wytheville, VA; North Bay Rehabilitation Services, Inc., Rohnert Park, CA

8415-01-144-1860—Cover, Helmet, Snow Camouflage

8415-01-144-1861—Cover, Helmet, Navy, White Snow Camouflage, Medium/Large

*Mandatory Source(s) of Supply:* Human Technologies Corporation, Utica, NY; Mount Rogers Community Services Board, Wytheville, VA

8415-01-494-4591—Cover, Parachutists' and Ground Troops' Helmet, All Services, Snow Camouflage, XSS

*Mandatory Source of Supply:* Mount Rogers Community Services Board, Wytheville, VA

*Contracting Activity:* Defense Logistics Agency Troop Support

**Amy B. Jensen,**

*Director, Business Operations.*

[FR Doc. 2017-27084 Filed 12-14-17; 8:45 am]

**BILLING CODE 6353-01-P**

## COMMODITY FUTURES TRADING COMMISSION

### Proposed Order and Request for Comment on Application for Exemption From Certain Provisions of the Commodity Exchange Act Regarding Investment of Customer Funds and From Certain Related Commission Regulations

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of proposed order and request for comment.

**SUMMARY:** The Commodity Futures Trading Commission ("CFTC" or "Commission") is requesting comment on a proposed exemption issued in response to an application from ICE Clear Credit LLC, ICE Clear US, Inc., and ICE Clear Europe Limited (collectively, "the ICE DCOs" or "the Petitioners") to grant an exemption to permit the investment of futures and swap customer funds in certain categories of euro-denominated sovereign debt. The ICE DCOs are also requesting exemptive relief to expand

the universe of counterparties and depositories they may use in connection with these investments given the structure of the market for repurchase agreements in euro-denominated sovereign debt.

**DATES:** Comments must be received on or before January 16, 2018.

**ADDRESSES:** You may submit comments by any of the following methods:

- *CFTC website:* <http://comments.cftc.gov>. Follow the instructions for submitting comments through the Comments Online process on the website.

- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

- *Hand Delivery/Courier:* Same as Mail, above.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

Please submit your comments using only one of these methods.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <http://www.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act ("FOIA"), a petition for confidential treatment of the exempt information may be submitted according to the established procedures in Commission Regulation 145.9, 17 CFR 145.9.

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <http://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of this action will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the FOIA.

**FOR FURTHER INFORMATION CONTACT:**

Eileen A. Donovan, Deputy Director, (202) 418-5096, [edonovan@cftc.gov](mailto:edonovan@cftc.gov), Division of Clearing and Risk, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581; or Tad Polley, Associate Director, (312) 596-0551, [\[cftc.gov\]\(http://cftc.gov\), or Scott Sloan, Attorney-Advisor, \(312\) 596-0708, \[ssloan@cftc.gov\]\(mailto:ssloan@cftc.gov\), Division of Clearing and Risk, Commodity Futures Trading Commission, 525 West Monroe Street, Chicago, Illinois 60661.](mailto:tpolley@</a></p>
</div>
<div data-bbox=)

**SUPPLEMENTARY INFORMATION:**

**I. Background**

By application dated June 22, 2017, the Petitioners, all registered derivatives clearing organizations ("DCOs"), requested an exemptive order under section 4(c) of the Commodity Exchange Act ("CEA" or "Act") permitting the ICE DCOs to invest futures and cleared swap customer funds in certain categories of euro-denominated sovereign debt.

Section 4d of the Act<sup>1</sup> and Commission Regulation 1.25(a)<sup>2</sup> set out the permitted investments in which DCOs may invest customer funds.<sup>3</sup> Section 4d limits investments of customer money to obligations of the United States ("U.S. Government Securities"), general obligations of any State or of any political subdivision thereof, and obligations fully guaranteed as to principal and interest by the United States.<sup>4</sup> Regulation 1.25 expands the list of permitted investments but does not permit investment of customer funds in foreign sovereign debt.<sup>5</sup>

Regulation 1.25 previously included foreign sovereign debt as a permitted investment for customer funds.<sup>6</sup> In 2011, the Commission removed this option from Regulation 1.25, but also acknowledged that "the safety of

<sup>1</sup> 7 U.S.C. 6d.

<sup>2</sup> 17 CFR 1.25(a) (2017).

<sup>3</sup> Although Regulation 1.25 by its terms applies only to futures customer funds, Regulation 22.3(d) requires that a DCO investing cleared swap customer funds comply with the requirements of Regulation 1.25.

<sup>4</sup> See 7 U.S.C. 6d(a)(2) (futures), (f)(4) (cleared swaps).

<sup>5</sup> Regulation 1.25 permits investment of customer funds in: (i) Obligations of the United States and obligations fully guaranteed as to principal and interest by the United States (U.S. government securities); (ii) General obligations of any State or of any political subdivision thereof (municipal securities); (iii) Obligations of any United States government corporation or enterprise sponsored by the United States government (U.S. agency obligations); (iv) Certificates of deposit issued by a bank (certificates of deposit) as defined in section 3(a)(6) of the Securities Exchange Act of 1934, or a domestic branch of a foreign bank that carries deposits insured by the Federal Deposit Insurance Corporation; (v) Commercial paper fully guaranteed as to principal and interest by the United States under the Temporary Liquidity Guarantee Program as administered by the Federal Deposit Insurance Corporation (commercial paper); (vi) Corporate notes or bonds fully guaranteed as to principal and interest by the United States under the Temporary Liquidity Guarantee Program as administered by the Federal Deposit Insurance Corporation (corporate notes or bonds); and (vii) Interests in money market mutual funds.

<sup>6</sup> See 17 CFR 1.25(a) (2005).

sovereign debt issuances of one country may vary greatly from those of another," and stated that it was amenable to considering requests for section 4(c) exemptions from this restriction.<sup>7</sup> Specifically, the Commission stated that it would consider permitting foreign sovereign debt investments (1) to the extent that the petitioner has balances in segregated accounts owed to customers or clearing member futures commission merchants in that country's currency and (2) to the extent that the sovereign debt serves to preserve principal and maintain liquidity of customer funds as required for all other investments of customer funds under Regulation 1.25.<sup>8</sup>

In connection with their proposal to invest customer funds in foreign sovereign debt, the ICE DCOs have also requested an exemption from Regulations 1.25(d)(2) and (7). Regulation 1.25(d)(2) limits the counterparties with which a DCO can enter into a repurchase agreement involving customer funds to a bank as defined in section 3(a)(6) of the Securities Exchange Act of 1934, a domestic branch of a foreign bank insured by the Federal Deposit Insurance Corporation, a securities broker or dealer, or a government securities broker or government securities dealer registered with the Securities and Exchange Commission or which has filed notice pursuant to section 15C(a) of the Government Securities Act of 1986. Regulation 1.25(d)(7) requires a DCO to hold the securities transferred to the DCO under a repurchase agreement in a safekeeping account with a bank as referred to in Regulation 1.25(d)(2), a Federal Reserve Bank, a DCO, or the Depository Trust Company in an account that complies with the requirements of Regulation 1.26.

**II. The ICE DCOs' Petition**

The ICE DCOs specifically seek to invest euro-denominated customer funds in sovereign debt issued by the French Republic and the Federal Republic of Germany ("Designated Foreign Sovereign Debt") through both direct investment and repurchase agreements.<sup>9</sup> In the petition, the ICE DCOs argue that French and German sovereign debt is comparable to U.S. Government Securities in terms of

<sup>7</sup> Investment of Customer Funds and Funds Held in an Account for Foreign Futures and Foreign Options Transactions, 76 FR 78776, 78782 (Dec. 19, 2011).

<sup>8</sup> *Id.*

<sup>9</sup> A copy of the petition is available on the Commission's website at <http://www.cftc.gov/idc/groups/public/@requestsandactions/documents/ijdocs/icedcos4cappl6-22-17.pdf>.

creditworthiness, liquidity, and volatility. The Petitioners note that facing the credit risk of these financially stable sovereigns is preferable from a risk management perspective to holding euro at a commercial bank. In the case of investments through reverse repurchase agreements (as opposed to direct investments), the ICE DCOs still face a commercial counterparty but receive the additional benefit of receiving securities as collateral against that counterparty's credit risk. The ICE DCOs have also represented that in the event a securities custodian enters insolvency proceedings, they would have a claim to specific securities rather than a general claim against the assets of the custodian.

The Petitioners further request an exemption from Regulation 1.25(d)(2) that would permit them to enter into reverse repurchase agreements with certain foreign banks, certain regulated securities dealers, or the European Central Bank and the central banks of Germany and France.<sup>10</sup> The ICE DCOs have represented that the principal participants in the European sovereign debt repurchase markets are non-U.S. banks, non-U.S. securities dealers, and foreign branches of U.S. banks. As a result, the counterparty requirements under Regulation 1.25(d)(2) would significantly constrain the use of euro-denominated sovereign debt repurchase agreements.

The ICE DCOs also request an exemption from Regulation 1.25(d)(7) that would permit them to hold the securities purchased through reverse repurchase agreements in a safekeeping account with a non-U.S. bank. The ICE DCOs seek this exemption based on their representation that it is impractical and inefficient to hold such securities at a U.S. custodian. Rather than seeking an open-ended exemption from Regulation 1.25(d)(7), the ICE DCOs propose that they be permitted to only use a foreign bank that qualifies as a depository under the requirements of Regulation 1.49.

### III. Section 4(c) of the Act

Section 4(c)(1) of the Act empowers the Commission to "promote responsible economic or financial innovation and fair competition" by exempting any transaction or class of transactions (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction), from any of the provisions of the Act, subject to

<sup>10</sup> The ICE DCOs have indicated they may not currently be able to enter into repurchase agreements with these central banks.

exceptions not relevant here.<sup>11</sup> In enacting section 4(c), Congress noted that its goal "is to give the Commission a means of providing certainty and stability to existing and emerging markets so that financial innovation and market development can proceed in an effective and competitive manner".<sup>12</sup> The Commission may grant such an exemption by rule, regulation, or order, after notice and opportunity for hearing, and may do so on application of any person or on its own initiative.

Section 4(c)(2) of the Act provides that the Commission may grant exemptions under section 4(c)(1) only when it determines that the requirements for which an exemption is being provided should not be applied to the agreements, contracts, or transactions at issue; that the exemption is consistent with the public interest and the purposes of the Act; that the agreements, contracts, or transactions will be entered into solely between appropriate persons; and that the exemption will not have a material adverse effect on the ability of the Commission or any contract market or derivatives transaction execution facility to discharge its regulatory or self-regulatory responsibilities under the Act.

### IV. Order

#### A. Discussion of the Proposed Order

The Commission is proposing to permit the ICE DCOs to invest futures and cleared swap customer funds in sovereign debt issued by the French Republic and the Federal Republic of Germany, through either direct investment or repurchase agreements, pursuant to an exemption under section 4(c) of the Act. The Commission is proposing the order below, which includes certain conditions on the permitted investments, in response to the ICE DCOs' argument that permitting investment in the Designated Foreign Sovereign Debt furthers responsible risk management. Based on the analysis below, the Commission has preliminarily determined that the exemption provided in the proposed order meets the requirements of section 4(c)(2) of the Act, including in that it is consistent with the public interest and the purposes of the Act, and in that it will not have a material adverse effect on the ability of the Commission to discharge its regulatory responsibilities.

Through their petition, the ICE DCOs have demonstrated that the Designated Foreign Sovereign Debt has credit,

<sup>11</sup> 7 U.S.C. 6(c)(1).

<sup>12</sup> House Conf. Report No. 102-978, 1992 U.S.C.A.N. 3179, 3213.

liquidity, and volatility characteristics that are comparable to U.S. Government Securities, which are permitted investments under the Act and Regulation 1.25. For example, as evidence of the creditworthiness of France and Germany, the ICE DCOs provided data demonstrating that credit default swap spreads of France and Germany have historically been similar to those of the United States. To demonstrate the liquidity of the markets, the ICE DCOs point to, for example, the substantial amount of outstanding marketable French and German debt and the daily transaction value of the repo markets for their debt. And with respect to volatility, the ICE DCOs provided data on daily changes to sovereign debt yields demonstrating that the price stability of French and German debt is comparable to that of U.S. Government Securities. The ICE DCOs have thus argued that the Designated Sovereign Debt serves to preserve principle and maintain liquidity of customer funds as is required for investments permitted under Regulation 1.25. To ensure that permitted investments are limited to those with an appropriate risk profile, the proposed order limits investments in Designated Foreign Sovereign Debt to instruments of a shorter duration, as is discussed below.

Further, the ICE DCOs have demonstrated that investing in the Designated Foreign Sovereign Debt poses less risk to customer funds than the current alternative of holding the funds at a commercial bank, arguing that exposure to high-quality sovereign debt is preferable to facing the credit risk of commercial banks through unsecured bank demand deposit accounts. And finally, the Commission does not believe that any of the section 4(c)(2) exceptions would prevent a grant of the requested exemption.

The Commission is also proposing certain conditions to the exemption, including that the ICE DCOs may only use customer euro cash to invest in the Designated Foreign Sovereign Debt. This restriction was included in Regulation 1.25<sup>13</sup> when the rule permitted the investment of customer funds in foreign sovereign debt, and the Commission believes it is still an appropriate

<sup>13</sup> See 17 CFR 1.25(b)(4)(D) (2005) (providing that sovereign debt is subject to the following limits: A futures commission merchant may invest in the sovereign debt of a country to the extent it has balances in segregated accounts owed to its customers denominated in that country's currency; a DCO may invest in the sovereign debt of a country to the extent it has balances in segregated accounts owed to its clearing member futures commission merchants denominated in that country's currency).

restriction on the amount that may be invested in these instruments.

The Commission is further proposing to permit the ICE DCOs to invest in the Designated Foreign Sovereign Debt only so long as the two-year credit default spread of the issuing sovereign is 45 basis points (“BPS”) or less. Because the Commission does not intend in this proposed order to expand the universe of permitted investments beyond instruments with a risk profile similar to those that are currently permitted, the Commission believes it is appropriate to use U.S. Government Securities as a benchmark to confine permitted investments in foreign sovereign debt. The Commission is proposing the cap of 45 BPS based on a historical analysis of the two-year credit default spread of the United States (“U.S. Spread”). Forty-five BPS is approximately two standard deviations above the mean U.S. Spread over the past eight years and represents a risk level that the U.S. Spread has exceeded approximately 5% of the time over that period.<sup>14</sup>

Under the proposal, if the spread exceeds 45 BPS, the ICE DCOs would not be permitted to make new investments in the relevant debt. They would not, however, be required to immediately divest all current investments, due to risks associated with selling assets into a potentially volatile market. The Commission believes that prohibiting new investments, together with the length to maturity condition discussed immediately below, will sufficiently protect customer funds in the event that a country’s Designated Foreign Sovereign Debt were to exceed the 45 BPS spread limit.

The Commission is also proposing to limit the length to maturity of direct investments in Designated Foreign Sovereign Debt, to limit permitted investments to those with a lower risk profile. Specifically, the proposed order requires each of the ICE DCOs to ensure that the dollar-weighted average of the time-to-maturity of their portfolio of direct investments in each type of Designated Foreign Sovereign Debt does not exceed 60 days. This restriction is consistent with Securities and Exchange Commission requirements for money

market mutual funds<sup>15</sup> and ensures that the ICE DCOs will not hold Designated Foreign Sovereign Debt investments on a long-term basis, and that the investments will mature relatively quickly, providing the ICE DCOs with access to euro cash. The Commission believes that the liquidity timing needs of money market mutual funds are an appropriate analogue to those of a DCO in this instance and that the 60-day time-to-maturity limit will further limit the risks of investments in Designated Foreign Sovereign Debt.

To provide the ICE DCOs with the ability to invest customer funds in the Designated Foreign Sovereign Debt, the Commission is also proposing to exempt the ICE DCOs from the counterparty and depository requirements of Regulation 1.25(d)(2) and (7), subject to conditions. As a practical matter, complying with these requirements would severely restrict the ICE DCOs’ ability to enter into repurchase agreements for Designated Foreign Sovereign Debt. As a result, the Commission proposes to exempt the ICE DCOs from the counterparty restrictions of Regulation 1.25(d)(2), subject to the condition that counterparties be limited to certain categories that are intended to limit the risk associated with reverse repurchase transactions. Similarly, the Commission is proposing to condition the ICE DCOs’ exemption from Regulation 1.25(d)(7) on its use of depositories that qualify as permitted depositories under Regulation 1.49. This approach is designed to ensure that the counterparties and depositories used by the ICE DCOs will be regulated entities comparable to those currently permitted under Regulation 1.25(d)(2) and (7).

#### B. Proposed Order

The Commission proposes an exemptive order that includes the following substantive provisions:

(1) The Commission, pursuant to its authority under section 4(c) of the Commodity Exchange Act (“Act”) and subject to the conditions below, hereby grants registered derivatives clearing organizations (“DCOs”) ICE Clear Credit LLC, ICE Clear US Inc., and ICE Clear Europe Limited (“ICE DCOs”) a limited exemption to section 4d of the Act and to Commission Regulation 1.25(a) to permit the ICE DCOs to invest euro-denominated futures and cleared swap customer funds in euro-denominated sovereign debt issued by the French Republic and the Federal Republic of Germany (“Designated Foreign Sovereign Debt”).

(2) The Commission, subject to the conditions below, additionally grants:

(a) A limited exemption to Commission Regulation 1.25(d)(2) to permit the ICE DCOs to use customer funds to enter into repurchase agreements with foreign banks and foreign securities brokers or dealers; and

(b) A limited exemption to Commission Regulation 1.25(d)(7) to permit the ICE DCOs to hold securities purchased under a repurchase agreement in a safekeeping account at a foreign bank.

(3) This order is subject to the following conditions:

(a) Investments of customer funds in Designated Foreign Sovereign Debt by each ICE DCO must be limited to investments made with euro customer cash.

(b) The ICE DCOs may only invest customer funds in Designated Foreign Sovereign Debt if the two-year credit default spread of the issuing sovereign is 45 basis points or less.

(c) The dollar-weighted average of the time-to-maturity of each ICE DCO’s portfolio of direct investments in each sovereign’s Designated Foreign Sovereign Debt may not exceed 60 days. Direct investment refers to purchases of Designated Foreign Sovereign Debt unaccompanied by a contemporaneous agreement to resell the securities.

(d) The ICE DCOs may use customer funds to enter into repurchase agreements for Designated Foreign Sovereign Debt with a counterparty that does not meet the requirements of Commission Regulation 1.25(d)(2) only if the counterparty is:

(i) A foreign bank that qualifies as a permitted depository under Commission Regulation 1.49(d)(3) and that is located in a money center country (as defined in Commission Regulation 1.49(a)(1)) or in another jurisdiction that has adopted the euro as its currency;

(ii) A securities dealer located in a money center country as defined in Commission Regulation 1.49(a)(1) that is regulated by a national financial regulator such as the UK Prudential Regulation Authority or Financial Conduct Authority, the German Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin), the French Autorité Des Marchés Financiers (AMF) or Autorité de Contrôle Prudentiel et de Résolution (ACPR), or the Italian Commissione Nazionale per le Società e la Borsa (CONSOB); or

(iii) The European Central Bank, the Deutsche Bundesbank, or the Banque de France.

(e) The ICE DCOs may hold customer securities purchased under a repurchase

<sup>14</sup> The Commission reviewed the daily U.S. Spread from July 3, 2009 to July 3, 2017. Over this time period, the U.S. Spread had a mean of approximately 26.5 BPS and a standard deviation of approximately 9.72 BPS. Over this same period, the two-year German spread exceeded 45 BPS approximately 6% of the time, and the two-year French spread exceeded 45 BPS approximately 25% of the time. Neither the German nor the French two-year spread has exceeded 45 BPS since September 2012.

<sup>15</sup> See 17 CFR 270.2a–7.

agreement with a depository that does not meet the requirements of Commission Regulation 1.25(d)(7) only if the depository meets the location and qualification requirements contained in Commission Regulation 1.49(c) and (d) and if the account complies with the requirements of Commission Regulation 1.26.

(4) The ICE DCOs must continue to comply with all other requirements in Commission Regulation 1.25, including but not limited to the counterparty concentration limits in Commission Regulation 1.25(b)(3)(v), and other applicable Commission regulations.

## V. Request for Comment

The Commission requests comment on all aspects of Petitioners' exemption request, including the specific provisions and issues highlighted in the discussion above and the issues presented in this section. For each comment submitted, please provide a detailed rationale supporting the response.

The purposes of the CEA include "promot[ing] responsible innovation and fair competition among boards of trade, other markets, and market participants".<sup>16</sup> It may be consistent with these and the other purposes of the CEA, and with the public interest, to grant the exemption requested by the Petitioners. Accordingly, the Commission is requesting comment as to whether an exemption from the requirements of the CEA should be granted in this context. The Commission also is requesting comment as to whether this exemption would affect its ability to discharge its regulatory responsibilities under the CEA.

## VI. Related Matters

### A. Paperwork Reduction Act

The Paperwork Reduction Act ("PRA") imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. This exemptive order does not involve a collection of information. Accordingly, the PRA does not apply.

### B. Cost-Benefit Analysis

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its action before issuing an order under the CEA. By its terms, section 15(a) does not require the Commission to quantify the costs and

benefits of an order or to determine whether the benefits of the order outweigh its costs. Rather, section 15(a) simply requires the Commission to "consider the costs and benefits" of its action.

#### 1. Baseline for the Proposal

The Commission's proposed baseline for consideration of the costs and benefits of the proposed exemptive order are the costs and benefits that the ICE DCOs and the public would face if the Commission does not grant the order, or in other words, the status quo. In that scenario, the ICE DCOs would be limited to investing customer funds in the instruments listed in Regulation 1.25.

#### 2. Costs and Benefits

The costs and benefits of the proposed order are not presently susceptible to meaningful quantification. Therefore, the Commission discusses proposed costs and benefits in qualitative terms.

The Commission does not believe granting the exemption would impose additional costs on the ICE DCOs. The proposed order would permit but not require the Petitioners to invest customer funds in Designated Foreign Sovereign Debt. The ICE DCOs may therefore choose whether to accept any costs and benefits of an investment. The Commission also does not expect the proposed order to impose additional costs on other market participants or the public, which do not face any direct costs from the proposed order. While other market participants or the public could potentially face costs from riskier investment activity leading to financial instability at an ICE DCO, the flexibility to hold customer funds in Designated Foreign Sovereign Debt rather than in euro cash at a commercial bank provides risk management benefits as described above.

The Commission believes that the ICE DCOs would benefit from the proposed order. The exemption would provide the ICE DCOs additional flexibility in how they manage and hold customer funds and would allow them to improve the risk management of their customer accounts. Further, as described above, it is safer from a risk management perspective to hold Foreign Sovereign Debt in a safekeeping account than to hold euro cash at a commercial bank. Therefore, market participants and the public may also benefit from the proposed exemption.

#### 3. Section 15(a) Factors

Section 15(a) of the CEA further specifies that costs and benefits shall be evaluated in light of five broad areas of

market and public concern: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. The Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular order was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the CEA. The Commission is considering the costs and benefits of this exemptive order in light of the specific provisions of section 15(a) of the CEA, as follows:

##### 1. *Protection of market participants and the public.*

As described above, investing in the Designated Foreign Sovereign Debt as requested by the Petitioners can provide risk management benefits relative to the current alternative of holding euro collateral in a commercial bank. Granting the exemption thus serves to protect market participants and the public.

##### 2. *Efficiency, competition, and financial integrity.*

Granting the exemption may increase efficiency by providing the Petitioners additional flexibility in how they manage customer funds. Making the investments permitted by the proposed order is elective, within the discretion of the ICE DCOs, and thus does not impose additional costs. Further, as discussed above, the ICE DCOs plan to exercise prudent risk management by investing in the Designated Foreign Sovereign Debt, which may enhance the financial integrity of the ICE DCOs.

##### 3. *Price discovery.*

The exemption is unlikely to impact price discovery.

##### 4. *Sound risk management practices.*

As described above, the ICE DCOs' plan to invest customer funds in the Designated Foreign Sovereign Debt is intended to advance sound risk management practices.

##### 5. *Other public interest considerations.*

The Commission believes that the relevant cost-benefit considerations are captured in the four factors above.

The Commission invites public comment on its application of the cost-benefit provisions of section 15.

<sup>16</sup> Section 3(b) of the CEA, 7 U.S.C. 5(b). See also Section 4(c)(1) of the CEA, 7 U.S.C. 6(c)(1) (purpose of exemptions is "to promote responsible economic or financial innovation and fair competition").

Issued in Washington, DC, on December 12, 2017, by the Commission.

**Christopher J. Kirkpatrick,**  
*Secretary of the Commission.*

**Appendix to Proposed Order and Request for Comment on Application for Exemption From Certain Provisions of the Commodity Exchange Act Regarding Investment of Customer Funds and From Certain Related Commission Regulations—Commission Voting Summary**

On this matter, Chairman Giancarlo and Commissioners Quintenz and Behnam voted in the affirmative. No Commissioner voted in the negative.

[FR Doc. 2017-27060 Filed 12-14-17; 8:45 am]

**BILLING CODE 6351-01-P**

**CORPORATION FOR NATIONAL AND COMMUNITY SERVICE**

**Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application Package for Social Innovation Fund Performance Progress Report; Proposed Information Collection; Comment Request**

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Notice.

**SUMMARY:** The Corporation for National and Community Service (CNCS) has submitted a public information collection request (ICR) entitled Social Innovation Fund (SIF) Performance Progress Report (PPR) which consists of the SIF Narrative Progress Report and SIF Data Supplement for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments may be submitted, identified by the title of the information collection activity, by January 16, 2018.

**ADDRESSES:** Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) *By fax to:* 202-395-6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; or

(2) *By email to:* smar@omb.eop.gov.

**FOR FURTHER INFORMATION CONTACT:** Copies of this ICR, with applicable supporting documentation, may be

obtained by calling the Corporation for National and Community Service, Katy Hussey-Sloniker, at 202-606-6796 or email to [khussey-sloniker@cns.gov](mailto:khussey-sloniker@cns.gov).

Individuals who use a telecommunications device for the deaf (TTY-TDD) may call 1-800-833-3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**Comments**

A 60-day Notice requesting public comment was published in the **Federal Register** on September 22, 2017 at FR Vol. 82, No. 183, page 44393. This comment period ended November 21, 2017. No public comments were received from this Notice.

**Description:** The Social Innovation Fund (SIF) Performance Progress Report (PPR) consists of the SIF Narrative Progress Report and SIF Data Supplement. The PPR is customized for SIF Classic grantees, SIF Pay for Success grantees, and SIF Pay for Success Administrative Data Pilot grantees. Instructions for all three versions of the PPR reporting requirements are included in this information collection request. CNCS seeks to renew the current information collection. The information collection will otherwise be used in the same manner as the existing application. CNCS also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expire on February 28, 2018.

**Type of Review:** Renewal.

**Agency:** Corporation for National and Community Service.

**Title:** Social Innovation Fund Performance Progress Report.

**OMB Number:** 3045-0168.

**Agency Number:** None.

**Affected Public:** Businesses or Organizations.

**Total Respondents:** 47.

**Frequency:** 2 times annually.

**Average Time per Response:** 10 hrs.

**Estimated Total Burden Hours:** 940 hrs.

**Total Burden Cost (capital/startup):** None.

**Total Burden Cost (operating/maintenance):** None.

Dated: December 6, 2017.

**Chester Spellman,**

*Director, AmeriCorps State & National.*

[FR Doc. 2017-27028 Filed 12-14-17; 8:45 am]

**BILLING CODE 6050-28-P**

**CORPORATION FOR NATIONAL AND COMMUNITY SERVICE**

**Guidance for Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for the Collection of Pilot and Test Data**

**AGENCY:** Corporation for National and Community Service (CNCS).

**ACTION:** Guidance for CNCS Notices, with request for comments.

**SUMMARY:** CNCS is submitting the below information for future CNCS **Federal Register** Notices in accordance with the Paperwork Reduction Act of 1995 (PRA). As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, OMB is coordinating the development of the following proposed Generic Information Collection Request (Generic ICR): "Generic Clearance for the Collection of Pilot and Test Data" for approval under the Paperwork Reduction Act. This notice announces that CNCS intends to submit collections to OMB for approval and solicit comments on specific aspects for the proposed information collection.

**DATES:** Comments must be submitted January 16, 2018.

**ADDRESSES:** Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for CNCS, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) *By fax to:* 202-395-6974, Attention: Ms. Sharon Mar, OMB Desk Officer for CNCS; and

(2) *Electronically by email to:* smar@omb.eop.gov.



**FOR FURTHER INFORMATION CONTACT:** To request additional information, please contact Amy Borgstrom, Associate Director of Policy, at 202-606-6930 or email to [aborgstrom@cns.gov](mailto:aborgstrom@cns.gov). Individuals who use a telecommunications device for the deaf (TTY-TDD) may call 1-800-833-3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:**

*Title:* Generic Clearance for the Collection of Pilot and Test Data.

*Abstract:* This is a new information collection. The information collection activity will enable pilot testing of survey instruments in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By pilot testing we mean information that provides useful insights on how respondents interact with the instrument, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations regarding prospective studies. It will also allow feedback to contribute directly to the improvement of research program management.

The Agency will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency;
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections will not be designed or expected to

yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address the target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

No comments were received in response to the 60-day notice published in the **Federal Register** of March 5, 2014 (79 FR 12495).

*Current Actions:* New collection of information.

*Type of Review:* New Collection.

*Affected Public:* Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

*Average Expected Annual Number of Activities:* 10.

*Respondents:* 350.

*Annual responses:* 350.

*Frequency of Response:* Once per request.

*Average minutes per response:* 30.

*Burden hours:* 10,500.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget Control Number.

Dated: December 11, 2017.

**Mary Hyde,**

*Director, Research and Evaluation.*

[FR Doc. 2017-27027 Filed 12-14-17; 8:45 am]

**BILLING CODE 6050-28-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Docket ID: DOD-2017-HA-0065]

### Proposed Collection; Comment Request

**AGENCY:** Office of the Assistant Secretary of Defense for Health Affairs, DoD.

**ACTION:** 60-Day information collection notice.

**SUMMARY:** In compliance with the *Paperwork Reduction Act of 1995*, the Office of the Assistant Secretary of Defense for Health Affairs announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by February 13, 2018.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, Regulatory and Advisory Committee Division, 4800 Mark Center Drive, Mailbox #24, Suite 08D09B, Alexandria, VA 22350-1700.

*Instructions:* All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are



received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at <http://www.regulations.gov> for submitting

comments. Please submit comments on any given form identified by docket number, form number, and title.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please contact Defense Health Agency, TRICARE Health Plan (J-10), ATTN: Mark Ellis, 7700 Arlington Boulevard, Falls Church, VA 22042, or call the TRICARE Health Plan, 703-681-0039.

**SUPPLEMENTARY INFORMATION:**

*Title:* Associated Form; and *OMB Number:* TRICARE Select Enrollment, Disenrollment, and Change Form, DD Form 3043, OMB Control Number 0720-XXXX.

*Needs and Uses:* The information collection requirement is necessary to obtain each non-active duty TRICARE beneficiary's personal information needed to: (1) Complete his/her enrollment into the TRICARE Select health plan option, (2) dis-enroll a beneficiary, or (3) change a beneficiary's enrollment information (e.g., address, add a dependent, report other health insurance). This information is required to ensure the beneficiary's TRICARE benefits and claims are administered based on their TRICARE plan of choice. Without this new enrollment form, each non-active duty TRICARE beneficiary is automatically defaulted into direct care, limiting their health care options to military hospitals and clinics. These beneficiaries would have no TRICARE coverage when using the TRICARE network of providers for services not available at their local military hospital or clinic.

*Affected Public:* Individuals or Households.

*Annual Burden Hours:* 24,825.

*Number of Respondents:* 99,300.

*Responses per Respondent:* 1.

*Annual Responses:* 99,300.

*Average Burden per Response:* 15 minutes.

*Frequency:* On occasion.

Respondents could be any non-active duty TRICARE beneficiary who is not eligible for Medicare. These beneficiaries have the option of enrolling into either the TRICARE Prime or TRICARE Select plan option starting January 1, 2018. Those choosing to

enroll in TRICARE Select can do so by submitting the DD Form 3043, using the BWE portal, or calling their Regional Contractor. If they choose to use the DD Form 3043, they must complete the appropriate page(s) of the form and mail the form to their Regional Contractor. No other form is required to enroll, disenroll, or change an enrollment. Respondents can download the form from the DoD Forms Management Program website, or click on the link to the form on the *TRICARE.mil* website or their Regional Contractor's website, or obtain a copy from their local military hospital or clinic. The mailing address and toll-free customer service number for their Regional Contractor are included on the DD Form 3043. If using either website option, the respondent can type in the information on the form prior to printing it or handwrite the information after printing the blank form.

Dated: December 12, 2017.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2017-27113 Filed 12-14-17; 8:45 am]

**BILLING CODE 5001-06-P**

## DEPARTMENT OF EDUCATION

### Study of the ESEA Title VI Indian Education LEA Grants Program; ED-2017-ICCD-0083; Correction

**AGENCY:** Department of Education.

**ACTION:** Correction Notice.

**SUMMARY:** This is to request correction on the **Federal Register** Notice (Docket ID Number ED-2017-ICCD-0083; FR DOC# 2017-26723), published on December 12, 2017, and entitled "Evaluation of the ESEA Title VI Indian Education LEA Grants Program". The title and abstract were incorrect. The correct title is "Study of the ESEA Title VI Indian Education LEA Grants Program". The abstract is corrected as follows:

This data collection supports a national study of the implementation of the Title VI Indian Education Grants to Local Educational Agencies program. It will provide descriptive information on the nature of program-funded services. It will also examine how grantees align and leverage Title VI-funded services with those funded by other federal, state, and local sources; how they identify American Indian and Alaska Native (AI/AN) students who are eligible for these services; how they establish and implement program priorities with parent, community, and tribal involvement; and how they measure progress toward their Title VI project objectives. This information will inform the U.S. Department of Education's Office of Indian Education

(OIE), other federal policy, budget and program staff, and grantees about the implementation of current practices. To gather consistent information that addresses how Title VI grantees are identifying eligible children and planning and implementing services for them, it is necessary to collect additional information beyond current federal data collections (e.g., Annual Performance Reports and EASIE Budget Reports provided by the OIE).

The Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Dated: December 12, 2017.

**Kate Mullan,**

*Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.*

[FR Doc. 2017-27032 Filed 12-14-17; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF ENERGY

### Biological and Environmental Research Advisory Committee; Notice of Renewal

**AGENCY:** Office of Science, Department of Energy.

**ACTION:** Notice of renewal.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act and Code of Federal Regulations, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Biological and Environmental Research Advisory Committee's (BERAC) charter has been renewed for a two-year period.

The Committee provides advice and recommendations to the Director, Office of Science on the biological and environmental research programs.

Additionally, the Secretary of Energy has determined that renewal of the BERAC has been determined to be essential to conduct business of the Department of Energy's mission and to be in the public interest in connection with the performance of duties imposed upon the Department of Energy by law and agreement. The Committee will operate in accordance with the provisions of the Federal Advisory Committee Act, the Department of Energy Organization Act (Pub. L. 95-91), and rules and regulations issued in implementation of that Act.

**FOR FURTHER INFORMATION CONTACT:** Dr. Tristram West at (301) 903-5155.

Issued in Washington, DC, on December 11, 2017.

**Shena Kennerly,**

*Acting Committee Management Officer.*

[FR Doc. 2017-27074 Filed 12-14-17; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF ENERGY

### Nuclear Energy Advisory Committee; Notice of Renewal

**AGENCY:** Office of Nuclear Energy, Department of Energy.

**ACTION:** Notice of renewal.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, and in accordance with Title 41 of the Code of Federal Regulations, Section 102-3.65(a), and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Nuclear Energy Advisory Committee (NEAC) will be renewed for a two-year period beginning on December 11, 2017.

The Committee will provide advice to the Department of Energy's Office of Nuclear Energy on complex science and technical issues that arise in the planning, managing, and implementation of DOE's nuclear energy program.

Additionally, the renewal of the NEAC has been determined to be essential to conduct business of the Department of Energy and to be in the public interest in connection with the performance of duties imposed upon the Department of Energy, by law and agreement. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act, adhering to the rules and regulations in implementation of that Act.

**FOR FURTHER INFORMATION CONTACT:** Robert Rova, Designated Federal Officer at (301) 903-9096.

Issued at Washington, DC, on December 11, 2017.

**Shena Kennerly,**

*Acting Committee Management Officer.*

[FR Doc. 2017-27076 Filed 12-14-17; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

#### Wind Industry Partnership Summit

**AGENCY:** Wind Energy Technologies Office, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

**ACTION:** Notice of the Wind Industry Partnership Summit.

**SUMMARY:** This notice announces that the Wind Energy Technologies Office (WETO) within the U.S. Department of Energy (DOE) intends to hold a Wind Industry Partnership Summit ("Summit") in Washington, DC, on January 24-25, 2018. WETO invests in energy science research and development (R&D) activities that enable innovation, advance U.S. wind systems, reduce the cost of electricity, and accelerate the deployment of wind power. In an effort to ensure that DOE's research and development priorities continue to benefit the wind energy industry, WETO is hosting this summit to share innovative technologies that may be beneficial to your firm and engage industry leaders in a dialogue about the future of public research and development laboratory R&D investments.

**DATES:** DOE will host the Summit from 8:00 a.m. to 6:00 p.m. on Wednesday, January 24, 2018, and 8:30 a.m. to 1:00 p.m. on Thursday, January 25, 2018.

**ADDRESSES:** The Summit will be held at Kimpton Hotel Palomar, 2121 P St. NW, Washington, DC 20045.

**FOR FURTHER INFORMATION CONTACT:**

Alexsandra Lemke, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Ave. SW, Washington, DC 20585. Telephone: (720)-648-4381. Email: [Alexsandra.lemke@EE.DOE.Gov](mailto:Alexsandra.lemke@EE.DOE.Gov).

**SUPPLEMENTARY INFORMATION:**

#### Background

The Wind Industry Partnership Summit will engage wind energy experts and industries to articulate wind power industry R&D needs, discuss capabilities of DOE National Laboratories, and provide guidance on how to engage DOE National Laboratories. This information will be summarized in a summary report capable of providing the wind energy industry and DOE with clarity on how the capabilities of its National Laboratories and other DOE Wind Program resources align with the perceived and prioritized R&D needs of the industry.

In November of 2015, the Executive Summit on Wind Research and Development was held in conjunction with the American Wind Energy Association (AWEA) Fall Symposium to identify and discuss priorities for industry-DOE Wind Program collaboration. This event will build on the successful 2015 Wind Industry Summit but provide a more focused

agenda around particular technology areas as well as provide a setting for development of plans for wind power industry partnerships with DOE.

This Summit will focus on the intersection of wind power industry R&D and technology development needs with the capabilities of DOE National Laboratories and other participants in R&D initiated by the DOE Wind Program. The *Wind Vision*<sup>1</sup> includes a roadmap outlining potential actions, in a non-prescriptive manner, for consideration by all wind power stakeholders. In the spring of 2017, a survey was developed around the *Wind Vision* to solicit input from industry, including developers, manufacturers, utilities, owner/operators, service providers, and consultants, among others, on the technology development needs of greatest importance to industry and where DOE support was deemed valuable. Informed by the *Wind Vision* roadmap and subsequent survey, summit sessions will address three categories of R&D activities: (1) *Turbine Technology Innovation and Extreme-Scale Turbines*, (2) *The SMART Wind Plant*, and (3) *Grid-enhancing Wind Power Plants*.

#### Public Participation

Although this meeting is primarily intended to be an information sharing event with design, consulting, assessment and operations professionals with experience in addressing the short and long-term challenges of wind energy development and operations, the event is open to the public based upon space availability. DOE anticipates that wind power professionals will share insights on the technological and science gaps that limit the growth of wind power capacity and generation and impede the enhancement of wind power technology and operations for greater value to the nation. As seating is limited, please RSVP to Alexsandra Lemke by January 3rd, 2018. DOE will also accept public comments as described above for purposes of better understanding the wind power industry and challenges associated with increased deployment. These comments may be submitted at [Alexsandra.lemke@EE.DOE.Gov](mailto:Alexsandra.lemke@EE.DOE.Gov).

Participants should limit information and comments to those based on personal experience, individual advice, information, or facts regarding this topic. It is not the object of this session to obtain any group position or consensus from the meeting participants.

<sup>1</sup> <https://energy.gov/eere/wind/wind-vision>.

### Information on Services for Individuals With Disabilities

Individuals requiring special accommodations at the meeting should contact [Alexandra.lemke@ee.doe.gov](mailto:Alexandra.lemke@ee.doe.gov).

Following the meeting, a summary will be compiled by DOE; and a public summary of the 2017 survey results will also be distributed, the summary will be posted at [wind.energy.gov](http://wind.energy.gov).

Issued on December 12, 2017 in Washington, DC.

**Valerie Reed,**

*Acting Director, Wind Energy Technologies Office, Office of Energy Efficiency and Renewable Energy.*

[FR Doc. 2017-27069 Filed 12-14-17; 8:45 am]

**BILLING CODE 6450-01-P**

---

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

[EERE-2013-BT-NOC-0005]

### Appliance Standards and Rulemaking Federal Advisory Committee: Notice of Public Meeting

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of public meeting and webinar.

**SUMMARY:** This notice announces a meeting of the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC). The Federal Advisory Committee Act, requires that agencies publish notice of an advisory committee meeting in the **Federal Register**.

**DATES:** DOE will hold a public meeting on January 10, 2018 from 9 a.m. to 5 p.m., in Washington, DC. The meeting will also be broadcast as a webinar.

**ADDRESSES:** The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E-089, 1000 Independence Avenue SW, Washington, DC 20585-0121. Please see the Public Participation section of this notice for additional information on attending the public meeting, including webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

**FOR FURTHER INFORMATION CONTACT:** John Cymbalsky, ASRAC Designated Federal Officer, U.S. Department of Energy, Building Technologies Program, EE-5B, 1000 Independence Avenue SW, Washington, DC 20585-0121, (202) 287-1692, Email: [asrac@ee.doe.gov](mailto:asrac@ee.doe.gov).

**SUPPLEMENTARY INFORMATION:** The primary focus of this meeting will be the discussion and prioritization of topic areas that ASRAC can assist the Appliance and Equipment Standards Program with. DOE plans to hold this public meeting to gather advice and recommendations to the Energy Department on the development of standards and test procedures for residential appliances and commercial equipment. (The final agenda will be available for public viewing at <https://www.regulations.gov/docket?D=EERE-2013-BT-NOC-0005>.)

### Public Participation

#### Attendance at Public Meeting

The time, date and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections of this document. If you plan to attend the public meeting, please notify the ASRAC staff at [asrac@ee.doe.gov](mailto:asrac@ee.doe.gov).

Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If a foreign national wishes to participate in the public meeting, please inform DOE as soon as possible by contacting Ms. Regina Washington at (202) 586-1214 or by email: [Regina.Washington@ee.doe.gov](mailto:Regina.Washington@ee.doe.gov) so that the necessary procedures can be completed.

DOE requires visitors to have laptops and other devices, such as tablets, checked upon entry into the building. Any person wishing to bring these devices into the Forrestal Building will be required to obtain a property pass. Visitors should avoid bringing these devices, or allow an extra 45 minutes to check in. Please report to the visitor's desk to have devices checked before proceeding through security.

Due to the REAL ID Act implemented by the Department of Homeland Security (DHS), there have been recent changes regarding ID requirements for individuals wishing to enter Federal buildings from specific States and U.S. territories. DHS maintains an updated website identifying the State and territory driver's licenses that currently are acceptable for entry into DOE facilities at <https://www.dhs.gov/real-id-enforcement-brief>. A driver's license from a State or territory identified as not compliant by DHS will not be accepted for building entry and one of the alternate forms of ID listed below will be required. Acceptable alternate forms of Photo-ID include U.S. Passport or Passport Card; an Enhanced Driver's License or Enhanced ID-Card issued by

States and territories as identified on the DHS website (Enhanced licenses issued by these States and territories are clearly marked Enhanced or Enhanced Driver's License); a military ID or other Federal government-issued Photo-ID card.

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website: <https://energy.gov/eere/buildings/public-meetings-and-comment-deadlines>. Participants are responsible for ensuring their systems are compatible with the webinar software.

#### Procedure for Submitting Prepared General Statements for Distribution

Any person who has plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **FOR FURTHER INFORMATION CONTACT** section of this notice. The request and advance copy of statements must be received at least one week before the public meeting and may be emailed, hand-delivered, or sent by mail. DOE prefers to receive requests and advance copies via email. Please include a telephone number to enable DOE staff to make a follow-up contact, if needed.

#### Conduct of Public Meeting

ASRAC's Designated Federal Officer will preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics.

DOE will permit, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other relevant matters. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be included on DOE's website: <https://energy.gov/eere/buildings/appliance-standards-and-rulemaking-federal-advisory-committee>. In addition, any person may buy a copy of the transcript from the transcribing reporter.

Issued in Washington, DC, on December 5, 2017.

**Kathleen B. Hogan,**

*Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.*

[FR Doc. 2017-27072 Filed 12-14-17; 8:45 am]

**BILLING CODE 6450-01-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2015-0794; 9970-53]

### Registration Review; Draft Human Health and/or Ecological Risk Assessments for Several Pesticides; Notice of Availability

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of EPA's draft human health and ecological risk assessments for the registration review of abamectin, buprofezin, chlorpropham, emamectin benzoate, fludioxonil, fluopicolide, fluridone, methiocarb, norflurazon, oryzalin, PBO (piperonyl buotoxide), pyriproxyfen, and quinoxifen. This notice also announces the availability of EPA's draft human health risk assessments for the registration review of 2,4-D, bifenthrin, and cyfluthrins.

**DATES:** Comments must be received on or before February 13, 2018.

**ADDRESSES:** Submit your comments, to the docket identification (ID) number for

the specific pesticide of interest provided in the Table in Unit IV, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

#### FOR FURTHER INFORMATION CONTACT:

*For pesticide specific information contact:* The Chemical Review Manager for the pesticide of interest identified in the Table in Unit IV.

*For general questions on the registration review program, contact:* Dana Friedman, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (703) 308-8015; email address: [friedman.dana@epa.gov](mailto:friedman.dana@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the Chemical Review Manager identified in the Table in Unit IV.

###### B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through [regulations.gov](http://www.regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that

you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <http://www.epa.gov/dockets/comments.html>.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

## II. Background

Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. As part of the registration review process, the Agency has completed comprehensive draft human health and/or ecological risk assessments for all pesticides listed in the Table in Unit IV. After reviewing comments received during the public comment period, EPA may issue a revised risk assessment, explain any changes to the draft risk assessment, and respond to comments and may request public input on risk mitigation before completing a proposed registration review decision for the pesticides listed in the Table in Unit IV. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

**III. Authority**

EPA is conducting its registration review of the chemicals listed in the Table in Unit IV pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product

may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

**IV. Registration Reviews**

As directed by FIFRA section 3(g), EPA is reviewing the pesticide registration for the pesticides listed in the Table to ensure that it continues to satisfy the FIFRA standard for registration—that is, that these chemicals can still be used without unreasonable adverse effects on human health or the environment.

TABLE—DRAFT RISK ASSESSMENTS BEING MADE AVAILABLE FOR PUBLIC COMMENT

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
2,4-D, Case 0073 .....	EPA-HQ-OPP-2012-0330	Christian Bongard, <a href="mailto:Bongard.christian@epa.gov">Bongard.christian@epa.gov</a> , (703) 347-0337.
Abamectin, Case 7430 .....	EPA-HQ-OPP-2013-0360	Julie Javier, <a href="mailto:Javier.julie@epa.gov">Javier.julie@epa.gov</a> , (703) 347-0790.
Bifenthrin, Case 7402 .....	EPA-HQ-OPP-2010-0384	Jordan Page, <a href="mailto:Page.jordan@epa.gov">Page.jordan@epa.gov</a> , (703) 347-0467.
Buprofezin, Case 7462 .....	EPA-HQ-OPP-2012-0373	Patricia Biggio, <a href="mailto:Biggio.patricia@epa.gov">Biggio.patricia@epa.gov</a> , (703) 347-0547.
Chlorpropham, Case 0271 .....	EPA-HQ-OPP-2010-0923	Marianne Mannix, <a href="mailto:mannix.marianne@epa.gov">mannix.marianne@epa.gov</a> , (703) 347-0275.
Cyfluthrins, Case 7405 .....	EPA-HQ-OPP-2010-0684	Garland Waleko, <a href="mailto:Waleko.garland@epa.gov">Waleko.garland@epa.gov</a> , (703) 308-8049.
Emamectin Benzoate, Case 7607 .....	EPA-HQ-OPP-2011-0483	Susan Bartow, <a href="mailto:bartow.susan@epa.gov">bartow.susan@epa.gov</a> , (703) 603-0065.
Fludioxonil, Case 7017 .....	EPA-HQ-OPP-2010-1067	Patricia Biggio, <a href="mailto:Biggio.patricia@epa.gov">Biggio.patricia@epa.gov</a> , (703) 347-0547.
Fluopicolide, Case 7055 .....	EPA-HQ-OPP-2013-0037	Thomas Harty, <a href="mailto:Harty.thomas@epa.gov">Harty.thomas@epa.gov</a> , (703) 347-0338.
Fluridone, Case 7200 .....	EPA-HQ-OPP-2009-0160	Leigh Rimmer, <a href="mailto:Rimmer.leigh@epa.gov">Rimmer.leigh@epa.gov</a> , 703-347-0553.
Methiocarb, Case 0577 .....	EPA-HQ-OPP-2010-0278	Veronica Dutch, <a href="mailto:Dutch.veronica@epa.gov">Dutch.veronica@epa.gov</a> , 703-308-8585.
Norflurazon, Case 0229 .....	EPA-HQ-OPP-2012-0565	Moana Appleyard, <a href="mailto:Appleyard.moana@epa.gov">Appleyard.moana@epa.gov</a> , (703) 308-8175.
Oryzalin, Case 0186 .....	EPA-HQ-OPP-2010-0940	Christina Scheltema, <a href="mailto:Scheltema.christina@epa.gov">Scheltema.christina@epa.gov</a> , (703) 308-2201.
PBO (piperonyl butoxide), Case 2525 .....	EPA-HQ-OPP-2010-0498	Mark Baldwin, <a href="mailto:Baldwin.marka@epa.gov">Baldwin.marka@epa.gov</a> , (703) 308-0504.
Pyriproxyfen, Case 7424 .....	EPA-HQ-OPP-2011-0677	Caitlin Newcamp, <a href="mailto:Newcamp.caitlin@epa.gov">Newcamp.caitlin@epa.gov</a> , (703) 347-0325.
Quinoxifen, Case 7037 .....	EPA-HQ-OPP-2013-0771	Katherine St. Clair, <a href="mailto:Stclair.katherine@epa.gov">Stclair.katherine@epa.gov</a> , (703) 347-8778.

Pursuant to 40 CFR 155.53(c), EPA is providing an opportunity, through this notice of availability, for interested parties to provide comments and input concerning the Agency’s draft human health and/or ecological risk assessments for the pesticides listed in the Table in Unit IV. For abamectin and emamectin benzoate, EPA is issuing a revised cumulative screening risk assessment in addition to chemical-specific ecological and human health risk assessments. For the pyrethroids bifenthrin and cyfluthrins, the ecological assessment for all of the pyrethroids was previously published for comment in the **Federal Register** in November 29, 2016 (81 FR 85952; FRL-9953-53); EPA is now publishing the single chemical human health risk assessments for bifenthrin and cyfluthrins. For 2,4-D, the ecological assessment was previously published for comment in the **Federal Register** in May 25, 2017 (82 FR 24117; FRL-9957-98); EPA is now publishing the human health risk assessment for 2,4-D. The Agency will consider all comments received during the public comment period and make changes, as appropriate, to a draft human health and/or ecological risk assessment. EPA may then issue a revised risk assessment, explain any changes to the

draft risk assessment, and respond to comments.

**Information submission requirements.** Anyone may submit data or information in response to this document. To be considered during a pesticide’s registration review, the submitted data or information must meet the following requirements:

- To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.
- The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.
- Submitters must clearly identify the source of any submitted data or information.
- Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency

should reconsider the data or information in the pesticide’s registration review.

As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

**Authority:** 7 U.S.C. 136 *et seq.*

Dated: November 20, 2017.

**Yu-Ting Guilaran,**

*Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.*

[FR Doc. 2017-27098 Filed 12-14-17; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

[ER-FRL-9036-6]

**Environmental Impact Statements; Notice of Availability**

*Responsible Agency:* Office of Federal Activities, General Information (202) 564-7146 or <http://www2.epa.gov/nepa>. Weekly receipt of Environmental Impact Statements  
Filed 12/04/2017 Through 12/08/2017

Pursuant to 40 CFR 1506.9

**Notice**

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: <https://cdxnodengn.epa.gov/cdx-nepa-public/action/eia/search>.

*EIS No. 20170238, Draft, FERC, CA, Lassen Lodge Hydroelectric Project, Comment Period Ends: 02/02/2018, Contact: Kenneth Hogan 202-502-8434.*

*EIS No. 20170239, Final Supplement, BOEM, LA, Gulf of Mexico OCS Lease Sale Final Supplemental Environmental Impact Statement 2018, Review Period Ends: 01/15/2018, Contact: Mr. Greg Koslowski 504-736-2512.*

*EIS No. 20170240, Final, ARS, USFS, WY, Final Environmental Impact Statement—Use of Domestic Sheep, Goats, and Pack Goats, Review Period Ends: 02/13/2018, Contact: Casey McQuiston 307-578-5134.*

**Amended Notices**

*EIS No. 20170218, Draft, NMFS, WA, 10 Salmon and Steelhead Hatchery Programs in the Duwamish-Green River Basin, Contact: Steve Leider 360-753-4650, Revision to FR Notice Published 11/03/2017; Extending Comment Period from 12/20/2017 to 01/19/2018.*

Dated: December 12, 2017.

**Kelly Knight**

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2017-27090 Filed 12-14-17; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

[EPA-HQ-OPP-2017-0069; FRL-9969-98]

**Product Cancellation Order for Certain Pesticide Registrations**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's order for the cancellations, voluntarily requested by the registrants and accepted by the Agency, of the products listed in Table 1 of Unit II, pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

This cancellation order follows an April 10, 2017 **Federal Register** Notice of Receipt of Requests from the registrants listed in Table 2 of Unit II to voluntarily cancel these product registrations. In the April 10, 2017 notice, EPA indicated that it would issue an order implementing the cancellations, unless the Agency received substantive comments within the 180-day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests. The Agency did not receive any comments on the notice. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

**DATES:** The cancellations are effective December 15, 2017.

**FOR FURTHER INFORMATION CONTACT:** Christopher Green, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone

number: (703) 347-0367; email address: [green.christopher@epa.gov](mailto:green.christopher@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this action apply to me?*

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

*B. How can I get copies of this document and other related information?*

The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2017-0069, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPP Docket is (703) 305-5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

**II. What action is the Agency taking?**

This notice announces the cancellations, as requested by registrants, of products registered under FIFRA section 3 (7 U.S.C. 136a). These registrations are listed in sequence by registration number in Table 1 of this unit.

TABLE 1—PRODUCT CANCELLATIONS

Registration No.	Company No.	Product name	Active ingredient
42750-78 .....	42750	Picloram Acid Technical .....	Picloram.
42750-183 .....	42750	Picloram Acid Technical .....	Picloram.
66171-1 .....	66171	Advantage 256 .....	2-Benzyl-4-chlorophenol; 4-tert-Amylphenol; & o-Phenylphenol (NO INERT USE).
66171-2 .....	66171	Advantage 128 .....	2-Benzyl-4-chlorophenol; 4-tert-Amylphenol; & o-Phenylphenol (NO INERT USE).
OR-990007 .....	62719	Kerb 50W Herbicide in WSP .....	Propyzamide.
WA-060002 .....	62719	Kerb 50-W .....	Propyzamide.
WA-960004 .....	279	Fyfanon ULV AG .....	Malathion (NO INERT USE).

Table 2 of this unit includes the names and addresses of record for all

registrants of the products in Table 1 of this unit, in sequence by EPA company

number. This number corresponds to the first part of the EPA registration

numbers of the products listed in Table 1 of this unit.

TABLE 2—REGISTRANTS OF CANCELLED PRODUCTS

EPA company No.	Company name and address
279 .....	FMC Corporation, 2929 Walnut Street, Philadelphia, PA 19104.
42750 .....	Albaugh, LLC, P.O. Box 2127, Valdosta, GA 31604–2127.
62719 .....	Dow AgroSciences, LLC, 9330 Zionsville Rd., 308/2E, Indianapolis, IN 46268–1054.
66171 .....	Preserve International, 944 Nandino Blvd., Lexington, KY 40511.

### III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received no comments in response to the **Federal Register** notice of April 10, 2017 (82 FR 17258) (FRL–9959–67) announcing the Agency's receipt of the requests for voluntary cancellations of products listed in Table 1 of Unit II.

### IV. Cancellation Order

Pursuant to FIFRA section 6(f) (7 U.S.C. 136d(f)), EPA hereby approves the requested cancellations of the registrations identified in Table 1 of Unit II. Accordingly, the Agency hereby orders that the product registrations identified in Table 1 of Unit II are canceled. The effective date of the cancellations that are the subject of this notice is December 15, 2017. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit II in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI will be a violation of FIFRA.

### V. What is the Agency's authority for taking this action?

Section 6(f)(1) of FIFRA (7 U.S.C. 136d(f)(1)) provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment in the **Federal Register** of April 10, 2017. The comment period closed on October 10, 2017.

### VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and

which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The existing stocks provisions for the products subject to this order are as follows.

The registrants may continue to sell and distribute existing stocks of products listed in Table 1 of Unit II until December 17, 2018, which is 1 year after the publication of the Cancellation Order in the **Federal Register**. Thereafter, the registrants are prohibited from selling or distributing products listed in Table 1, except for export in accordance with FIFRA section 17 (7 U.S.C. 1360), or proper disposal. Persons other than the registrants may sell, distribute, or use existing stocks of products listed in Table 1 of Unit II until existing stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

**Authority:** 7 U.S.C. 136 *et seq.*

Dated: November 14, 2017.

**Hamaad A. Syed,**

*Acting Director, Information Technology and Resources Management Division, Office of Pesticide Programs.*

[FR Doc. 2017–27093 Filed 12–14–17; 8:45 am]

**BILLING CODE 6560–50–P**

### ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2016–0729; FRL–9970–52]

### Registration Review Proposed Interim Decisions for Several Pesticides; Notice of Availability

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of EPA's proposed interim registration review decisions and opens a 60-day public comment period on the proposed interim decisions for the following pesticides: Cloransulam-methyl, cymoxanil, cyprodinil, diethylene glycol monomethyl ether

(DGME), dimethomorph, fomesafen, kresoxim-methyl, metalaxyl & mefenoxam, and the mineral acids. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, that the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

**DATES:** Comments must be received on or before February 13, 2018.

**ADDRESSES:** Submit your comments, identified by the docket identification (ID) number for the specific pesticide of interest provided in the table in Unit II, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

### FOR FURTHER INFORMATION CONTACT:

*For pesticide specific information, contact:* The Chemical Review Manager for the pesticide of interest identified in the table in Unit II.

*For general information on the registration review program, contact:* Dana Friedman, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection



Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (703) 347-8827; email address: [friedman.dana@epa.gov](mailto:friedman.dana@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this action apply to me?*

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action

to a particular entity, consult the Chemical Review Manager for the pesticide of interest identified in the table in Unit II.

*B. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through [regulations.gov](http://regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI

must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <http://www.epa.gov/dockets/comments.html>.

**II. What action is the Agency taking?**

Pursuant to 40 CFR 155.58, this notice announces the availability of EPA's proposed interim registration review decisions for the pesticides shown in the following table, and opens a 60-day public comment period on the proposed interim decisions. For cloransulam-methyl, this notice also opens a comment period on the draft human health and ecological risk assessments.

TABLE—REGISTRATION REVIEW PROPOSED INTERIM DECISIONS BEING ISSUED

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
Cloransulam-methyl, Case 7243 .....	EPA-HQ-OPP-2010-0855	Patricia Biggio, <a href="mailto:biggio.patricia@epa.gov">biggio.patricia@epa.gov</a> , 703-347-0547.
Cymoxanil, Case 7023 .....	EPA-HQ-OPP-2012-0148	Moana Appleyard, <a href="mailto:appleyard.moana@epa.gov">appleyard.moana@epa.gov</a> , 703-308-8175.
Cyprodinil, Case 7025 .....	EPA-HQ-OPP-2011-1008	Cathryn Britton, <a href="mailto:britton.cathryn@epa.gov">britton.cathryn@epa.gov</a> , 703-308-0136.
Diethylene Glycol Monomethyl Ether (DGME), Case 5010.	EPA-HQ-OPP-2010-0694	Stephen Savage, <a href="mailto:savage.stephen@epa.gov">savage.stephen@epa.gov</a> , 703-347-0345.
Dimethomorph, Case 7021 .....	EPA-HQ-OPP-2013-0045	Linsey Walsh, <a href="mailto:walsh.linsey@epa.gov">walsh.linsey@epa.gov</a> , 703-347-8030.
Fomesafen, Case 7211 .....	EPA-HQ-OPP-2006-0239	Leigh Rimmer, <a href="mailto:rimmer.leigh@epa.gov">rimmer.leigh@epa.gov</a> , 703-347-0553.
Kresoxim-methyl, Case 7026 .....	EPA-HQ-OPP-2012-0861	Bilin Basu, <a href="mailto:basu.bilin@epa.gov">basu.bilin@epa.gov</a> , 703-347-0455.
Metalaxyl and Mefenoxam, Case 0081 .....	EPA-HQ-OPP-2009-0863	Leigh Rimmer, <a href="mailto:rimmer.leigh@epa.gov">rimmer.leigh@epa.gov</a> , 703-347-0553.
Mineral Acids, Case 4064 .....	EPA-HQ-OPP-2008-0766	Rachel Ricciardi, <a href="mailto:ricciardi.rachel@epa.gov">ricciardi.rachel@epa.gov</a> , 703-347-0465. Cathryn Britton, <a href="mailto:britton.cathryn@epa.gov">britton.cathryn@epa.gov</a> , 703-308-0136.

The registration review docket for a pesticide includes earlier documents related to the registration review case. For example, the review opened with a Preliminary Work Plan, for public comment. A Final Work Plan was placed in the docket following public comment on the Preliminary Work Plan.

The documents in the dockets describe EPA's rationales for conducting additional risk assessments for the registration review of the pesticides included in the table in Unit II, as well as the Agency's subsequent risk findings and consideration of possible risk mitigation measures. These proposed interim registration review decisions are supported by the rationales included in those documents.

Following public comment, the Agency will issue interim or final registration review decisions for the pesticides listed in the table in Unit II.

The registration review program is being conducted under congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. Section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)

(7 U.S.C. 136a(g)) required EPA to establish by regulation procedures for reviewing pesticide registrations, originally with a goal of reviewing each pesticide's registration every 15 years to ensure that a pesticide continues to meet the FIFRA standard for registration. The Agency's final rule to implement this program was issued in August 2006 and became effective in October 2006, and appears at 40 CFR part 155, subpart C. The Pesticide Registration Improvement Act of 2003 (PRIA) was amended and extended in September 2007. FIFRA, as amended by PRIA in 2007, requires EPA to complete registration review decisions by October 1, 2022, for all pesticides registered as of October 1, 2007.

The registration review final rule at 40 CFR 155.58(a) provides for a minimum 60-day public comment period on all proposed interim registration review decisions. This comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the proposed interim decision. All comments should be submitted using

the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. These comments will become part of the docket for the pesticides included in the table in Unit II. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

The Agency will carefully consider all comments received by the closing date and may provide a "Response to Comments Memorandum" in the docket. The interim registration review decision will explain the effect that any comments had on the interim decision and provide the Agency's response to significant comments.

Background on the registration review program is provided at: <http://www.epa.gov/pesticide-reevaluation>.

**Authority:** 7 U.S.C. 136 *et seq.*

Dated: November 27, 2017.

**Charles Smith,**

*Acting Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.*

[FR Doc. 2017-27100 Filed 12-14-17; 8:45 am]

**BILLING CODE 6560-50-P**



**ENVIRONMENTAL PROTECTION  
AGENCY**

[EPA-R04-RCRA-2017-0534; FRL-9967-81-Region 4]

**Alabama: Notice of Determination of Adequacy of Alabama's Financial Assurance Regulations for the State's Municipal Solid Waste Landfill Permit Program****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

**SUMMARY:** On November 28, 2016, the Alabama Department of Environmental Management (ADEM) submitted a final solid waste Financial Assurance Program Approval Application to the Environmental Protection Agency (EPA) seeking a Determination of Adequacy for its solid waste financial assurance regulations. ADEM supplemented this application on January 4 and 5, 2017. Subject to review and comment, this document approves ADEM's application and grants a Determination of Adequacy for Alabama's municipal solid waste landfill (MSWLF) financial assurance program.

**DATES:** This Determination of Adequacy for Alabama's MSWLF financial assurance regulations will be effective February 13, 2018, unless adverse comments are received on or before February 13, 2018. If EPA receives adverse comments, EPA will review such comments and publish another **Federal Register** document responding to the comments and either affirming or revising this initial decision.

**ADDRESSES:** Written comments, identified by Docket ID No. EPA-R04-RCRA-2017-0534, can be submitted to the *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the online instructions for submitting comments. Comments can also be sent to Davy Simonson, Materials and Waste Management Branch, Resource Conservation and Restoration Division, U.S. EPA Region 4, Atlanta Federal Center, 61 Forsyth Street SW (Mailcode: 9T25), Atlanta, Georgia 30303-8960; telephone: (404) 562-8457. Comments may be submitted electronically to [simonson.davy@epa.gov](mailto:simonson.davy@epa.gov), or by facsimile to (404) 562-9964. You may examine copies of the application materials submitted by Alabama during normal business hours at EPA Region 4, or at the offices of ADEM, 1400 Coliseum Boulevard, Montgomery, Alabama 36110-2400, attn: Russell A. Kelly, Chief, Permits and Services Division, telephone: (334) 271-7714.

Once submitted, comments cannot be edited or withdrawn. EPA may publish any comment received at its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:**

Davy Simonson, Materials and Waste Management Branch, Resource Conservation and Restoration Division, U.S. EPA Region 4, Atlanta Federal Center, 61 Forsyth Street SW (Mailcode: 9T25), Atlanta, Georgia 30303-8960; telephone number: (404) 562-8457; fax number: (404) 562-9964; email address: [simonson.davy@epa.gov](mailto:simonson.davy@epa.gov).

**SUPPLEMENTARY INFORMATION:****I. Background**

Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6945(c)(1)(B), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires that states develop and implement permit programs to ensure that MSWLFs receiving household hazardous waste or small quantity generator waste comply with the minimum federal criteria for MSWLFs in Title 40 of the Code of Federal Regulations (40 CFR) part 258. Section 4005(c)(1)(C) of RCRA, 42 U.S.C. 6945(c)(1)(C), then requires that EPA determine whether a state's MSWLF permit program is adequate. The federal regulations at 40 CFR part 239 set forth the procedures EPA will follow in determining the adequacy of such state programs.

In 1993, Alabama applied to EPA for partial program approval for its MSWLF permit program. At that time, ADEM did not have the statutory authority to require financial assurance at MSWLFs; however, its regulations contained all of the other required MSWLF criteria in 40 CFR part 258. On March 2, 1994 (59 FR 9979), EPA granted a Determination of Adequacy to Alabama, approving its

MSWLF permit program, with the exception of the financial assurance criteria contained in 40 CFR part 258, subpart G. In June 2005, the Alabama State Legislature enacted a statute allowing ADEM to require financial assurance at MSWLFs. Alabama's regulations were amended in December 2005 to add financial assurance requirements that mirror the federal financial assurance regulations at 40 CFR part 258, subpart G.

On November 28, 2016, Alabama submitted a final solid waste Financial Assurance Program Approval Application to EPA. ADEM submitted supplemental information to support its application on January 4 and 5, 2017. The application covers ADEM's MSWLF financial assurance program, only.

**II. Decision**

After reviewing Alabama's application, EPA concludes that Alabama's financial assurance regulations, as set forth at ADEM Administrative Code (Admin. Code r.) 335-13-4-.28, along with the statutory authority provided in Section 22-27-8 of the Alabama Code, are adequate to ensure compliance with the federal criteria set forth at 40 CFR part 258, subpart G (§§ 258.70 through 258.74). Accordingly, EPA is granting a Determination of Adequacy for the portion of Alabama's MSWLF permit program relating to financial assurance requirements. EPA's approval of Alabama's financial assurance program will result in full federal approval of the State's MSWLF permit program.

This action takes effect sixty (60) days after the date of publication if no adverse comments are received. EPA's action only addresses Alabama's financial assurance requirements for its MSWLF permit program. EPA is not reopening, nor soliciting public comments on, its prior approval of the remaining portions of Alabama's MSWLF permit program. EPA will only respond to comments addressing the financial assurance portion of Alabama's MSWLF permit program.

**Authority:** This action is issued under the authority of sections 2002, 4005, and 4010(c) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6945, and 6949(a).

Dated: November 9, 2017.

**Onis "Trey" Glenn, III,***Regional Administrator, Region 4.*

[FR Doc. 2017-27102 Filed 12-14-17; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

[EPA-HQ-OPP-2017-0008; FRL-9970-49]

**Pesticide Product Registration; Receipt of Applications for New Uses****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

**SUMMARY:** EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

**DATES:** Comments must be received on or before January 16, 2018.

**ADDRESSES:** Submit your comments, identified by the Docket Identification (ID) Number and the File Symbol of interest as show in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:**

Michael Goodis, Registration Division (7505P), main telephone number: (703) 305-7090; email address:

[RDfRNotices@epa.gov](mailto:RDfRNotices@epa.gov). The mailing address for each contact person is:

Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001.

**SUPPLEMENTARY INFORMATION:****I. General Information***A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or

pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

*B. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through [regulations.gov](http://www.regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <http://www.epa.gov/dockets/comments.html>.

**II. Registration Applications**

EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

**III. New Uses**

1. *EPA Registration Number:* 100-936, 100-938, 100-941, 100-1147, 100-1291, 100-1458. *Docket ID number:* EPA-HQ-OPP-2017-0234. *Applicant:* Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419. *Active ingredient:* Thiamethoxam. *Product type:* Insecticide. *Proposed Use:* Foliar application to wheat, barley, corn, sorghum, alfalfa, rice, and potato. *Contact:* RD.

2. *EPA Registration Numbers:* 524-591 and 66478-1. *Docket ID number:* EPA-HQ-OPP-2017-0235. *Applicant:* Monsanto Company, 800 N. Lindbergh Blvd., St. Louis, Missouri 63167. *Active ingredient:* Acetochlor. *Product type:* Herbicide. *Proposed use:* Alfalfa. *Contact:* RD.

3. *EPA Registration Number:* 91274-1. *Docket ID number:* EPA-HQ-OPP-2017-0508. *Applicant:* IGI, LLC, 600 West Taddel Road Acampo, CA 95220. *Active ingredient:* Carbon Dioxide. *Product type:* Rodenticide. *Proposed Uses:* Treatment of burrows of voles, gophers, wood chucks, and ground squirrels. *Contact:* RD.

4. *EPA Registration Numbers:* 92198-R. *Docket ID Number:* EPA-HQ-OPP-2017-0529. *Applicant:* All In One Medical, Enterprise Drive Four Ashes, Wolverhampton WV10 7DF, United Kingdom. (Represented by Exponent, 1150 Constitution Ave. NW, Washington DC). *Active Ingredient:* DDAC. *Product Type:* Antimicrobial End-Use Product. *Proposed Uses:* Materials preservative for non-clothing textiles. *Contact:* AD

5. *File Symbol:* 7F8592. *EPA Registration Numbers:* 100-759 and 100-1308. *Docket ID number:* EPA-HQ-OPP-2017-0538. *Applicant:* Syngenta Crop Protection, LLC 410 Swing Road, Greensboro, NC 27409. *Active ingredient:* Fludioxonil. *Product type:* Fungicide. *Proposed use:* Post-harvest sugar beet. *Contact:* RD.

6. *EPA Registration Numbers:* 59639-97, 59639-193, 59639-206 and 59639-207. *Docket ID Number:* EPA-HQ-OPP-2017-0333. *Applicant:* Valent U.S.A. Corporation, 1600 Riviera Ave., Suite 200, Walnut Creek, CA 94596. *Active Ingredient:* Flumioxazin. *Product Type:* Herbicide. *Proposed Uses:* Grass grown for seeds. *Contact:* RD.

7. *EPA Registration Numbers:* 62719-73, 62719-80, and 62719-81. *Docket ID number:* EPA-HQ-OPP-2017-0035. *Applicant:* Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268. *Active ingredient:* Clopyralid. *Product type:* Herbicide. *Proposed Uses:* Pear and Radish *Contact:* RD.

8. *EPA Registration Number:* 62719-285. *Docket ID number:* EPA-HQ-OPP-2017-0226. *Applicant:* Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268. *Active ingredient:* Fluroxypyr 1-methylheptyl ester. *Product type:* Herbicide. *Proposed use:* Formulation of end-use products used on teff. *Contact:* RD.

9. *EPA Registration Number:* 62719-559. *Docket ID number:* EPA-HQ-OPP-2017-0226. *Applicant:* Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268. *Active*

*ingredient:* Florasulam. *Product type:* Herbicide. *Proposed use:* Formulation of end-use products used on teff. *Contact:* RD.

10. *EPA Registration Number:* 62719-567. *Docket ID number:* EPA-HQ-OPP-2017-0226. *Applicant:* Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268. *Active ingredient:* Pyroxsulam. *Product type:* herbicide. *Proposed use:* Formulation of end-use products used on teff. *Contact:* RD.

11. *EPA Registration Number:* 62719-582. *Docket ID number:* EPA-HQ-OPP-2017-0226. *Applicant:* Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268. *Active ingredients:* Florasulam, fluroxypyr 1-methylheptyl ester, and pyroxsulam. *Product type:* Herbicide. *Proposed use:* Special Local Needs (24(c)) use on teff to control broadleaf weeds. *Contact:* RD.

12. *EPA Registration Number:* 62719-664. *Docket ID number:* EPA-HQ-OPP-2017-0511. *Applicant:* Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268. *Active ingredient:* Halauxifen-methyl. *Product type:* Herbicide. *Proposed use:* Formulation into end-use products used on turf. *Contact:* RD.

13. *EPA Registration Numbers:* 63588-91 and 63588-92. *Docket ID Number:* EPA-HQ-OPP-2017-0334. *Applicant:* K-I Chemical USA, Inc., 11 Martine Ave., Suite 970, White Plains, NY 10606. *Active Ingredient:* Pyroxasulfone. *Product Type:* Herbicide. *Proposed Uses:* Leaf petiole vegetable subgroup 22B; Cottonseed subgroup 20C; Peppermint, oil; Peppermint, tops; Spearmint, oil; Spearmint, tops; Soybean, vegetable, succulent and Grass grown for seeds. *Contact:* RD.

14. *EPA Registration Numbers:* 59639-206 and 59639-193. *Docket ID Number:* EPA-HQ-OPP-2017-0334. *Applicant:* Valent U.S.A. Corporation, 1600 Riviera Ave., Suite 200, Walnut Creek CA 94596. *Active Ingredient:* Pyroxasulfone. *Product Type:* Herbicide. *Proposed Uses:* Grass grown for seeds. *Contact:* RD.

15. *File Symbol:* 62719-TEN. *Docket ID number:* EPA-HQ-OPP-2017-0511. *Applicant:* Dow AgroSciences LLC, 9330 Zionsville Road. *Active ingredients:* Halauxifen-methyl and florasulam. *Product type:* Herbicide. *Proposed use:* Turf. *Contact:* RD.

16. *File Symbol:* 62719-TEU. *Docket ID number:* EPA-HQ-OPP-2017-0511. *Applicant:* Dow AgroSciences LLC, 9330 Zionsville Road. *Active ingredients:* Halauxifen-methyl, 2,4-D choline salt, and fluroxypyr 1 methylheptyl ester. *Product type:*

Herbicide. *Proposed use:* Turf. *Contact:* RD.

**Authority:** 7 U.S.C. 136 *et seq.*

Dated: November 14, 2017.

**Hamaad Syed,**

*Acting Director, Information Technology and Resources Management Division, Office of Pesticide Programs.*

[FR Doc. 2017-27092 Filed 12-14-17; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9972-15-OAR]

### Allocations of Cross-State Air Pollution Rule Allowances From New Unit Set-Asides for 2017 Control Periods

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of data availability (NODA).

**SUMMARY:** The Environmental Protection Agency (EPA) is providing notice of the availability of preliminary lists of units eligible for second-round allocations of emission allowances for the 2017 control periods from the new unit set-asides (NUSAs) established under the Cross-State Air Pollution Rule (CSAPR). EPA has posted spreadsheets containing the lists on EPA's website. EPA will consider timely objections to the lists before determining the amounts of the second-round allocations.

**DATES:** Objections to the information referenced in this notice must be received on or before January 16, 2018.

**ADDRESSES:** Submit your objections via email to [CSAPR\\_NUSA@epa.gov](mailto:CSAPR_NUSA@epa.gov). Include "2017 NUSA allocations" in the email subject line and include your name, title, affiliation, address, phone number, and email address in the body of the email.

**FOR FURTHER INFORMATION CONTACT:**

Questions concerning this action should be addressed to Robert Miller at (202) 343-9077 or [miller.robertL@epa.gov](mailto:miller.robertL@epa.gov) or Kenon Smith at (202) 343-9164 or [smith.kenon@epa.gov](mailto:smith.kenon@epa.gov).

**SUPPLEMENTARY INFORMATION:** Under each CSAPR trading program where EPA is responsible for determining emission allowance allocations, a portion of each state's emissions budget for the program for each control period is reserved in a NUSA (and in an additional Indian country NUSA in the case of states with Indian country within their borders) for allocation to certain units that would not otherwise receive allowance allocations. The

procedures for identifying the eligible units for each control period and for allocating allowances from the NUSAs and Indian country NUSAs to those units are set forth in the CSAPR regulations at 40 CFR 97.411(b) and 97.412 (NO<sub>x</sub> Annual Trading Program), 97.511(b) and 97.512 (NO<sub>x</sub> Ozone Season Group 1 Trading Program), 97.611(b) and 97.612 (SO<sub>2</sub> Group 1 Trading Program), 97.711(b) and 97.712 (SO<sub>2</sub> Group 2 Trading Program), and 97.811(b) and 97.812 (NO<sub>x</sub> Ozone Season Group 2 Trading Program). Each NUSA allowance allocation process involves up to two rounds of allocations to eligible units, termed "new" units, followed by the allocation to "existing" units of any allowances not allocated to new units.

This notice concerns EPA's preliminary identification of units eligible to receive allowances in the second round of NUSA allocations for the 2017 control periods. The units eligible for second-round allocations for a given control period are CSAPR-affected units that commenced commercial operation between January 1 of the year before that control period and November 30 of the year of that control period. In the case of the 2017 control periods, an eligible unit therefore must have commenced commercial operation between January 1, 2016 and November 30, 2017 (inclusive). Generally, where a unit is eligible to receive a second-round NUSA allocation under a given CSAPR trading program for a given control period, the unit's maximum potential second-round allocation equals the positive difference (if any) between the unit's emissions during the control period as reported under 40 CFR part 75 and any first-round NUSA allocation the unit received.<sup>1</sup> If the total of such maximum potential allocations to all eligible units would exceed the total allowances remaining in the NUSA, the allocations are reduced on a pro-rata basis.

The preliminary lists of eligible units are set forth in Excel spreadsheets titled "CSAPR\_NUSA\_2017\_NOx\_Annual\_2nd\_Round\_Prelim\_Data," "CSAPR\_NUSA\_2017\_NOx\_Ozone\_Season\_2nd\_Round\_Prelim\_Data," and "CSAPR\_NUSA\_2017\_SO\_2nd\_Round\_Prelim\_Data" available on EPA's website at <https://www.epa.gov/csapr/csapr-compliance-year-2017-nusa-nodas>. Each

<sup>1</sup> EPA notes that a unit's emissions occurring before its monitor certification deadline are not considered to have occurred during a control period and consequently are not included in the emission amounts used to determine NUSA allocations. See 40 CFR 97.406(c)(3), 97.506(c)(3), 97.606(c)(3), 97.706(c)(3), and 97.806(c)(3).

spreadsheet contains a separate worksheet for each state covered by that program showing each unit preliminarily identified as eligible for a second-round NUSA allocation. Each state worksheet also contains a summary showing (1) the quantity of allowances initially available in that state's 2017 NUSA, (2) the sum of the 2017 NUSA allowance allocations that were made in the first round to new units in that state, if any, and (3) the quantity of allowances in the 2017 NUSA available for second-round allocations to new units (or ultimately for allocations to existing units), if any.

Objections should be strictly limited to whether EPA has correctly identified the units eligible for second-round 2017 NUSA allocations according to the criteria established in the regulations and should be emailed to the address identified in **ADDRESSES**. Objections must include: (1) Precise identification of the specific data the commenter believes are inaccurate, (2) new proposed data upon which the commenter believes EPA should rely instead, and (3) the reasons why EPA should rely on the commenter's proposed data and not the data referenced in this notice.

EPA notes that an allocation or lack of allocation of allowances to a given unit does not constitute a determination that CSAPR does or does not apply to the unit. EPA also notes that allocations are subject to potential correction if a unit to which NUSA allowances have been allocated for a given control period is not actually an affected unit as of the start of that control period.<sup>2</sup>

(Authority: 40 CFR 97.411(b), 97.511(b), 97.611(b), 97.711(b), and 97.811(b).)

Dated: December 1, 2017.

**Reid P. Harvey,**

*Director, Clean Air Markets Division, Office of Atmospheric Programs, Office of Air and Radiation.*

[FR Doc. 2017-27094 Filed 12-14-17; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2017-0006; FRL-9970-50]

### Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

**AGENCY:** Environmental Protection Agency (EPA).

<sup>2</sup> See 40 CFR 97.411(c), 97.511(c), 97.611(c), 97.711(c), and 97.811(c).

**ACTION:** Notice of filing of petitions and request for comment.

**SUMMARY:** This document announces the Agency's receipt of several initial filings of pesticide petitions requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

**DATES:** Comments must be received on or before January 16, 2018.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:**

Robert McNally, Biopesticides and Pollution Prevention Division (7511P), main telephone number: (703) 305-7090; email address: [BPPDFRNotices@epa.gov](mailto:BPPDFRNotices@epa.gov), Michael Goodis, Registration Division (7505P), main telephone number: (703) 305-7090; email address: [RDFRNotices@epa.gov](mailto:RDFRNotices@epa.gov), Steve Knizner, Antimicrobials Division (7510P), main telephone number: (703) 305-7090; email address: [ADFRNotices@epa.gov](mailto:ADFRNotices@epa.gov), Michael Goodis. The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers

determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT** for the division listed at the end of the pesticide petition summary of interest.

*B. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through [www.regulations.gov](http://www.regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <http://www.epa.gov/dockets/comments.html>.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

**II. What action is the Agency taking?**

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug,

and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the requests before responding to the petitioners. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petitions described in this document contain the data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this document, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available at <http://www.regulations.gov>.

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

### III. Amended Tolerance Exemptions for Non-Inerts (Except PIPS)

1. *PP 7F8547*. (EPA-HQ-OPP-2017-0526). Bayer CropScience LP, 2 T.W. Alexander Dr., Research Triangle Park, NC 27709, requests to amend an exemption from the requirement of a tolerance in 40 CFR 180.1257 for residues of the nematocide *Purpureocillium lilacinum* (synonym *Paecilomyces lilacinus*) strain 251 in or on all agricultural commodities to update the taxonomic description. The petitioner believes no analytical method is needed because the active ingredient has only been renamed and remains unchanged. *Contact*: BPPD.

### IV. Amended Tolerances for Non-Inerts

1. *PP 7E8597*. (EPA-HQ-OPP-2017-0476). Interregional Research Project No. 4 (IR-4), Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540, requests that the existing

tolerance in 40 CFR 180.355(a) General. (1) for the combined residues of the herbicide bentazon (3-isopropyl-1*H*-2,1,3-benzothiadiazin-4(3*H*)-one-2,2-dioxide) and its 6- and 8-hydroxy metabolites in or on pea, dry, seed be increased from 1.0 ppm to 3.0 ppm. Upon establishment of the amended tolerance, the Petitioner requests that the previously established tolerance for bentazon on pea, dry, seed at 1.0 ppm is removed. Adequate enforcement methodolog (gas liquid chromatography (GLC) methods are available for the determination of residues of bentazon and its 6- and 8-hydroxy metabolites in/on plant commodities. The limit of detection is 0.05 ppm for each regulated compound. *Contact*: RD

2. *PP 7F8592*. EPA-HQ-OPP-2017-0538. Syngenta Crop Protection, LLC 410 Swing Road, Greensboro, NC 27409, requests to amend the tolerance in 40 CFR part 180 for residues of the fungicide fludioxonil in or on Sugar beet at 5.0 parts per million (ppm). The method Syngenta Crop Protection Method AG-597B was used and has passed an Agency petition method validation for several commodities, and is currently the enforcement method to measure and evaluate the chemical fludioxonil. *Contact*: RD.

### V. New Tolerance Exemptions for Inerts (Except Pips)

1. *PP IN-11063*. (EPA-HQ-OPP-2017-0474). Toxcel, LLC, on behalf of Lanxess Corporation, 111 RIDC Park West Drive, Pittsburgh, PA 15275, requests to establish an exemption from the requirement of a tolerance for residues of aspartic acid, N-(1,2-dicarboxyethyl)-, tetrasodium salt (CAS Reg. No. 144538-83-0) when used as an inert ingredient in antimicrobial pesticide formulations (food-contact surface sanitizing solutions) under 40 CFR 180.940(a). The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact*: RD

2. *PP IN-11066*. (EPA-HQ-OPP-2017-0541). SciReg, Inc., 12733 Director's Loop, Woodbridge, VA 22192 on behalf of Solvay USA Inc., requests to establish an exemption from the requirement of a tolerance for residues of 2-isobutyl-2-methyl-1,3-dioxolane-4-methanol (CAS Reg. No. 5660-53-7) when used as an inert ingredient (solvent/cosolvent) in pesticide formulations applied to growing crops and raw agricultural commodities after harvest under 40 CFR 180.910 and when used as an inert ingredient in antimicrobial pesticide formulations (food-contact surface sanitizing

solutions) under 40 CFR 180.940(a). The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact*: RD.

### VI. New Tolerance Exemptions for Non-Inerts (Except Pips)

1. *PP 7E8567*. (EPA-HQ-OPP-2017-0525). Interregional Research Project Number 4 (IR-4), Rutgers, The State University of New Jersey, 500 College Rd. East, Suite 201 W, Princeton, NJ 08540, requests to establish an exemption from the requirement of a tolerance in 40 CFR part 180 for residues of the microbial pesticide Pepino mosaic virus, strain CH2, isolate 1906 in or on tomato. The petitioner believes no analytical method is needed because Pepino mosaic virus, strain CH2, isolate 1906 is a naturally occurring, low risk plant virus that is not related to any animal or human pathogen and is not known to be able to survive in animal or human tissue. *Contact*: BPPD.

2. *PP 4F8325*. (EPA-HQ-OPP-2017-0063). ICA Trinova, Inc., 1 Beavers Street, Suite B, Newnan, GA 30263, requests to establish an exemption from the requirement of a tolerance for residues of the antimicrobial, sodium chlorite, in or on tomatoes. The petitioner believes no analytical method is needed because no residues of chlorate were detected in tomato puree from tomatoes treated post-harvest with gaseous chlorine dioxide generated from sodium chlorite. *Contact*: AD.

3. *PP 7F8546*. (EPA-HQ-OPP-2017-0460). Envera, LLC, 220 Garfield Ave., West Chester, PA 19380, requests to establish an exemption from the requirement of a tolerance in 40 CFR part 180 for residues of the bactericide and fungicide *Bacillus amyloliquefaciens* strain ENV503 in or on all food commodities. The petitioner believes no analytical method is needed because an exemption from the requirement of a tolerance is being proposed. *Contact*: BPPD.

4. *PP 7F8599*. (EPA-HQ-OPP-2017-0487). Sunnton International Inc., 901 H St., Suite 610, Sacramento, CA 95814, requests to establish an exemption from the requirement of a tolerance in 40 CFR part 180 for residues of the plant regulator 24-epibrassinolide in or on all agricultural commodities. The petitioner believes no analytical method is needed because it is expected that, when used as proposed, 24-epibrassinolide would not result in residues that are of toxicological concern. *Contact*: BPPD.

## VII. New Tolerances for Non-Inerts

1. *PP 7E8609* (EPA-HQ-OPP-2017-0532) OAT Agrio. Ltd. 1-3-1 Kanda Ogawa-machi, Chiyoda-ku Tokyo 101-0052, Japan c/o Landis International R&D Management 3185 Madison Highway, P.O. Box 5126, Valdosta, Georgia, 31603-5126, requests to establish a tolerance in 40 CFR part 180 for residues of the miticide, cyflumetofen (2-methoxyethyl  $\alpha$ -cyano- $\alpha$ -[4-(1,1-dimethylethyl)phenyl]- $\beta$ -oxo-2-(trifluoromethyl)benzenepropanoate) in or on tea at 40 parts per million (ppm). The high performance liquid chromatography-tandem mass spectrometry method is used to measure and evaluate the chemicals, cyflumetofen and 2-trifluoromethylbenzoic acid. *Contact:* RD.

2. *PP 4F8325*. (EPA-HQ-OPP-2017-0063). ICA Trinova, Inc., 1 Beavers Street, Suite B, Newnan, GA 30263, requests to establish a tolerance in 40 CFR part 180 for residues of the antimicrobial, sodium chlorite, in or on cantaloupes at 1.5 parts ppm. Liquid chromatography—mass spectroscopy (LC/MS) is used to measure and evaluate the chemical chlorate. Adequate enforcement methodology (LC/MS) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755-5350; telephone number: (410) 305-2905; email address: *residuemethods@epa.gov*. *Contact:* AD.

3. *PP 7F8558*. (EPA-HQ-OPP-2017-0233). Bayer CropScience, 2 T. W. Alexander Drive, Research Triangle Park, NC 27709 requests to establish a tolerance in 40 CFR part 180 for residues of the insecticide, tetranilprole in or tuberous and corm vegetables, crop group 1C at 0.015 ppm; potato, wet peel at 0.02 ppm; leafy vegetables, crop group 4-16 at 20 ppm; brassica head and stem vegetables, crop group 5-16 at 1.5 ppm; fruiting vegetables, crop group 8-10 at 0.40 ppm; tomato paste at 1.5 ppm; citrus fruit, orange subgroup 10-10A at 0.50 ppm; citrus fruit, lemon/lime subgroup 10-10B at 0.80 ppm; citrus fruit, grapefruit subgroup 10-10C at 0.50 ppm; citrus oil at 4.0 ppm; pome fruit, crop group 11-10 at 0.40 ppm; stone fruit, crop group 12-12 at 1.0 ppm; plum, dried (prune) at 2.0 ppm; small fruit, vine climbing subgroup, except fuzzy kiwi, crop subgroup 13-07F at 1.5 ppm; tree nuts, crop group 14-12 at 0.03 ppm; almond hulls at 4.0 ppm; corn, field, grain at 0.015 ppm; corn, field, forage at 4.0 ppm; corn, field, stover at 15 ppm; corn, pop, grain

at 0.015 ppm; corn, pop, stover at 15 ppm; corn, sweet, kernel plus cobs with husks removed at 0.01 ppm; corn, sweet, forage at 6.0 ppm; corn, sweet, stover at 20 ppm; cottonseed, crop group 20C at 0.40 ppm; cotton, gin byproducts at 30 ppm; soybean seed at 0.20 ppm; soybean hulls at 0.60 ppm; aspirated grain fractions at 45 ppm; soybean forage at 0.07 ppm; soybean hay at 0.20 ppm; alfalfa, forage and hay at 0.06 ppm; forage, fodder and straw of cereal grains, crop group 16, except field, pop and sweet corn at 0.10 ppm; foliage of legume vegetables, crop group 7, except soybeans at 0.03 ppm; milk at 0.06 ppm; fat of cattle, horses, sheep and goats at 0.30 ppm; muscle of cattle, horses, sheep and goats at 0.03 ppm; meat by-products of cattle, horses, sheep and goats at 0.30 ppm. The high performance liquid chromatography-electrospray ionization/tandem mass spectrometry (LC/MS/MS) is used to measure and evaluate the chemical. *Contact:* RD.

**Authority:** 21 U.S.C. 346a.

Dated: November 14, 2017.

**Hammad A. Syed,**

*Acting Director, Information Technology and Resources Management Division, Office of Pesticide Programs.*

[FR Doc. 2017-27103 Filed 12-14-17; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2015-0393; FRL-9970-54]

### Interim Registration Review Decisions and Case Closures for Several Pesticides; Notice of Availability

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of EPA's interim registration review decision for the chemicals listed in the Table in Unit II of this Notice. It also announces the case closure for metiram (Case 0644 and Docket ID Number: EPA-HQ-OPP-2015-0290) because all of the U.S. registrations for this pesticide have been canceled. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration; that is, the pesticide can perform its intended function without causing unreasonable adverse effects on human health or the environment. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other

knowledge, including its effects on human health and the environment.

## SUPPLEMENTARY INFORMATION:

### I. General Information

#### A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the pesticide specific contact person listed under **FOR FURTHER INFORMATION CONTACT:** *For pesticide specific information, contact:* The Chemical Review Manager for the pesticide of interest identified in the table in Unit II.

*For general information on the registration review program, contact:* Dana Friedman, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (703) 347-8827; email address: *friedman.dana@epa.gov*.

### II. What action is the Agency taking?

Pursuant to 40 CFR 155.58(c), this notice announces the availability of EPA's interim registration review decision for the chemicals listed in the Table in Unit II.

Pursuant to 40 CFR 155.57, a registration review decision is the Agency's determination whether a pesticide meets, or does not meet, the standard for registration in Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). EPA has considered the chemicals listed in the following Table in light of the FIFRA standard for registration. The interim registration review decisions are supported by rationales included in the docket established for each chemical.

In addition to the interim registration review decision document, the registration review docket for the chemicals listed in the Table also includes other relevant documents related to the registration review of these cases. The proposed interim registration review decision was posted to the docket and the public was invited to submit any comments or new information.

TABLE—REGISTRATION REVIEW INTERIM DECISIONS BEING ISSUED

Registration review case name and number	Docket ID No.	Chemical review manager and contact information
Bifenazate case 7609 .....	EPA-HQ-OPP-2012-0633	Garland Waleko, <a href="mailto:waleko.garland@epa.gov">waleko.garland@epa.gov</a> , 703-308-8049.
Clethodim Case 7226 .....	EPA-HQ-OPP-2008-0658	Bilin Basu, <a href="mailto:basu.bilin@epa.gov">basu.bilin@epa.gov</a> , 703-347-0455.
Ethfluralin Case 2260 .....	EPA-HQ-OPP-2011-0094	Patricia Biggio, <a href="mailto:biggio.patricia@epa.gov">biggio.patricia@epa.gov</a> , 703-347-0547.
Fenitrothion Case 0445 .....	EPA-HQ-OPP-2009-0172	Leigh Rimmer, <a href="mailto:rimmer.leigh@epa.gov">rimmer.leigh@epa.gov</a> , 703-347-0553.
Pirimiphos-methyl Case 2535 .....	EPA-HQ-OPP-2009-0056	Caitlin Newcamp, <a href="mailto:newcamp.caitlin@epa.gov">newcamp.caitlin@epa.gov</a> , 703-347-0325.

EPA addressed the comments or information received during the 60-day comment period for the proposed interim decisions in the discussion for each pesticide listed in the Table. Comments from the 60-day comment period that were received may or may not have affected the Agency's interim decision.

Pursuant to 40 CFR 155.58(c), the registration review case docket for the chemicals listed in the Table will remain open until all actions required in the interim decision have been completed.

Background on the registration review program is provided at: <http://www.epa.gov/pesticide-reevaluation>. Earlier documents related to the registration review of these pesticides are provided in the chemical specific dockets listed in the Table.

This document also announces the closure of the registration review case for metiram (Case 0644 and Docket ID Number: EPA-HQ-OPP-2015-0290) because all of the U.S. registrations for this pesticide have been canceled.

**Authority:** 7 U.S.C. 136 *et seq.*

Dated: November 20, 2017.

**Yu-Ting Guilaran,**

Director, Pesticide Re-Evaluation Division,  
Office of Pesticide Programs.

[FR Doc. 2017-27095 Filed 12-14-17; 8:45 am]

**BILLING CODE 6560-50-P**

**EXPORT-IMPORT BANK**

[Public Notice: 2017-3015]

**Agency Information Collection  
Activities: Comment Request**

**AGENCY:** Export-Import Bank of the United States.

**ACTION:** Submission for OMB review and comments request.

**SUMMARY:** The Export-Import Banks of the United States (EXIM), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

The Letter of Interest (LI) is an indication of Export-Import (EXIM) Bank's willingness to consider financing a given export transaction. EXIM uses the requested information to determine the applicability of the proposed export transaction and determines whether or not to consider financing that transaction.

**DATES:** Comments must be received on or before January 16, 2018 to be assured of consideration.

**ADDRESSES:** Comments may be submitted electronically on [WWW.REGULATIONS.GOV](http://WWW.REGULATIONS.GOV) (EIB 95-09) or by mail to Office of Information and Regulatory Affairs, 725 17th Street NW, Washington, DC 20038, Attn: OMB 3048-EIB 95-09. The form can be reviewed at <https://www.exim.gov/sites/default/files/pub/pending/95-09-li.pdf>.

**SUPPLEMENTARY INFORMATION:**

*Title and Form Number:* EIB 95-09

Letter of Interest Application.

*OMB Number:* 3048-0005.

*Type of Review:* Regular.

*Need and Use:* The Letter of Interest (LI) is an indication of Export-Import (EXIM) Bank's willingness to consider financing a given export transaction. EXIM uses the requested information to determine the applicability of the proposed export transaction system prompts and determines whether or not to consider financing that transaction.

*Affected Public:* This form affects entities involved in the export of U.S. goods and services.

*Annual Number of Respondents:* 540.

*Estimated Time per Respondent:* 0.5 hours.

*Annual Burden Hours:* 270.

*Frequency of Reporting of Use:* On occasion.

*Government Expenses:*

*Reviewing Time per Year:* 270.

*Average Wages per Hour:* \$42.50.

*Average Cost per Year:* \$11,475 (time \* wages).

*Benefits and Overhead:* 20%.

*Total Government Cost:* \$13,770.

**Bassam Doughman,**

IT Specialist.

[FR Doc. 2017-27064 Filed 12-14-17; 8:45 am]

**BILLING CODE 6690-01-P**

**EXPORT-IMPORT BANK**

[Public Notice: 2017-3016]

**Agency Information Collection  
Activities: Final Collection; Comment  
Request**

**AGENCY:** Export-Import Bank of the United States.

**ACTION:** Submission for OMB review and comments request.

**SUMMARY:** The Export-Import Bank of the United States (EXIM), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

This collection will provide information needed to determine compliance and creditworthiness for transaction requests submitted to EXIM under its insurance, guarantee, and direct loan programs. Information presented in this form will be considered in the overall evaluation of the transaction, including Export-Import Bank's determination of the appropriate term for the transaction.

**DATES:** Comments should be received on or before January 16, 2018 to be assured of consideration.

**ADDRESSES:** Comments maybe submitted electronically on <http://www.regulations.gov> (EIB 11-03) or by mail to Office of Information and Regulatory Affairs, 725 17th Street NW, Washington, DC 20038 Attn: OMB 3048-0039 The form can be viewed at: <https://www.exim.gov/sites/default/files/pub/pending/eib11-03.pdf>.

**SUPPLEMENTARY INFORMATION:**

*Titles and Form Number:* EIB 11-03 Used Equipment Questionnaire.

*OMB Number:* 3048-0039.

*Type of Review:* Regular.

*Need and Use:* The information collected will provide information needed to determine compliance and creditworthiness for transaction requests submitted to the Export Import Bank under its insurance, guarantee, and direct loan programs.



*Affected Public:* This form affects entities involved in the export of U.S. goods and services.

*Annual Number of Respondents:* 50.  
*Estimated Time per Respondent:* 15 minutes.

*Annual Burden Hours:* 12.5 hours.  
*Frequency of Reporting or Use:* As needed.

*Government Expenses:*  
*Reviewing Time per Year:* 12.5 hours.  
*Average Wages per Hour:* \$42.50.  
*Average Cost per Year:* \$531.25 (time \* wages).

*Benefits and Overhead:* 20%.  
*Total Government Cost:* \$637.5.

**Bassam Doughman,**  
*IT Specialist.*

[FR Doc. 2017-27091 Filed 12-14-17; 8:45 am]

**BILLING CODE 6690-01-P**

## FEDERAL RESERVE SYSTEM

### Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Approval of information collection activity.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, with revision, the mandatory Capital Assessments and Stress Testing information collection applicable to bank holding companies (BHCs) with total consolidated assets of \$50 billion or more and U.S. intermediate holding companies (U.S. IHCs) established by foreign banking organizations under FR Y-14A/Q/M; OMB No. 7100-0341.

**DATES:** The revisions are applicable as of December 31, 2017, or March 31, 2018, as described in this notice.

**ADDRESSES:** A copy of the PRA OMB submission, including the final reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public website at: <http://www.federalreserve.gov/apps/reportforms/review.aspx> or may be requested from the agency clearance officer, whose name appears in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Nuha Elmaghrabi, Federal Reserve Board Clearance Officer, Office of the Chief Data Officer, Board of Governors

of the Federal Reserve System, Washington, DC, (202) 452-3884. Telecommunications Device for the Deaf (TDD) users may contact (202) 263-4869.

**SUPPLEMENTARY INFORMATION:** On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve of and assign OMB numbers to collection of information requests and requirements conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

### Final Approval Under OMB Delegated Authority To Extend for Three Years, With Revision, the Following Information Collection

*Report Title:* Capital Assessments and Stress Testing information collection.

*Agency Form Number:* FR Y-14A/Q/M.

*OMB Control Number:* 7100-0341.

*Effective Dates:* December 31, 2017, or March 31, 2018.

*Frequency:* Annually, semi-annually, quarterly, and monthly.

*Respondents:* The respondent panel consists of any top-tier bank holding company (BHC) or intermediate holding company (U.S. IHC) that has \$50 billion or more in total consolidated assets, as determined based on: (i) The average of the firm's total consolidated assets in the four most recent quarters as reported quarterly on the firm's Consolidated Financial Statements for Bank Holding Companies (FR Y-9C) (OMB No. 7100-0128); or (ii) the average of the firm's total consolidated assets in the most recent consecutive quarters as reported quarterly on the firm's FR Y-9Cs, if the firm has not filed an FR Y-9C for each of the most recent four quarters. Reporting is required as of the first day of the quarter immediately following the quarter in which it meets this asset threshold, unless otherwise directed by the Board.

*Estimated Annual Reporting Hours:* FR Y-14A: Summary, 67,412 hours; Macro Scenario, 2,356 hours; Operational Risk, 684 hours; Regulatory Capital Instruments, 798 hours; Business Plan Changes, 608 hours; Adjusted capital plan submission, 500 hours. FR Y-14Q: Retail, 2,280 hours; Securities, 1,976 hours; Pre-provision net revenue (PPNR), 108,072 hours; Wholesale, 22,952 hours; Trading, 92,448 hours; Regulatory Capital

Transitions, 3,496 hours; Regulatory Capital Instruments, 8,208 hours; Operational risk, 7,600 hours; Mortgage Servicing Rights (MSR) Valuation, 1,288 hours; Supplemental, 608 hours; Retail Fair Value Option/Held for Sale (Retail FVO/HFS), 1,440 hours; Counterparty, 24,672 hours; and Balances, 2,432 hours. FR Y-14M: 1st lien mortgage, 222,912 hours; Home Equity, 185,760 hours; and Credit Card, 104,448 hours. FR Y-14 On-going automation revisions, 18,240 hours; and One-time implementation, 2,400 hours. FR Y-14 Attestation On-going audit and review, 33,280 hours.

*Estimated Average Hours per Response:* FR Y-14A: Summary, 887 hours; Macro Scenario, 31 hours; Operational Risk, 18 hours; Regulatory Capital Instruments, 21 hours; Business Plan Changes, 16 hours; Adjusted capital plan submission, 100 hours. FR Y-14Q: Retail, 15 hours; Securities, 13 hours; PPNR, 711 hours; Wholesale, 151 hours; Trading, 1,926 hours; Regulatory Capital Transitions, 23 hours; Regulatory Capital Instruments, 54 hours; Operational risk, 50 hours; MSR Valuation, 23 hours; Supplemental, 4 hours; Retail FVO/HFS, 15 hours; Counterparty, 514 hours; and Balances, 16 hours. FR Y-14M: 1st Lien Mortgage, 516 hours; Home Equity, 516 hours; and Credit Card, 512 hours. FR Y-14 On-going automation revisions, 480 hours; and One-time implementation, 400 hours. FR Y-14 Attestation On-going audit and review, 2,560 hours.

*Number of Respondents:* 38.

*Legal Authorization and Confidentiality:* The FR Y-14 series of reports are authorized by section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which requires the Board to ensure that certain BHCs and nonbank financial companies supervised by the Board are subject to enhanced risk-based and leverage standards in order to mitigate risks to the financial stability of the United States (12 U.S.C. 5365). Additionally, Section 5 of the Bank Holding Company Act authorizes the Board to issue regulations and conduct information collections with regard to the supervision of BHCs (12 U.S.C. 1844).

As these data are collected as part of the supervisory process, they are subject to confidential treatment under exemption 8 of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(8)). In addition, commercial and financial information contained in these information collections may be exempt from disclosure under exemption 4 of FOIA (5 U.S.C. 552(b)(4)), if disclosure would likely have the effect of (1)



impairing the government's ability to obtain the necessary information in the future, or (2) causing substantial harm to the competitive position of the respondent. Such exemptions would be made on a case-by-case basis.

*Abstract:* The data collected through the FR Y-14A/Q/M reports provide the Board with the information and perspective needed to help ensure that large firms have strong, firm-wide risk measurement and management processes supporting their internal assessments of capital adequacy and that their capital resources are sufficient given their business focus, activities, and resulting risk exposures. The annual Comprehensive Capital Analysis and Review (CCAR) exercise complements other Board supervisory efforts aimed at enhancing the continued viability of large firms, including continuous monitoring of firms' planning and management of liquidity and funding resources and regular assessments of credit, market and operational risks, and associated risk management practices. Information gathered in this data collection is also used in the supervision and regulation of these financial institutions. To fully evaluate the data submissions, the Board may conduct follow-up discussions with, or request responses to follow up questions from, respondents.

The Capital Assessments and Stress Testing information collection consists of the FR Y-14A, Q, and M reports. The semi-annual FR Y-14A collects quantitative projections of balance sheet, income, losses, and capital across a range of macroeconomic scenarios and qualitative information on methodologies used to develop internal projections of capital across scenarios.<sup>1</sup> The quarterly FR Y-14Q collects granular data on various asset classes, including loans, securities, and trading assets, and pre-provision net revenue (PPNR) for the reporting period. The monthly FR Y-14M comprises three retail portfolio- and loan-level collections, and one detailed address matching collection to supplement two of the portfolio and loan-level collections.

*Current Actions:* On June 9, 2017, the Board published a notice in the **Federal Register** (82 FR 26793) requesting public comment for 60 days on the proposal to extend, with revision, the FR Y-14A/Q/M reports. The Board proposed (1) revising and extending for three years the Capital Assessments and Stress Testing information collection (FR Y-14A/Q/M; OMB No. 7100-0341); (2) modifying the scope of the global market shock component of the Board's stress tests (global market shock) in a manner that would include certain U.S. intermediate holding companies (U.S. IHCs) of foreign banking organizations (FBOs); and (3) making other changes to the FR Y-14 reports.

Specifically, the initial notice proposed amending the FR Y-14 to apply the global market shock to any domestic BHC or U.S. IHC that is subject to supervisory stress tests and that (1) has aggregate trading assets and liabilities of \$50 billion or more, or aggregate trading assets and liabilities equal to 10 percent or more of total consolidated assets, and (2) is not a "large and noncomplex firm" under the Board's capital plan rule.<sup>2</sup> As a result of the proposed change, based on data as of June 30, 2017, six U.S. IHCs would become subject to the global market shock, and the six domestic bank holding companies that meet the current materiality threshold would remain subject to the exercise under the proposed threshold.<sup>3</sup>

The proposed revisions to the FR Y-14M consisted of adding two items related to subsidiary identification and balance amounts, which facilitate use of these data by the Office of the Comptroller of the Currency (OCC). The addition of these items would also result in the removal of an existing item that identifies loans where the reported balance is the cycle-ending balance. A limited number of other changes to the FR Y-14 were proposed. In connection with these proposed changes, two schedules on the FR Y-14A would be removed from the collection. The revisions were proposed to be effective with the reports with data as of

<sup>2</sup> A large and noncomplex firm is defined under the capital plan rule as a firm that has average total consolidated assets of at least \$50 billion but less than \$250 billion, has average total nonbank assets of less than \$75 billion, and is not identified as global systemically important bank holding company (GSIB) under the Board's rules. See 12 CFR 225.8(d)(9).

<sup>3</sup> The firms include the five firms noted in the initial notice (Credit Suisse Holdings (USA), Inc., Barclays US LLC, DB USA Corporation, HSBC North America Holdings Inc., and UBS Americas Holdings LLC) and RBC USA HoldCo Corporation, which has since met the threshold.

September 30, 2017, or December 31, 2017.

These data are, or would be, used to assess the capital adequacy of BHCs and U.S. IHCs using forward-looking projections of revenue and losses to support supervisory stress test models and continuous monitoring efforts, as well as to inform the Board's operational decision-making as it continues to implement the Dodd-Frank Act.

The comment period for this notice expired on August 8, 2017. The Board received eight comment letters addressing the proposed changes: Three from industry groups (The Financial Services Roundtable, The Clearing House, The Institute of International Bankers), and five from U.S. IHCs that file the FR Y-14 reports. Most comment letters focused on the proposed modifications to the global market shock. Commenters requested that the Board reconsider applying the global market shock to U.S. IHCs at this time. In lieu of the proposed threshold, commenters recommended a number of alternative approaches to achieve what they indicated would be a more appropriate application of the global market shock, such as further tailoring the threshold based on risk, size, or complexity. Commenters recommended that if the Board were to adopt the modifications to the global market shock, the implementation timeline should be delayed and provide for a gradual phase-in of both the global market shock and associated FR Y-14 reporting requirements, including for BHCs or U.S. IHCs that subsequently cross the thresholds for application of the GMS in future quarters.

Two commenters also addressed the proposed changes to the FR Y-14 information collection. Those commenters expressed support for many of the clarifying and burden reducing changes, but posed clarifying questions on the proposed instructions, forms, or reporting requirements for those items. Commenters offered alternatives to or suggestions for modifying or clarifying certain proposed changes, particularly surrounding the proposed modifications to the FR Y-14Q, Schedule H (Wholesale) and Schedule L (Counterparty), and recommended that the Board delay the effective date of several of the proposed modifications. Both commenters requested the elimination of additional FR Y-14 schedules or sub-schedules.

The Board also received comments outside of the scope of this proposal regarding (1) historical resubmission of the FR Y-14Q, Schedule A.2 (Retail—U.S. Auto), (2) timing of release and

<sup>1</sup> BHCs that must re-submit their capital plan generally also must provide a revised FR Y-14A in connection with their resubmission.

content of technical instructions, (3) the Q&A (previously known as the FAQ) process, (4) the FR Y-14 attestation requirement, and (5) the removal of additional schedules or sub-schedules.

The previous annual burden for the FR Y-14A/Q/M was estimated to be 858,138 hours and, with the changes in this final notice, is estimated to increase by 58,732 hours for 916,870 aggregate burden hours. The modifications to the scope of the global market shock are estimated to increase the annual reporting burden by approximately 61,000 hours in the aggregate. All of the increase in burden due to the modification of the global market shock is attributable to the six U.S. IHCs that would become subject to the global market shock submitting the FR Y-14 trading and counterparty schedules on a quarterly basis. This includes the addition of one-time implementation burden associated with the filing of these schedules by U.S. IHCs in response to comment. Excluding the proposed modifications to the global market shock, the further changes would result in an overall net decrease of 2,084 annual reporting hours.

The following section includes a detailed discussion of aspects of the proposed FR Y-14 collection for which the Board received substantive comments and an evaluation of, and responses to the comments received. Where appropriate, responses to these comments and technical matters are also addressed in the attached final FR Y-14A/Q/M reporting forms and instructions.

#### **Proposed Revisions to the FR Y-14A/Q/M**

##### *Proposed Global Market Shock Modifications*

The global market shock currently applies to a firm with a four quarter average of total consolidated assets of \$500 billion or more. The proposal would have modified the definition of a firm with "significant trading activity" for purposes of determining applicability of the trading and counterparty components of the supervisory and company-run stress tests ("global market shock") and associated regulatory reports. As noted, the proposal would have revised the definition of "significant trading activity" to include a firm that (1) has aggregate trading assets and liabilities of \$50 billion or more, or aggregate trading assets and liabilities equal to 10 percent or more of total consolidated assets, and (2) is not a "large and noncomplex firm" under the Board's capital plan rule. The proposed changes were designed to

better align the threshold with the risk profile of firms subject to the stress test rules.

Commenters recommended various modifications to the proposed threshold. For instance, commenters recommended that the Board adopt a threshold based on the size, risk profile, or systemic importance of trading activities at the covered companies. Commenters noted that the modified threshold would scope in firms that have materially smaller trading activities and smaller systemic footprints than the firms currently subject to the global market shock. Some commenters noted that applying the global market shock to additional firms, and thereby increasing capital requirements for these firms, could disincentivize these firms to invest in their U.S. lending and securities businesses.

The global market shock is a key element of the Dodd-Frank Act stress tests. The Dodd-Frank Act requires the Board to conduct annual analyses of whether bank holding companies with total consolidated assets of \$50 billion or more have the capital necessary to absorb losses as a result of adverse economic conditions and to direct those firms to conduct stress tests under baseline, adverse, and severely adverse conditions. The Board's regulations provide that the Board will issue scenarios on an annual basis, and indicates that firms with "significant trading activity" (as identified in the Capital Assessments and Stress Testing report (FR Y-14)) may be required to include a trading and counterparty component in its stress test.

The Board's Policy Statement on Scenario Design describes how the Board develops the supervisory scenarios, including the global market shock, and why the global market shock is important for firms with significant trading activity. As described in the Policy Statement, the macroeconomic severely adverse scenario is designed to reflect conditions that characterize post-war U.S. recessions, and does not capture the effects of a sudden market dislocation. The pattern of a financial crisis, characterized by a short period of large declines in asset prices, increased volatility, and reduced liquidity of higher-risk assets is a familiar and plausible risk to capital. To the extent a firm's trading activity is sufficiently large, or represents a sufficiently large percentage of the firm's assets, the trading shock is necessary to adequately evaluate whether the firm has capital necessary to absorb losses and withstand stressful conditions.

The proposed measure was intended to provide a simple measure of the significance of a firm's trading activity to its operations. The proposed threshold would have represented a level of trading exposure that would be material to the capital of the firms subject to the global market shock. For example, unlike most banking book activities, losses stemming from trading activity potentially could be larger than the total size of on-balance sheet trading assets, for example, for derivatives exposures.

As noted by commenters, the modified threshold would include firms with smaller trading activities than the firms currently included by the \$500 billion in total consolidated assets threshold. However, the proposed revisions were designed to capture the materiality of a firm's trading activities to its operations, as well as the absolute size of a firm's trading activities. While the application of the global market shock may require a higher level of capital to meet post-stress regulatory minimums, this capital would be related to the losses arising from the firm's trading activities under stress. As such, the application of the global market shock would help to ensure that when the U.S. IHCs look to expand their U.S. lending and securities businesses, the firms are holding capital commensurate with the market risk associated with these exposures and activities.

In addition, commenters argued that the global market shock should be modified as applied to U.S. IHCs. For instance, commenters recommended that the Board modify the definition of "trading activity" to exclude hedging positions booked outside of the United States. Another commenter argued that U.S. IHCs have less flexibility to respond to a negative outcome in CCAR as many IHCs have little or no planned capital distributions to reduce in the limited adjustment to planned capital actions.

As noted, the proposal would have applied the same definition of significant trading activity standard to U.S. IHCs and U.S. BHCs. The stress testing regime is designed to measure the ability of the U.S. IHC to maintain operations during times of stress. In stressful circumstances, each U.S. IHC is expected to continue operations based on its own capital position, without relying on hedges overseas. Additionally, to the extent that a firm is unable to maintain capital levels above all minimum capital requirements even when it has little or no capital distributions, it should consider seeking a capital infusion.

Commenters also provided views on the measurement of trading activities. For instance, commenters recommended that the Board take into account the risks and purposes of trading activities, such as excluding certain types of assets like U.S. Treasuries.

Adopting a significant trading activity threshold that excluded certain types of trading assets, such as U.S. Treasuries, could be inconsistent with the purposes of the global market shock. The global market shock estimates projected profit and losses associated with repricing trading exposures based on a large instantaneous shock to risk factors. The resulting impact to capital is a reflection of market risk, not credit risk, and U.S. Treasuries could generate market losses, such as through changes to interest rates. In addition, all else equal, a firm with safer trading activities will have smaller losses in the global market shock than a firm that engages in riskier trading activities.

For these reasons, the Board is finalizing the same definition of global market shock threshold as was proposed. The global market shock is applicable to any firm subject to the supervisory stress test that (1) has aggregate trading assets and liabilities of \$50 billion or more, or aggregate trading assets and liabilities equal to 10 percent or more of total consolidated assets, and (2) is not a "large and noncomplex firm" under the Board's capital plan rule.

In addition to modifications to the threshold itself, commenters noted that tailoring the reporting collection would allow the Board to estimate the losses associated with the global market shock while minimizing reporting burden on firms with smaller and less complex trading activity. In this regard, commenters recommended that the Board adopt an additional threshold for firms with smaller or less material trading exposures where only a subset of FR Y-14Q, Schedule F (Trading) data collection would apply. Alternatively, commenters recommended setting materiality thresholds for individual lines or sub-schedules on the trading schedule.

Notably, the proposal adopted a threshold that was significantly higher than the materiality threshold for other FR Y-14 schedules, generally \$5 billion or 5 percent of tier 1 capital for firms that are not large and noncomplex. The higher materiality threshold in the proposal reflected the Board's intention to apply the global market shock only to firms with significant trading activities that pose a potential risk to capital. Additionally, by excluding noncomplex firms from the global market shock, the proposal did tailor the application to

only those firms that are larger and more complex.

Introducing additional materiality criteria would create additional complexity in reporting thresholds and potentially require different scenarios or models to estimate trading losses. If a firm does not have exposure to particular risk factors, it can report a zero for that item on the trading schedule. However, if a firm does have sensitivity to that risk factor it would be inappropriate not to estimate the resulting profit and loss stemming from that exposure in the global market shock. As such, the final rule does not introduce an additional materiality threshold with tailored reporting requirements.

Commenters also recommended that, as an alternative form of tailoring, the Board could revise the FR Y-14Q Schedule F and L (Trading and Counterparty collections) to require smaller firms to file the trading schedule less frequently, such as one time a year as of the date of the supervisory stress test. Commenters noted that this would reduce the reporting burden associated with participating in the global market shock for firms with smaller trading operations.

The frequency of the collection of trading data is consistent with other FR Y-14 schedules and necessary for running of the stress tests. For instance, the Board collects data on credit cards and mortgages monthly and data on securities, other loans, and revenues quarterly. Trading exposures can evolve rapidly, especially relative to these banking book assets. Firms with material trading exposures produce reports and run internal stress tests far more frequently than once a quarter, usually at least weekly. As such, the firms subject to the global market shock should be able to produce information on their trading exposures once a quarter, allowing the Board to analyze the risks of their trading book and the evolution of those risks over the year. Further, collecting a time series of these data at least quarterly is important to the stress test to allow the Board to follow trends and examine the volatility of each respective firm's data. Therefore, the frequency of reporting the FR Y-14 Trading and Counterparty schedules is being finalized without further modification.

Commenters also requested additional support for the proposed threshold, notably the impact on capital from the proposal. Based on publically available data from the stress test exercises from 2012 through 2017, on average, each global market shock firm experienced losses under the severely adverse stress

scenarios equivalent to 4.8 percent of trading exposure on the as of date of the supervisory stress test. As of June 30, 2017, 4.8 percent of trading exposure would be equivalent to about 14.3 percent of tier 1 capital, on average, for the new participants in the global market shock.

Ultimately, the impact on capital under the proposal would be a function of the trading exposures of each covered firm. Notably, many commenters indicated that their trading exposures were significantly less risky than the trading exposures of the firms that currently participate in the global market shock, which could make estimating the impact of the proposal based on those exposures unrepresentative. Additionally, since 2014, disclosed trading losses have also included the impact of the large counterparty default scenario component, which is not a part of this proposal. As such, this impact analysis may overstate the impact of the proposal on a firm's capital.

In addition to the suggestion for further tailoring the global market shock requirement, commenters expressed concerns regarding transparency and the manner of notification surrounding the proposed changes to the global market shock threshold. Specifically, commenters stated that given the perceived significance of the changes and aforementioned impact to regulatory capital, the modifications should not have been proposed as a modification to the FR Y-14 information collection. As previously noted, the stress test rules indicate that the Board will specify the definition of significant trading activity in the FR Y-14.<sup>4</sup> Moreover, the Board invited public comment on the proposed changes. For example, firms had the opportunity to comment for sixty days, Federal Reserve staff met with commenters to discuss their comments, and the Board

<sup>4</sup> See 12 CFR 252.54(b)(2)(i). The Board's stress test rules require companies to submit data necessary for the Board to conduct a supervisory stress test. See 12 CFR 252.45(a)-(b). In the case of companies with significant trading activities, such data includes data necessary for the Federal Reserve to derive pro forma estimates of losses and revenue related to the global market shock. In addition, the capital plan rule (12 CFR 225.8), which applies to U.S. IHCs pursuant to 12 CFR 252.153(e)(2)(ii), requires companies to provide the Federal Reserve with information regarding the amount and risk characteristics their on- and off-balance sheet exposures, including exposures within the company's trading account, other trading-related exposures (such as counterparty-credit risk exposures) or other items sensitive to changes in market factors, including, as appropriate, information about the sensitivity of positions to changes in market rates and prices. 12 CFR 225.8(e)(3)(iii).

considered and is responding to these comments.<sup>5</sup>

One commenter recommended that in the context of firms newly subject to the global market shock, the Board should clarify the treatment of losses on the same trading positions between the instantaneous shock and the Pre-Position Net Revenue (PPNR) nine quarter projections as outlined in the CCAR instructions. The commenter highlighted the difficulty in identifying identical positions when the as-of date for the global market shock is different from that of the other nine-quarter projections, including PPNR.

The global market shock is generally intended to be an add-on component of the stress scenarios that is independent of a firm's PPNR projection process, with the exceptions for identical positions noted in the CCAR instructions. Per the CCAR 2017 instructions, firms have the option, but are not required, to demonstrate that identical positions are stressed under both the global market shock and supervisory macroeconomic scenario and, if so, may assume combined losses from such positions do not exceed losses resulting from the higher of losses from either the global market shock or macroeconomic scenario. For example, the Board adjusts PPNR to account for the global market shock by using a median regression approach for firms subject to the global market shock to lessen the influence of extreme movements in trading revenue, and, thereby, to avoid double-counting of trading losses that are captured under the global market shock. Firms should refer to the CCAR instructions and the Supervisory Stress Test Methodology and Results document for that year's exercise for guidance regarding the treatment of identical positions. For firms that choose to implement their own version of a market shock, firms have flexibility regarding how to effectively identify and capture their key risks, including the interaction of the BHC stress scenario market shock and PPNR projections; therefore, the Board does not intend to provide additional information regarding the

double counting of losses in the described circumstance.

If the Board did adopt the proposed changes modifying the applicability criteria for the global market shock, commenters recommended the implementation feature a phase-in of the application of global market shock to new participants and allow for additional time for firms newly subject to the global market shock to submit the FR Y-14 trading and counterparty schedules. Commenters stated that the compressed timeframe between finalization and the effective date would create challenges accounting for the impact of the global market shock on regulatory capital requirements, and to prepare systems, infrastructure, and processes to file the associated FR Y-14 data.

Suggestions from commenters for transitioning the initial application of the global market shock to new participants included a confidential "dry-run" for the 2018 stress test and capital plan cycle and delaying full application of the global market shock component and public disclosure until the 2019 cycle. For the associated FR Y-14 data submissions, commenters requested additional time to submit the data for the reports with data as of September 30, 2017 and December 31, 2017. Finally, commenters requested that any transitions for new participants apply for any additional firms that become subject to the global market shock going forward.

Although, as noted, the Board is adopting the proposed global market shock threshold without modification, the Board recognizes the challenges associated with building the systems necessary to report the data in the trading schedule. Regarding the application of the global market shock component, under the revised FR Y-14 report, the Board is delaying the application of the global market shock to firms that would become newly subject to it until the 2019 DFAST/CCAR exercise. However, assessing potential losses associated with trading books, private equity positions, and counterparty exposures for firms with significant trading activity is a critical component of stress testing and capital planning. Therefore, for the 2018 DFAST exercise, pursuant to the stress test rules, the materiality of trading exposures and counterparty positions to U.S. IHCs may warrant applying an additional component to firms that meet such criteria. The components would serve as an add-on to the economic conditions and financial market environment specified in the adverse and severely adverse scenarios. The

Board will notify any affected firms in writing of the additional components or the additional scenarios to be included.<sup>6</sup>

In consideration of the recommendations outlined by commenters regarding the submission of FR Y-14Q, Schedule F (Trading) and Schedule L (Counterparty), the Board agrees that a delay in the initial data submission date would facilitate improved data quality. Although commenters indicated that submitting data as of September 30, 2017, would be feasible with a delay in the submission date, firms joining the reporting panel will not be required to report the FR Y-14 trading and counterparty schedules until the December 31, 2017 as-of date. Given the alternative approach to inclusion of trading and counterparty activities for these firms for stress testing in 2018 the Board will provide firms with additional time to submit the FR Y-14 data with the objective of allowing for additional opportunities for submitting test files and achieving higher data quality. Specifically, the FR Y-14 trading and counterparty for the reports as of Q4 2017 will be due May 1, 2018. In addition, there will also be a delayed submission date for the reports as of Q1 2018, which will be due June 30, 2018. For the reports Q2 2018 forward, the data will be due as outlined in the FR Y-14 instructions.

The Board understands the need for additional time for the initial application of the modified global market shock threshold. If firms that were already subject to stress testing and FR Y-14 reporting and subsequently cross the global market shock threshold going forward, firms would presumably have been below but close to the threshold for a considerable period of time and would have been aware of the application criteria. This should already provide an adequate amount of time to anticipate meeting and preparing to comply with requirements. In addition, firms already have a phase-in period related to the establishment of a U.S. IHC and application of the capital plan rule. Therefore, for firms that cross the global market shock threshold in the future, the Board does not anticipate providing any further delay in applicability.

In the context of the recommendation for a transition period for applicability of the modified global market shock threshold, one commenter expressed that the resources required for actual implementation of the global market shock would be multiples of the estimated ongoing resources requirements for the schedule,

<sup>5</sup> As noted, companies subject to the Board's stress test rules are required, pursuant to these rules, to submit data necessary for the Board to conduct the stress tests, and companies subject to the capital plan rule are required, pursuant to the capital plan rule, to provide the Federal Reserve with information regarding their trading exposures. See 12 CFR 225.8(e)(3)(iii), and 12 CFR 252.45(a)-(b). This information, when applied through the global market shock, facilitates the implementation of the Board's supervisory stress tests under the stress test rules and the Board's review of capital plans under the capital plan rule.

<sup>6</sup> See 12 CFR 252.54(b)(4)(i).

estimated at 9,736 hours per firm. The Board continues to invite comments on the burden estimates and strives to accurately reflect the effort to compile and submit data on the FR Y-14 reports. The commenter provided no further information on how or why the Board should adjust the burden estimates and the Board received no other comments on the burden estimates as related to the global market shock threshold. To capture the additional effort necessary to begin reporting the FR Y-14 trading and counterparty schedules, the Board will adjust the implementation burden to recognize the upfront burden for the six firms newly subject to the global market shock and, specifically associated FR Y-14 reporting requirements, to begin filing the schedules.

Commenters also noted that the proposal did not address whether U.S. IHCs that become subject to the global market shock would also become subject to the large counterparty default scenario. Specifically, commenters requested that if the Board's intention is to apply the large counterparty default scenario component to the firms covered under the modified global market shock threshold, the Board should conduct a quantitative impact study and/or allow for public comment. If the Board does apply the large counterparty default scenario component to firms newly subject to global market shock, commenters requested that it be applied only after implementation of global market shock or with a phased-in approach similar to that recommended for global market shock.

The large counterparty default scenario component is an add-on component that requires firms with substantial derivatives or securities financing transaction activities to incorporate a scenario component into their supervisory adverse and severely adverse stress scenarios. In connection with the large counterparty default scenario component, subject firms are required to estimate and report losses and related effects on capital associated with the instantaneous and unexpected default of the counterparty that would generate the largest losses across their derivatives and securities financing activities, including securities lending and repurchase or reverse repurchase agreement activities. As indicated in the stress test rules, the Board will notify the firm in writing no later than December 31 of the preceding calendar year of its intention to require the firm to include one or more additional components in its stress test. The covered firm may request

reconsideration with an explanation for why reconsideration should be granted within 14 calendar days of receipt of the notification. The Board will continue to use this existing process to apply the large counterparty default scenario component.

#### *Proposed Revisions to the FR Y-14A*

The proposed revisions to the FR Y-14A consisted of modifying reported items and instructions by clarifying the intended reporting of existing items or aligning them with standards and methodology, adding an item critical to stress test and supervisory modeling, and reducing burden through the elimination of certain schedules.

Specifically, the Board proposed modifying Summary—Securities (Schedule A) sub-schedules A.3.a and A.3.c to clarify the reporting of “Credit Loss portion” and “Non-Credit Loss Portion” information, adding an item to the Summary—Counterparty sub-schedule (Schedule A.5) to capture Funding Valuation Adjustment (FVA), and eliminating the FR Y-14A, Schedule D (Regulatory Capital Transitions) and Schedule G (Retail Repurchase Exposures). Commenters were supportive of these modifications and the final FR Y-14 requirements implement the modifications as proposed effective for the reports with data as of December 31, 2017.

Comments and clarifying changes were received on the proposed addition of a sub-schedule to the FR Y-14A, Schedule F (Business Plan Changes), indirectly related to the proposed removal of Schedule G (Retail Repurchase Exposures), and the proposed elimination of the concept of extraordinary items. In some cases, these comments resulted in modifications to the proposed changes, including delays in the effective date for certain changes to December 31, 2017, or March 31, 2018. The effective dates and responses to comments are detailed below.

#### *FR Y-14A, Schedule A (Summary)*

One commenter did not comment on the proposal to capture FVA on the FR Y-14A and FR Y-14Q reports, but recommended clarifications to the FR Y-14A instructions to allow for consistent reporting of FVA and related activities. First, the commenter recommended that the Board update the instructions to indicate that firms should report FVA gains and losses for all supervisory and BHC scenarios. Second, the commenter recommended that the Board update the instructions to indicate that gains and losses on FVA hedges should be reported on Schedule

A.4 (Summary—Trading). The Board has reviewed the suggested clarifications, however additional analysis is needed surrounding the impact on reporting before updating the instructions. The Board will continue to consider the clarifications and will propose changes for notice and comment or provide additional guidance in the future if appropriate.

#### *FR Y-14A, Schedule F (Business Plan Changes)*

##### *Schedule F.2 (Pro Forma Balance Sheet M&A)*

Two commenters requested clarification on what information surrounding pro forma balance sheet mergers and acquisitions the proposed sub-schedule would collect, and one commenter requested the Board delay the implementation of this new sub-schedule, which was originally proposed to be effective as of December 31, 2017. Specifically, one commenter requested clarification as to whether the “Pro Forma Balance Sheet M&A” sub-schedule of the FR Y-14A, Schedule F (Business Plan Changes) would require respondents to report projections. The same commenter also requested that the Board provide a minimum of six months to implement necessary changes to accommodate the proposed sub-schedule.

In the event that a covered company intends to undertake a merger or acquisition, then the “Pro Forma Balance Sheet M&A” worksheet will require projections, as does the current FR Y-14A, Schedule F.1 (BPC). The pro forma information required is similar to what a firm must submit in its application for regulatory approval for the merger or acquisition, and the items collected on the sub-schedule must sum to the post-acquisition fair value of the portfolio as reported on the FR Y-14A, Schedule F.1 (BPC). The projection of these additional items should not pose a significant additional burden for firms that are already projecting a merger or acquisition for the purposes of reporting the FR Y-14A Schedule F, Balance Sheet worksheet. This information should be available to the firms that would be required to complete the schedule, is similarly structured to information reported elsewhere, and would provide valuable inputs to the DFAST and CCAR exercises, therefore the Board will not delay the effective date of this change. The final FR Y-14A report implements sub-schedule F.2 (Pro Forma Balance Sheet M&A) as proposed, effective December 31, 2017.

Another commenter requested that the Board clarify if divestitures would

also be included in the proposed sub-schedule F.2. The Board confirms that divestitures would not be included in sub-schedule F.2. The commenter also requested that the Board clarify how a firm would report values associated with M&A activity in the structure of the FR Y-14A, Balance Sheet as proposed. The Board confirms that a firm would report only the post-acquisition fair value of an asset or liability onboarded in a merger or acquisition on its projected balance sheet. The “Pro Forma Balance Sheet M&A” sub-schedule allows firms to report the pre-acquisition book value, purchase accounting adjustments, and fair value adjustments that resulted in the post-acquisition fair value reported on the current FR Y-14A, Balance Sheet sub-schedule.

FR Y-14A, Schedule G (Retail Repurchase Exposures)

One commenter requested that the Board clarify if the proposal eliminates the FR Y-14A, Schedule G (Retail Repurchase Exposures) completely or if the collection of these data would move back to a sub-schedule of the FR Y-14A, Schedule A (Summary) where it was historically collected. The Board confirms that the collection of data under the FR Y-14A, Schedule G would be removed and the FR Y-14 would no longer collect these data. Having received no further comments on the removal of the FR Y-14A, Schedule G, the final FR Y-14 eliminates the schedule as proposed, effective with the reports with data as of December 31, 2017.

One commenter asked that the Board eliminate the FR Y-14A, Schedule A.2.b (Retail Repurchase Projections). The commenter noted that this sub-schedule collects similar information to the FR Y-14A, Schedule G (Retail Repurchase Exposures) indicating the rationale should also apply for eliminating this annual collection. In addition, commenters cited that large and noncomplex firms are no longer required to complete the FR Y-14A, Schedule A.2.b (Retail Repurchase Exposures).

The Board agrees that some of the same reasons for eliminating the FR Y-14A, Schedule G (Retail Repurchase Exposures) apply to the projection data collection, however notes there are additional, ongoing uses of these data for which the Board can find alternative inputs. However, given the schedule’s connection to other components of the FR Y-14A, Schedule A (Summary) and current reliance on these data for the CCAR and DFAST exercises, firms will still report the sub-schedule through the

reports with data as of December 31, 2017. In response to comment and in an effort to further reduce burden, the final FR Y-14 eliminates the FR Y-14A, Schedule A.2.b (Retail Repurchase Projections) with the reports with data as-of March 31, 2018.

Proposed Elimination of Extraordinary Items

Under the proposal, references to the term “extraordinary items” would be eliminated from the FR Y-14A, Schedule A.1.a (Income Statement) and the FR Y-14Q, Schedule H (Wholesale) forms and instructions, and where appropriate, replaced with “discontinued operations” as a result of an amendment (ASU No. 2015-01) to the FASB Accounting Standards Codification, Income Statement—Extraordinary and Unusual Items (FASB Subtopic 225-30) effective with the reports with data as of September 30, 2017.

One commenter requested that the Board clarify if firms should aggregate all categories of Discontinued Operations (revenue, expenses, and provisions) into the proposed field, Discontinued Operations, on the FR Y-14A, Schedule A.1.a (Income Statement) and consequently exclude all of those categories from other line items in the Income Statement sub-schedule. The Board clarifies that the intended reporting of line item 131 in the Income Statement sub-schedule (historically, “Extraordinary items and other adjustments, net of income taxes” and now proposed, “Discontinued operations, net of applicable income taxes”) does not change with the proposed modifications, rather the line item name has been updated to be in-line with the FR Y-9C, Schedule HI. The definition for this line item references the FR Y-9C, Schedule HI, item 11 and should still be reported as such under the proposed changes.

Another commenter requested that the Board delay the removal and replacement of the extraordinary items concept on the FR Y-14Q, Schedule H (Wholesale) until at least March 31, 2018 to allow adequate time for the firms to source and validate the data. In response, the Board is delaying the effective date of these changes for both the FR Y-14A, Schedule A.1.a (Income Statement) and the FR Y-14Q, Schedule H (Wholesale) to be effective as of March 31, 2018 (*i.e.*, for reports as of June 30, 2018 for FR Y-14A, Schedule A).

*Proposed Revisions to the FRY-14Q*

The proposed revisions to the FR Y-14Q consisted of updating certain

instructions and changing the reporting structure and requirements of existing items to further align reported items with methodology, standards, and treatment on other regulatory reports or within the FR Y-14 reports, and to enhance supervisory modeling. The proposal would also have added new items and make a number of changes to the FR Y-14Q, Schedule L (Counterparty). Two commenters addressed the proposed changes to the FR Y-14Q schedules.

Commenters were generally supportive of and voiced no concerns regarding the modifications to the FR Y-14Q Schedule A (Retail), Schedule C (Regulatory Capital Instruments), Schedule J (FVO/HFS), and Schedule M (Balances). These changes are narrow in scope or clarifying in nature, and are necessary to enhance supervisory information for the CCAR and DFAST exercises. Therefore, the Board will implement these changes with the reports with data as of December 31, 2017. There were no substantive comments regarding the proposed change to the FR Y-14Q, Schedule F (Trading); however, in response to comments, the Board will extend the effective date of this change until March 31, 2018. Any clarifying questions have been addressed in the detailed sections.

Regarding the remaining changes to the FR Y-14Q, Schedule H (Wholesale) and Schedule L (Counterparty), certain modifications to the proposed changes will be made in consideration of the comments received, including delays in the effective date for certain changes to December 31, 2017 or March 31, 2018. The effective dates and responses to comments are detailed below.

FR Y-14Q, Schedule C (Regulatory Capital Instruments)

Under the proposal, the Board would enhance the instructions for the “Comments” field in all three sub-schedules of the FR Y-14Q, Schedule C (Regulatory Capital Instruments) to specify that firms should indicate within the comments how the amounts reported on these sub-schedules tie back to amounts approved in the firm’s capital plan. One commenter requested that the Board clarify if the “Comments” field in the three sub-schedules should reflect summary balance variances to the firm’s capital plan by Instrument Type since the capital plans submitted by firms do not reflect CUSIP-level detail. The Board confirms that firms’ comments in the FR Y-14Q, Schedule C should reflect summary balance variances by Instrument Type. Furthermore, if the same comment is relevant across multiple instruments in

the firm's submission, comments should repeat.

Also under the proposal, additional types of instruments would be added to be reported in Column C (Instrument Type) on the issuance and redemption sub-schedules to capture issuances and redemptions of capital instruments related to employee stock compensation (e.g., de novo common stock or treasury stock), and changes in an IHC's APIC through the contribution of capital from a foreign parent or the remission of capital to a foreign parent.

One commenter requested that the Board clarify if the firm should report the same CUSIP in multiple rows or add a character at the end of each CUSIP to uniquely identify each instrument. The Board confirms that the firm should report the same CUSIP across multiple rows, provided that a different instrument type is used for each recurrence of the respective CUSIP. The combination of the CUSIP and the Instrument Type will uniquely identify each record. If there are duplicate records with the same CUSIP and Instrument Type, a firm should append a differentiating feature on the end of the CUSIP (e.g., "v1" and "v2", etc.) and specify in the comments column that these are in fact swaps on the same CUSIP.<sup>7</sup> This guidance will be added to the instructions. Another comment asked for guidance regarding the intended reporting of Common Stock with relation to the three proposed instruments. The Board clarifies that firms should report the remaining amount of common stock after deducting the amount reported in the new instruments.

Finally, a third comment requested clarification surrounding how a decrease in APIC should be treated if it resulted from an issuance of common stock from treasury stock. The Board clarifies that a decrease in APIC as a result of treasury stock being issued at a price lower than its cost basis (i.e., the accounting amount of the stock held on the firm's balance sheet) must not be captured in sub-schedule C.2 (Issuances). Reductions in APIC on sub-schedule C.2 should reflect only instances in which an U.S. IHC remits capital to its foreign parent outside the context of payment on or redemption of an internal capital instrument. Sub-schedule C.2 does not capture decreases in APIC resulting from employee stock compensation-related drivers, nor does sub-schedule C.3 capture increases in APIC resulting from employee stock compensation-related drivers. The final instructions include these clarifications.

The final FR Y-14 will be updated accordingly and the changes implemented with the reports with data as of December 31, 2017.

#### FR Y-14Q, Schedule F (Trading)

One commenter asked that the Board confirm the formatting of the proposed vintage breakouts on the FR Y-14Q, Schedule F.14 (Securitized Products). The proposed draft instructions erroneously specified one of the vintage breakouts for the FR Y-14Q, Schedule F.14. The vintage breakouts should read as follows: ">9Y", ">6Y and <= 9Y", ">3Y and <= 6Y", "<= 3Y", and "Unspecified Vintage". The final form reflects the appropriate vintage breakouts. As noted above, having received no other comments, the final FR Y-14 will implement the revision as proposed effective with the reports with data as of March 31, 2018.

#### FR Y-14Q, Schedule H (Wholesale)

The Board proposed expanding the Disposition Flag (Schedule H.1 (Corporate), item 98, and Schedule H.2 (CRE), item 61) and Credit Facility Type (Schedule H.1, (Corporate), item 20) to include an option for commitments to commit. Commenters requested that the Board clarify the expectations surrounding the reporting of the proposed Credit Facility Type field to ensure accurate reporting and expressed that reporting firms do not always consider "commitment to commit" as a separate facility type. Commenters also asserted that the concept of netting deferred fees of a commitment is not a GAAP or FR Y-9C concept. Commenters requested that the Board withdraw or defer both of these proposed changes to a later effective date.

The final FR Y-14 includes the expansion of the Disposition Flag (Schedule H.1, Corporate, Item 98, and Schedule H.2, CRE, item 61) and Credit Facility Type (Schedule H.1, Corporate, Item 20) to include an option for commitment to commit. However, in response to comments, the Board is delaying the effective date of this change until the reports with data as of March 31, 2018. The Board clarifies that firms are already required to report commitments to commit on both the FR Y-14Q, Schedule H.1 (Corporate) and H.2 (CRE). This improved data is necessary to adequately capture risk and provide consistent treatment across the portfolio of firms. In the absence of a clear and explicit reporting requirement, there has been significant variation in how banks have reported these exposures, including some who have not reported them at all. As these facilities constitute material exposures

for some banks, the improvements fill important gaps in our assessment of potential losses. The Board further clarifies that firms should report commitments to commit, as defined in the FR Y-9C, Schedule HC-L (Derivatives and Off-Balance Sheet Items), on the Wholesale schedules along with all corresponding data fields. Per the FR Y-14Q, Schedule H.1 (Corporate) and H.2 (CRE) instructions for Origination Date (H.1, item 18 and H.2, item 10), "For commitments to commit which are not syndicated, report the date on which the BHC or IHC extended terms to the borrower." Therefore, commitments to commit should not have a future origination date.

The Board intended the proposed change in the reporting of Utilized Exposure/Outstanding Balance (Schedule H.1, Corporate, item 25 and Schedule H.2, CRE, item 3) and Committed Exposure (Schedule H.1, Corporate, item 24 and Schedule H.2, CRE, item 5) items to clarify reporting. However, in light of comments and questions received, the Board is not adopting these proposed changes to the FR Y-14.

The Board also proposed updating the instructions for the ASC 310-30 item (Schedule H.1, Corporate, item 31 and Schedule H.2, CRE, item 47) to be consistent with purchase credit impaired (PCI) accounting standards and terminology and modifying the Participation Flag field (Item 7) on Schedule H.2 (CRE) to be mandatory rather than optional.

One commenter questioned how the proposed instructions would result in different reporting from the current requirements. The Board confirms that the change to the existing ASC 310-30 field is only meant to clarify reporting of PCIs to improve alignment with GAAP and may not represent a change in reporting based on a firm's prior interpretation of the instructions. The final FR Y-14 implements this change effective with the reports with data as of March 31, 2018.

Regarding the change of the Participation Flag to mandatory, one commenter expressed that item 7 and item 59 (Participation Flag and Participation Interest, respectively) of the FR Y-14Q, Schedule H.2 (CRE) should remain optional. Commenters cited that the SNC program status is monitored by agent banks, which are not required to notify participant banks of the status and therefore, the information is often not available and therefore not reported. Therefore, the commenter suggests, even if the field

<sup>7</sup> See FR Y-14 FAQ ID Y140000259.



becomes mandatory, it should only be mandatory for agent banks.

As stated in the initial **Federal Register** notice, almost all reporting firms already choose to report the participation flag field. Therefore, this information does in fact appear to be readily available in most cases. The Board confirms that intent of the options in the Participation Flag field are, in conjunction with the SNC Internal Credit Facility ID and Participation Interest, intended to distinguish whether or not the credit facility is included in the SNC report. The change will be implemented as proposed, with a delay in the effective date until March 31, 2018.

#### FR Y-14Q, Schedule L (Counterparty)

The Board proposed several changes to the FR Y-14Q, Schedule L (Counterparty). All of the changes were proposed to be effective with the September 30, 2017 report date. Primarily, commenters asked for additional time to incorporate these changes given the perceived material nature of several of the changes and inconsistencies or ambiguity identified in the proposed instructions and forms. Firms indicated that the Board would need to provide further guidance in order for respondents to report the various fields properly. Commenters also asked several clarifying questions regarding the proposed forms and instructions.

The final FR Y-14 implements the proposed changes to the FR Y-14Q, Schedule L (Counterparty), but will delay the effective date until March 31, 2018, for all changes except for the collection of information related to additional or offline reserves, which will be collected with the reports with data as of December 31, 2017. This should allow reporting firms adequate time to incorporate the changes with the additional guidance needed to report the requested data properly.

Furthermore, the final forms and instructions include a number of clarifications in line with the comments, as appropriate, to enhance guidance surrounding the intended reporting.

One commenter noted that the FR Y-14Q, Schedule L.5 (Derivatives and Securities Financing Transactions (SFT) Profile) sub-schedules do not consistently address requirements for each scenario or distinguish on the report form for sub-schedule L.5.1 (Derivative and SFT information by counterparty legal entity and master netting agreement) where internal and external ratings of counterparties or different currencies should be reported, although subdivided reporting was

proposed. To address this, the final FR Y-14 form for the L.5 sub-schedules will include a column for severely adverse and adverse scenarios, and the form for sub-schedule L.5.1 will include columns for both internal and external ratings and currencies in line with the proposed instructions. The final XML technical instructions will further outline reporting structure.

Several clarifications were requested regarding the ranking and definition of central clearing counterparties (CCPs), including what ranking methodology should be used to report on sub-schedule L.5.2 (SFT assets posted and received by counterparty legal entity and master netting agreement) and what definition should be used for CCPs. The Board confirms that CCPs refer to designated central clearing counterparties and will update the instructions to clarify that all G-7 Sovereigns and CCPs should be reported in addition to the Top 25 counterparties by Rank 1, 2, 3, 4 (including non G-7s Sovereigns). For counterparties reported on sub-schedule L.5.2 ranking methodologies 1 and 2 apply. The final FR Y-14 form for the L.5 sub-schedules will include columns for rank methodology and rank so that firms may clearly report by distinguishing which counterparties are reported for each ranking methodology. The technical instructions will specify reporting structure details.

Similarly, one commenter noted that the proposed instructions for sub-schedule L.5 did not specify a ranking methodology for the baseline and stressed scenarios. The Board clarifies that for unstressed (Non-CCAR) quarters, firms should report all G-7 Sovereigns and CCPs plus Top 25 non G-7/Non CCP counterparties, ranked by SFT amount posted, SFT net current exposure, derivatives notional, and derivatives net current exposure. For the CCAR (stressed) quarter, firms should report all G-7 Sovereigns and CCPs plus Top 25 non G-7/Non CCP counterparties, ranked by SFT amount posted, derivatives notional amount, SFT FR stressed net current exposure for each scenario, and derivatives FR stressed net current exposure for each scenario. The final instructions will be updated to be consistent with this reporting methodology.

One commenter noted the proposed instructions indicate firms should report notional information and inquired whether respondents should report the notional amounts on the FR Y-14Q, Schedule L (Counterparty) net or gross. The Board confirms that respondents should report the gross amount and the instructions include this guidance. Total

notional is the gross notional value of all derivative contracts on the reporting date. For contracts with variable notional principal amounts, the basis for reporting is the notional principal amounts at the time of reporting. The total should include the sum of notional values of all contracts with a positive market value and contracts with a negative market value.

One commenter asked for clarification regarding the reporting of netting Agreement ID and Netting Set ID on the FR Y-14Q, Schedule L.5.1 and noted that the form only included a column for Netting Set ID. The Board clarifies that firms should only report the Netting Set ID field for both SFTs and derivatives. The final instructions will be updated to reflect this treatment.

The commenter also asked for clarification regarding the "consolidation of counterparties" section of the general instructions for the FR Y-14Q, Schedule L. The Board will clarify these instructions to indicate that firms should report Sovereigns and CCPs at the entity level and non-Sovereigns and non-CCPs at the consolidated group level. For Sovereigns and CCPs, firms should report consolidated group/parent level name in the Counterparty Name field, the consolidated counterparty ID in Counterparty ID field, the counterparty entity ID in the Netting Set ID field, and the counterparty entity name in the Sub-Netting Set ID field. The ranking described in this section of the general instructions should be based on the consolidated Sovereign or CCP and firms must report that rank for each entity. For non-Sovereigns and non-CCPs, firms should report NA in both the Netting Set ID and the Sub-Netting Set ID fields.

Also regarding L.5.1, one commenter asked if certain fields (Agreement Type (CACNR529), Agreement Role (CACNR530), Netting Level (CACNR532), Legal Enforceability (CACNR534), Independent Amount (non CCP) or Initial Margin (CCP) (CACSR551), Excess Variation Margin (for CCPs) (CACSR553), Default Fund (for CCPs) (CACSR554) were to be reported for both derivatives and SFTs. As proposed, firms should report these fields for both derivatives and SFTs. The final instructions reflect allowable entries for these fields applicable to derivatives as well.

One commenter indicated that some firms do not collect initial margin and default fund as part of SFT CCP reporting and that the proposed instructions did not specify if the firms need to exclude initial margin and default fund contributions from SFT



CCP data. The Board clarifies that initial margin and default fund contribution should only be reported where applicable to SFT CCP reporting.

One commenter observed that 3 new columns were added to the instructions for the FR Y-14Q, Schedule L.5.4 (Derivative position detail), but were not included on the form. The commenter also asked if certain fields (total notional, new notional during the quarter, weighted average maturity, position MTM and total net collateral) are applicable to CCPs. The Board confirms that these fields are applicable to CCPs, for sub-schedules L.1.a through L.1.d. The instructions and forms will be updated accordingly.

The proposed draft instructions asked firms to report Weighted Average Maturity. Commenters inquired whether, for trades with Optional Early Termination agreements (OETs) or Mandatory Early Termination agreements (METs), the maturity reporting should take into account early termination features and whether firms should report effective average maturity (e.g., to reflect amortizations or prepayments) or only legal maturity. The Board clarifies that firms should report the average of time to maturity in years for all positions associated with the reported amount in the item Gross CE, as weighted by the gross notional amount associated with a given position. For trades with Optional Early Termination (OET), the maturity reporting should not take into account such early termination features. For trades with Mandatory Early Termination (MET), however, the maturity reporting should take into account such early termination features.

One commenter noted some inconsistencies in the instructions, and requested clarification to central counterparty reporting regarding the house exposures and client exposures. The Board has reviewed and addressed questions related to central counterparty reporting outside of this proposal. Firms should refer to the most up-to-date instructions are available on the Board's public website.

#### *Proposed Revisions to the FR Y-14M*

The proposed revisions to the FR Y-14M consisted of adding a line item to collect the RSSD ID (the unique identifier assigned to institutions by the Board) of any chartered national bank that is a subsidiary of the BHC and that is associated with a loan or portfolio reported, and add a line item to collect the month-ending balance for credit card borrowers. Both items were proposed to be effective for reports as of September 30, 2017.

Schedules A, B, D (First Lien, Home Equity, and Credit Card)

Regarding the addition of an item to collect the RSSD ID (the unique identifier assigned to institutions by the Board) one commenter presented questions regarding what RSSD ID should be reported and questioned the value of adding a field versus enhancing the existing "Entity Type" field (fields 129, 207, and 115 of Schedules A, B, and D, respectively). The commenter requested that in light of the required data sourcing and coding changes, the Board delay the implementation of this item.

The final FR Y-14 implements the collection of the RSSD ID for loans reported on the FR Y-14M Schedules A, B, and D, but in response to comment will delay the effective date until the reports with data as of March 31, 2018, and would make certain clarifications to the collection of these data. The Board continues to support collection of this data element to meet supervisory needs of the OCC, but understands the complexities involved in making these changes. Accordingly, the final FR Y-14 implements the collection of the RSSD ID field beginning with the reports with data as of March 31, 2018, with the clarifications included in the following section.

One commenter asked that the Board clarify, in Schedules A, B, and D, if loans could be identified using the existing Entity Type field or RSSD ID contained in the file name rather than adding a new field. The Board agrees the existing field provides additional information, however notes that it is not sufficient or comprehensive on its own. The Entity Type field alone is not sufficient, because for BHCs that have multiple national bank charters, the Entity Type field does not specify which national bank charter holds a financial interest in the loan.<sup>8</sup> Furthermore, the RSSD ID provided in each of the BHC's file naming conventions is the RSSD ID of the BHC. The requested additional RSSD ID field is the RSSD ID of the national bank entity that has a financial interest associated with the loan.

Commenters asked several questions to clarify what RSSD ID respondents should provide in the proposed field in particular circumstances. Commenters asked if respondents should report the RSSD ID based on the direct subsidiary or indirect subsidiary for the proposed field for loans that are held in a chartered national bank that is an indirect subsidiary of the holding

company. For example, if national bank B were an indirect subsidiary of a BHC and a direct subsidiary of national bank A (which is a direct subsidiary of a BHC). Commenters also asked if a respondent would ever be required to provide a RSSD ID of a chartered national bank that is not a subsidiary of the reporting BHC. For example, whether respondents would report loans serviced by a subsidiary of the BHC but owned by another bank or, if loans are owned by the BHC but serviced by a third party, whether respondents would report the RSSD ID of the subsidiary national bank or that of the third-party bank. For loans serviced by a direct subsidiary of the BHC for a third party entity, commenters asked if the respondent would report the BHC RSSD ID. Finally, commenters asked for clarification on whether the field should be reported if the subsidiary of the holding company is a state chartered bank, and not a national bank, and if so, if the reported RSSD ID should reflect the BHC or the state bank.

In the case of an indirect subsidiary, the respondent should report the RSSD ID of the national bank that has a financial interest in the loan. For loans that are serviced by a national bank subsidiary of the BHC but owned by another entity, the respondent should report the RSSD ID of the national bank subsidiary that services the loan. For loans that are owned by a national bank subsidiary of the BHC but serviced by another entity, the respondent should report the RSSD ID of the national bank subsidiary that owns the loan. If a national bank subsidiary of the BHC both owns and services the loan, the respondent should report the RSSD ID of the national bank subsidiary that both owns and services the loan. If no national bank subsidiary either owns or services the loan, this field should be left blank (null). In all cases, this field either would be left null or will contain the RSSD ID of a chartered national bank that is a subsidiary of the reporting BHC. To clarify the intended reporting of the national bank RSSD ID in line with the proposal and in light of commenters' questions, the definition of this item within the FR Y-14M instructions will be updated to include these clarifications.

Finally, commenters questioned whether the RSSD ID field would only affect Loan Level files (FR Y-14M, Schedules A.1, B.1, and D.1) or if an additional field also be added to Portfolio Level files (FR Y-14M, Schedules A.2, B.2 and D.2). With the clarifications to the instructions outlined above, the final FR Y-14 implements the proposed changes for

<sup>8</sup> For the purposes of this notice, a national bank subsidiary is deemed to have a financial interest in the loan if it owns the loan and/or services the loan.

the Loan Level files (Schedules A.1, B.1, and D.1) effective with the reports with data as of March 31, 2018. The RSSD ID field will not be collected as part of the Portfolio Level files (Schedules A.2, B.2, and D.2).

#### Schedule D (Credit Card)

For the reports with data as of September 30, 2017, the Board proposed breaking out the total outstanding balance reported on Schedule D (Credit Card) into two items: Cycle-Ending Balance (existing item 15) and Month-Ending Balance. The addition of the month-ending balance item would replace the Cycle Ending Balance Flag (item 16).

One commenter indicated that the rationale for both cycle-ending balance and month-ending balance on Schedule D was unclear and that availability in credit card servicing systems does not necessarily imply those data are available for reporting purposes. The commenter requested that the Board withdraw this change.

The Board emphasizes that both Month Ending Balance and the existing Cycle-Ending Balance fields enhance modeling and enable the Board and the OCC to identify the level and direction of model risks to which a bank is exposed. In particular, the cycle-ending balance informs consumers' behavior in terms of performance of loans, spending and payment behavior, and highlights the timing influence between the two measures. The existing cycle-ending balance field currently allows firms to report either the month-ending or cycle-ending balances identified by the existing cycle-ending balance flag field, resulting in inconsistent reporting across firms and diminished usability of the reported data for this field. The final FR Y-14 implements these changes with the reports with data as of March 31, 2018.

#### Other Comments

Under the current attestation requirement, BHCs and U.S. IHCs subject to supervision by the Large Institution Supervision Coordination Committee (LISCC)<sup>9</sup> are required to submit a cover page signed by the chief financial officer or an equivalent senior officer attesting to the material correctness of actual data, conformance to instructions, and effectiveness of internal controls. Although no modifications to the existing attestation requirement were proposed, commenters suggested certain

modifications to the submission dates for the attestation requirement, including allowing firms subject to supervision by the LISCC to submit the FR Y-14M attestations quarterly, instead of each respective month. Another commenter requested that U.S. IHCs subject to supervision by the LISCC that are required to submit their first attestation as of December 31, 2017, submit their attestations for the reports associated with the annual cycle for the FR Y-14A and FR Y-14Q reports in April 2018, instead of on each data schedule's respective submission date. These modifications would allow these U.S. IHCs the same amount of time to come into compliance with the attestation requirement as was accorded BHCs and would clarify the attestation due date for FR Y-14 schedules with alternative submission dates, while reducing operational burden associated with the attestation requirement. In line with this feedback, the Board will modify the attestation requirement as follows:

- *FR Y-14A/Q (annual submission)*: For both LISCC U.S. IHCs and BHCs subject to the FR Y-14 attestation requirement, the attestation associated with the annual submission (*i.e.*, data reported as of December 31, including the global market shock submission<sup>10</sup>) will be submitted on the last submission date for those reports, typically April 5 of the following year. For example, all of the FR Y-14Q schedules due 52 days after the as of date (typically mid-February), all of the FR Y-14A schedules due April 5, and the trading and counterparty schedules due on the global market shock submission date (March 15 at the latest) will be due on the latest of those dates, the annual submission date for the FR Y-14A report schedules (April 5).

- *FR Y-14M*: for those firms that file the FR Y-14M reports, the three attestations for the three months of the quarter will be due on one date, the final FR Y-14M submission date for those three intervening months. For example, the attestation cover pages and any associated materials for the FR Y-14M reports with January, February, and March as of dates will be due on the data due date for the March FR Y-14M. Note that one attestation page per monthly submission is still required.

- *FR Y-14Q*: the FR Y-14Q attestation for the three remaining

quarters (Q1, Q2, and Q3) will continue to be submitted on the due date for the FR Y-14Q for that quarter.

The instructions and cover pages will be updated to clarify and align with the submission dates.

Two commenters requested the elimination of several schedules that the Board did not propose to modify. Commenters requested that the Board no longer require the reporting of detailed information on a firm's retail balances and loss projections (FR Y-14A, Schedule A.2.a), metrics of provision net revenue (FR Y-14A, Schedule A.7.c), or quarterly data monitoring progress towards phasing in regulatory capital requirements (FR Y-14Q, Schedule D) as they believe the information is not material to the balance sheet and provides little incremental information or value. The Board reviews the items required to be reported on the FR Y-14 series of reports on an ongoing basis. In response to past comments, the Board has assessed the information collected on the Summary—PPNR Metrics (FR Y-14A, Schedule A.7.c) sub-schedule and added thresholds to certain items or removed other items altogether. All of these schedules continue to be used to produce either the Dodd-Frank Act stress test estimates or as part of the qualitative capital plan assessment (either through the qualitative component of the CCAR assessment for LISCC and large and complex firms or through the annual supervisory review for large and noncomplex firms). The Board may propose additional changes in the future to further reduce burden associated with these reporting requirements or in connection with updates to stress-test projections.

Similarly, in an effort to reduce burden, commenters recommended that the Board reduce the reporting of the FR Y-14M schedules to a quarterly frequency. One commenter also summarized and provided further feedback on topics that require ongoing discussions, including requirements for historic resubmissions. The Board continues to investigate opportunities to reduce the burden of reporting while still collecting the data at a level of granularity and frequency that supports the running of the DFAST and CCAR exercises. As requested, the Board will continue to engage the industry to gather further feedback, including in regards to the FR Y-14M, and values industry feedback on matters related to FR Y-14 reporting.

<sup>9</sup> BHCs subject to supervision by the LISCC were subject to the attestation requirement in December 2016, and U.S. IHCs subject to supervision by the LISCC will be subject beginning in December 2017.

<sup>10</sup> As outlined in Sections 252.144 (Annual Stress Tests) of Regulation YY (12 CFR 252), the as-of date will be October 1 of the calendar year preceding the year of the stress test cycle to March 1 of the calendar year of the stress test cycle and will be communicated to the BHCs by March 1st of the calendar year.

As in prior proposals,<sup>11</sup> commenters requested that the Board undertake a periodic, full-scale review of the data items required in the FR Y–14 submissions, and that the Board increase edit check thresholds or allow for permanent closure options. In response, the Board confirms that it regularly reviews the required elements of the FR Y–14 submissions and will continue to review the requirements to ensure they are appropriate. The current edit check thresholds and permanent closure of edit checks are varied and have been determined on a case-by-case basis depending on the data item to which the edit check pertains. Given the disparate nature of the data items being collected, it would be inappropriate to create uniform minimum thresholds across all schedules.

Board of Governors of the Federal Reserve System, December 11, 2017.

**Ann E. Misback,**

*Secretary of the Board.*

[FR Doc. 2017–26960 Filed 12–14–17; 8:45 am]

**BILLING CODE 6210–01–P**

## GENERAL SERVICES ADMINISTRATION

[Notice–MV–2017–05; Docket No. 2017–0002; Sequence No. 25]

### Procurement Through Commercial e-Commerce Portals

**AGENCY:** Office of Acquisition Policy, General Services Administration.

**ACTION:** Notice of a public meeting and request for information.

**SUMMARY:** The General Services Administration (GSA) and the Office of Management and Budget (OMB) are interested in conducting an ongoing dialogue with industry about Section 846 of the National Defense Authorization Act (NDAA) for Fiscal Year 2018, Procurement through Commercial e-Commerce Portals. The dialogue begins with this public notice and request for comment.

GSA is providing external stakeholders the opportunity to offer input on the first implementation phase outlined in Section 846, an implementation plan due to Congress within 90 days of enactment.

GSA and OMB are hosting a modified town-hall style public meeting to help inform the Phase I submittal.

**DATES:** The public meeting will be conducted on January 9, 2018, at 8:30 a.m. Eastern Standard Time. Further

Information for the public meeting may be found under the heading **SUPPLEMENTARY INFORMATION.**

**ADDRESSES:** The meeting will be held at GSA’s Central Office, at 1800 F St NW, Washington, DC 20405.

Submit comments identified by “Procurement Through Commercial e-Commerce Portals”, by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments by searching for “Procurement Through Commercial e-Commerce Portals”. Select the link “Comment Now” and follow the instructions provided at the “You are commenting on” screen. Please include your name, company name (if any), and “Procurement Through Commercial e-Commerce Portals”, on your attached document.

- *Mail:* U.S. General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, 2nd Floor, ATTN: Lois Mandell, Washington, DC 20405–0001.

*Instructions:* Please submit comments only and cite “Procurement Through Commercial e-Commerce Portals” in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:**

Matthew McFarland at [section846@gsa.gov](mailto:section846@gsa.gov), or 202–690–9232, for clarification of content, public meeting information and submission of comment. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite “Procurement Through Commercial e-Commerce Portals”.

*Written Comments/Statements:* Interested parties may submit written comments to [www.regulations.gov](http://www.regulations.gov) by January 16, 2018.

GSA and OMB encourage early engagement so that public input may be considered in the formulation of the Phase I implementation plan, which is due to Congress within 90 days of enactment of the NDAA for Fiscal Year 2018.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The General Services Administration (GSA) was established to provide the United States Government with centralized procurement. For decades, GSA has provided access to commercial products through a number of channels including GSA Advantage!, GSA eBuy, GSA Global Supply, and the Federal Supply Schedules. Across the

Government, the market for commercial products is estimated to be greater than \$50 billion annually.

GSA has long been focused on improving the acquisition of commercial items. Throughout its history, GSA has sought to leverage the best available technology to help agencies shorten the time to delivery, reduce administrative cost, make compliance easier, be a strategic thought leader and supplier of choice across the Federal Government, and be a good partner to industry. Today, the best available technology includes commercial e-commerce portals.

The National Defense Authorization Act (NDAA) for Fiscal Year 2018, Section 846 Procurement Through Commercial e-Commerce Portals, directs the Administrator of the GSA to establish a program to procure commercial products through commercial e-commerce portals. Section 846 language can be found at the following link—<https://interact.gsa.gov/group/commercial-platform-initiative>. Section 846 paragraph (c) instructs the “Director of the Office of Management and Budget, in consultation with the GSA Administrator and the heads of other relevant departments and agencies,” to carry out three implementation phases. Phase I requires:

Not later than 90 days after the date of the enactment of this Act, an implementation plan and schedule for carrying out the program established pursuant to subsection (a), including a discussion and recommendations regarding whether any changes to, or exemptions from, laws that set forth policies, procedures, requirements, or restrictions for the procurement of property or services by the Federal Government are necessary for effective implementation of this section.

GSA and OMB intend to establish an ongoing dialogue with industry and interested parties in Government throughout the program’s implementation. As a first step, GSA and OMB are seeking feedback from outside stakeholders on initial ideas for general program design and buying practices and, in that context, whether existing laws, Executive Orders, policies or other requirements may hinder effective implementation of the program.

#### II. Written Comments

To assist GSA and OMB in drafting the Phase I implementation plan, GSA and OMB are inviting interested parties to submit written comments. GSA and OMB are encouraging those comments be submitted before the public meeting on January 9, 2018, which will help

<sup>11</sup> See, for example, responses to comments outline in the final tailoring rule (82 FR 9308).

GSA and OMB prepare informed questions for the public meeting discussions. However, all comments must be submitted by January 16, 2018, which will allow the Government to take them into account before drafting the Phase I implementation plan.

To facilitate comment submission, GSA and OMB have developed a number of questions grouped around three focus areas—program design, business practices, and implementation. Each question is intended to provide respondents with a general framework for commenting. These questions are not intended to be all-inclusive; other comments and observations are encouraged. GSA and OMB understand the tight timeframe for initial comment may limit commenters' ability to fully address every issue and are therefore encouraging commenters to continue their analysis and provide additional input at future outreach sessions.

#### A. General Program Design

1. *Leveraging existing e-commerce portal providers.* What factors would encourage portal providers to contract with GSA to operate e-commerce portals for Government use? What are the standard terms and conditions relating to purchasing through the portal? Which of these standard terms and conditions would need to change for Federal Government buying? What relief from applicable laws, Executive Orders, regulations, and policies is necessary for portal providers to want to enter this marketplace?

2. *Number of portals.* What factors should GSA take into consideration when determining the appropriate number of contracts to award to portal providers to achieve the objectives of the law (*i.e.*, enhancing competition, expediting procurement, enabling market research, and ensuring reasonable pricing of commercial products)? For example, would it be appropriate for GSA to seek to limit overlap of product categories and/or make award to a single portal provider for a product category? In some industries, such as travel, aggregators and metasearch engines permit easy comparison shopping. Does such a model fit into a commercial-off-the-shelf (COTS) product marketplace?

3. *Phase-in.* Section 846 envisions that the program would be available to acquisitions under the simplified acquisition threshold (SAT), which pursuant to NDAA Section 806, will be \$250,000. Notwithstanding this limitation, should GSA take an incremental approach to the roll-out of the program? If so, should the phase-in be based on dollar value (*e.g.*, focus

initially on a threshold below the SAT), certain product categories (*e.g.*, lab equipment, office supplies, clothing), and/or some other variable? Explain.

4. *Relationship between GSA, Government buyers, e-commerce portal providers, and sellers through portal providers.* What is the commercial practice for the privacy of contract relationship between e-commerce portal providers, sellers through portal providers, and buyers? Who should have privacy of contract under the program? Should the portal provider have privacy of contract with the sellers? Should the Government buyer have privacy of contract with the seller through the portal provider?

5. *Relationship to existing programs.* How should GSA consider the relationship between this program and other GSA managed Government-wide acquisition programs that provide ready access to COTS items, such as the Federal Supply Schedules and the national supply system? What unintended consequences, if any, do you envision, and what steps, if any, do you recommend to avoid them?

#### B. Buying Practices

1. *Competition.* How do commercial firms consider competition when conducting purchases through commercial e-commerce portals, compared to the Federal Government's approach to competition in its acquisition system? Should all purchases between the micro-purchase threshold and the SAT be treated in identical fashion in terms of competition? How, if at all, should the competition rules be modified from what is currently required by the Federal Acquisition Regulation (FAR) for COTS purchases?

2. *Pricing, delivery and other terms of sale.* How do commercial firms establish pricing, delivery, and other terms of sales when buying COTS products through commercial e-commerce portals? Should the Government's commercial e-commerce portal program allow GSA and/or Government buyers to negotiate discounts from stated prices and other concessions (*e.g.*, volume discounts, faster delivery, longer warranties), as is done under the Federal Supply Schedules contracts? Alternatively, should Government buyers be restricted to a "take it or leave it" approach that limits customers to the prices sellers offer commercial customers based on the competitive pressures of the platform? How does the relationship between the e-commerce portal provider and supplier drive the approach?

3. *Compliance.* What is the commercial practice of e-commerce portal providers for monitoring compliance with applicable laws/regulations and supply chain risk management of sellers through the portal? To the extent that purchases made through the portal are subject to certain Government-unique requirements, who should be responsible for ensuring compliance (*e.g.*, the platform provider, the seller, the government buyer, other)?

4. *Considerations for small businesses, socio-economic programs, and mandatory sources.* What, if any, adjustments should be made to existing requirements associated with small businesses, socio-economic programs, and mandatory sources?

5. *Supplier and product performance.* What are the commercial practices for reviewing supplier and product performance on commercial e-commerce portals? How should the Government use supplier and product reviews for this program? Should Government reviews be public? Should the Government rely on commercial reviews integrated in the existing e-commerce platform when making purchases through the program? What role should existing Government past performance data play in the program?

6. *Responsibility of platform sellers.* What are the commercial practices of e-commerce portal providers vetting the sellers on their platform? What, if any, responsibility determination should be made for companies selling through the portals, who should make the responsibility determination, and when should such a determination be made?

#### C. Implementation

1. *Changes to existing acquisition framework for COTS items.* If the program were only to apply core commercial item clauses in contracts with e-commerce portal providers and suppliers who sell through the portal, could the program operate successfully in part or in full? If not, what additional changes are needed to statutes, Executive Orders, regulations, policies, and other guidance and tools, to make the program successful? Where possible, please tie recommendations for relief to suggestions made in response to other questions to help illustrate the potential benefits of action and the potential consequences of inaction.

2. *Level of relief.* Should the list of applicable laws, Executive Orders, regulations, and policies applicable to program purchases be identical for all COTS transactions over the micro-purchase threshold and up to the SAT?

3. *Rulemaking.* Should the regulations for this program be in the FAR, in separate GSA regulations, or both? Why?

#### D. Additional Considerations

What other issues are especially important in thinking about Phase I and the initial implementation plan?

### III. Public Meeting

GSA and OMB are holding a modified town-hall style public meeting on January 9, 2018. The meeting will start at 8:30 a.m. Eastern Standard Time and conclude no later than 4:00 p.m. Eastern Standard Time. Attendees can attend the meeting in person at GSA Central Office or virtually through GSA's internet meeting platform, Adobe Connect. Further details on the virtual meeting will be made available via GSA Interact at <https://interact.gsa.gov/group/commercial-platform-initiative>. (GSA may encourage industry-to-industry dialogue through this interact site.)

GSA and OMB will not make presentations and will not answer questions during this meeting. Instead, GSA and OMB will actively listen to the viewpoints and information presented by different interested parties. GSA and OMB may pose questions to participants to clarify feedback, to generate dialogue, or to increase understanding.

This meeting will focus on Phase I. Future sessions are envisioned to gather information for subsequent implementation phases.

*In-person Attendance:* Interested parties may attend the public meeting to be held in the GSA Auditorium at GSA Headquarters, located at 1800 F St NW, Washington, DC 20405. The public is asked to pre-register by January 2, 2018, due to security and seating limitations. To pre-register, email the names of attendees (required) and the name of their organization (not required) to Mr. Matthew McFarland at [section846@gsa.gov](mailto:section846@gsa.gov).

Registration check-in will begin at 7:30 a.m. Eastern Standard Time January 9, 2018, and the meeting will start promptly at 8:30 a.m. Eastern Standard Time, January 9, 2018. Attendees must be prepared to present a form of government-issued photo identification.

*Oral Presentations:* GSA and OMB intend to conduct a modified town-hall/panel style discussion focused around each of the three main topics outlined above (*i.e.*, program design, buying practices, and implementation). GSA will assign parties interested in presenting (at the public meeting) into panels.

GSA intends to organize panel discussions around each of the three topic areas (General Program Design, Buying Practices, and Implementation). Each panel discussion will include up to five panelists and is expected to run between one to two hours. Parties wishing to participate as a panel member should email Mr. Matthew McFarland at [section846@gsa.gov](mailto:section846@gsa.gov) by December 28, 2017, noting which of the three topics they wish to address.

GSA will select the panelists from amongst those expressing an interest and will formally notify them of which panel and estimated starting time. In selecting panelists, GSA will seek an array of perspectives, backgrounds, and views.

As part of the facilitated dialogue, GSA and OMB employees will ask the panelists questions. Time permitting, other attendees may also be invited to ask questions. Time will be reserved before the conclusion of the meeting for attendees to comment on issues not already addressed.

*Note:* Requests made after the deadline to participate on a panel may be accepted if space permits.

*Virtual Attendance:* Interested parties may also attend virtually through GSA's virtual meeting platform, hosted by Adobe Connect. Further details on the virtual meeting will be made available via GSA Interact at <https://interact.gsa.gov/group/commercial-platform-initiative>.

*Meeting Accommodations:* The public meeting is physically accessible to people with disabilities. Request for sign language interpretation or other auxiliary aids should be directed to Mr. Matthew McFarland at [section846@gsa.gov](mailto:section846@gsa.gov) or 202-690-9232 by December 28, 2017.

The TTY number for further information is: 1-800-877-8339. When the operator answers the call, let them know the agency is the General Services Administration; the point-of-contact is Mr. Matthew McFarland at 202-690-9232.

Dated: December 11, 2017.

**Jeffrey A. Koses,**

*Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy, General Services Administration.*

[FR Doc. 2017-26964 Filed 12-14-17; 8:45 am]

**BILLING CODE 6820-61-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Designation of a Class of Employees for Addition to the Special Exposure Cohort

**AGENCY:** National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** HHS gives notice of a decision to designate a class of employees from the Idaho National Laboratory (INL) in Scoville, Idaho, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000.

**FOR FURTHER INFORMATION CONTACT:** Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, NIOSH, 1090 Tusculum Avenue, MS C-46, Cincinnati, OH 45226-1938, Telephone 1-877-222-7570. Information requests can also be submitted by email to [DCAS@CDC.GOV](mailto:DCAS@CDC.GOV).

#### SUPPLEMENTARY INFORMATION:

**Authority:** 42 U.S.C. 7384q(b). 42 U.S.C. 7384l(14)(C).

On November 22, 2017, as provided for under 42 U.S.C. 7384l(14)(C), the Acting Secretary of HHS designated the following class of employees as an addition to the SEC:

All employees of the Department of Energy, its predecessor agencies, and their contractors and subcontractors who worked at the Idaho National Laboratory (INL) in Scoville, Idaho, and who were monitored for external radiation at the Idaho Chemical Processing Plant (CPP) (*e.g.*, at least one film badge or TLD dosimeter from CPP) between January 1, 1975, and December 31, 1980, for a number of work days aggregating at least 250 work days, occurring solely under this employment, or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

This designation will become effective on December 22, 2017, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

**John Howard,**

*Director, National Institute for Occupational Safety and Health.*

[FR Doc. 2017-27038 Filed 12-14-17; 8:45 am]

**BILLING CODE 4163-19-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Centers for Medicare & Medicaid Services**

[Document Identifier: CMS-10571]

**Agency Information Collection Activities: Proposed Collection; Comment Request****AGENCY:** Centers for Medicare & Medicaid Services, HHS.**ACTION:** Notice.

**SUMMARY:** The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**DATES:** Comments must be received by February 13, 2018.

**ADDRESSES:** When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to <http://www.regulations.gov>. Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number \_\_\_\_, Room C4-26-05, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

To obtain copies of a supporting statement and any related forms for the

proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at <http://www.cms.hhs.gov/PaperworkReductionActof1995>.
2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to [Paperwork@cms.hhs.gov](mailto:Paperwork@cms.hhs.gov).
3. Call the Reports Clearance Office at (410) 786-1326.

**FOR FURTHER INFORMATION CONTACT:** William Parham at (410) 786-4669.

**SUPPLEMENTARY INFORMATION:****Contents**

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

**CMS-10571 Limited Wraparound Coverage Reporting**

Under the PRA (44 U.S.C. 3501-3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

**Information Collection**

1. *Type of Information Collection Request:* New collection of information request; *Title of Information Collection:* Limited Wraparound Coverage Reporting; *Use:* The Department of Treasury, the Department of Labor and the Department of Health and Human Services published final regulations on March 18, 2015 (80 FR 13995), amending the regulations regarding excepted benefits under the Employee Retirement Income Security Act of 1974, the Internal Revenue Code, and the Public Health Service Act to specify requirements for limited wraparound coverage to qualify as an excepted benefit. The final regulations include requirements that limited wraparound

coverage must satisfy in order to qualify as excepted benefits. One of them is a reporting requirement, for group health plans and group health insurance issuers, as well as group health plan sponsors.

A self-insured group health plan, or a health insurance issuer offering or proposing to offer Multi-State Plan wraparound coverage, is required to report to OPM information reasonably required to determine whether the plan or issuer qualifies to offer such coverage or complies with the applicable requirements. In addition, the plan sponsor of any group health plan offering any type of limited wraparound coverage is required to report to the Department of Health and Human Services (HHS), in a form and manner specified in guidance by the Secretary of HHS.

We seek comment on the content of the proposed collection form. We also seek comment on the impact that an extension of the limited wraparound pilot program would have on the number of employers/sponsors participating in the limited wraparound pilot program. In addition, if HHS extends the limited wraparound pilot program, we seek comment on when the limited wraparound pilot program should sunset, or whether the limited wraparound pilot program should be made permanent. *Form Number:* CMS-10571 (OMB control number: 0938-NEW); *Frequency:* Once; *Affected Public:* Private Sector; *Number of Respondents:* 8; *Number of Responses:* 8; *Total Annual Hours:* 24. (For policy questions regarding this collection contact Usree Bandyopadhyay at 410-786-6650).

Dated: December 12, 2017.

**William N. Parham, III,**  
*Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2017-27048 Filed 12-14-17; 8:45 am]

**BILLING CODE 4120-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Food and Drug Administration**

[Docket No. FDA-2017-N-0809]

**Issuance of Priority Review Voucher; Rare Pediatric Disease Product**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the issuance of a priority review voucher to

the sponsor of a rare pediatric disease product application. The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Food and Drug Administration Safety and Innovation Act (FDASIA), authorizes FDA to award priority review vouchers to sponsors of approved rare pediatric disease product applications that meet certain criteria. FDA is required to publish notice of the award of the priority review voucher. FDA has determined that MEPSEVII (vestronidase alfa-vjbc), manufactured by Ultragenyx Pharmaceutical, Inc., meets the criteria for a priority review voucher.

**FOR FURTHER INFORMATION CONTACT:**

Althea Cuff, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993-0002, 301-796-4061, Fax: 301-796-9856, email: [althea.cuff@fda.hhs.gov](mailto:althea.cuff@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** FDA is announcing the issuance of a priority review voucher to the sponsor of an approved rare pediatric disease product application. Under section 529 of the FD&C Act (21 U.S.C. 360ff), which was added by FDASIA, FDA will award priority review vouchers to sponsors of approved rare pediatric disease product applications that meet certain criteria. FDA has determined that MEPSEVII (vestronidase alfa-vjbc), manufactured by Ultragenyx Pharmaceutical, Inc., meets the criteria for a priority review voucher. MEPSEVII (vestronidase alfa-vjbc) is indicated for the treatment of Mucopolysaccharidosis type VII (MPS VII, Sly Syndrome).

For further information about the Rare Pediatric Disease Priority Review Voucher Program and for a link to the full text of section 529 of the FD&C Act, go to <https://www.fda.gov/ForIndustry/DevelopingProductsforRareDiseasesConditions/RarePediatricDiseasePriorityVoucherProgram/default.htm>. For further information about MEPSEVII (vestronidase alfa-vjbc), go to the "Drugs@FDA" website at <https://www.accessdata.fda.gov/scripts/cder/daf/>.

Dated: December 12, 2017.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2017-27049 Filed 12-14-17; 8:45 am]

**BILLING CODE 4164-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA-2017-D-6702]

**The Least Burdensome Provisions: Concept and Principles; Draft Guidance for Industry and Food and Drug Administration Staff; Availability**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability of the draft guidance entitled "The Least Burdensome Provisions: Concept and Principles" FDA utilizes a least burdensome approach to medical device regulation to eliminate unnecessary burdens that may delay the marketing of beneficial new products, while maintaining the statutory requirements for clearance and approval. This document describes the guiding principles and recommended approach for FDA staff and industry to facilitate consistent application of least burdensome principles to the activities pertaining to products meeting the statutory definition of a device regulated under the Federal Food, Drug, and Cosmetic Act (the FD&C Act). This draft guidance is not final nor is it in effect at this time.

**DATES:** Submit either electronic or written comments on the draft guidance by February 13, 2018 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

**ADDRESSES:** You may submit comments on any guidance at any time as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your

comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

*Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

*Instructions:* All submissions received must include the Docket No. FDA-2017-D-6702 for "The Least Burdensome Provisions: Concept and Principles; Draft Guidance for Industry and Food and Drug Administration Staff; Availability." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- *Confidential Submissions—*To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For



more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

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

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled “The Least Burdensome Provisions: Concept and Principles” to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002; or to the Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

**FOR FURTHER INFORMATION CONTACT:** Joshua Silverstein, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 66, Rm. 1615, Silver Spring, MD 20993–0002, 301–796–5155; and Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The FD&C Act, as amended by the FDA Modernization Act of 1997, the FDA Safety and Innovation Act (FDASIA), and the 21st Century Cures Act (Cures Act), includes least burdensome provisions that direct the Food and Drug Administration (FDA or Agency) to take a least burdensome approach to medical device evaluation in a manner that eliminates unnecessary burdens that may delay the marketing of beneficial new products, while maintaining the statutory requirements for clearance and approval. The updates to the least burdensome provisions in FDASIA and the Cures Act clarified the original least burdensome provisions and further recognized the role of postmarket activities as they relate to premarket decisions. FDA believes, as a matter of policy, that least burdensome principles should be consistently and widely applied to all activities in the premarket and postmarket settings to remove or reduce unnecessary burdens so that patients can have earlier and continued access to high quality, safe, and effective devices. This draft guidance, therefore, reflects FDA’s belief that least burdensome principles should be applied throughout the medical device total product lifecycle.

For the purposes of this guidance, FDA defines “least burdensome” as the minimum amount of information necessary to adequately address a regulatory question or issue through the most efficient manner at the right time. This draft guidance describes the least burdensome guiding principles and recommended approach for FDA staff and industry to ensure consistent application of least burdensome principles to the activities pertaining to products meeting the statutory definition of a device regulated under the FD&C Act. This guidance document, when finalized, will replace the 2002 Least Burdensome Guidance entitled “The Least Burdensome Provisions of the FDA Modernization Act of 1997: Concept and Principles” (October 4, 2002).

**II. Significance of Guidance**

This draft guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on “The Least Burdensome Provisions: Concept and Principles.” It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

**III. Electronic Access**

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at <https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm>. This guidance document is also available at <https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm> or <https://www.regulations.gov>. Persons unable to download an electronic copy of “The Least Burdensome Provisions: Concept and Principles; Draft Guidance for Industry and Food and Drug Administration Staff” may send an email request to [CDRH-Guidance@fda.hhs.gov](mailto:CDRH-Guidance@fda.hhs.gov) to receive an electronic copy of the document. Please use the document number 1332 to identify the guidance you are requesting.

**IV. Paperwork Reduction Act of 1995**

This draft guidance refers to previously approved collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in the following FDA regulations, guidance, and forms have been approved by OMB as listed in the following table:

21 CFR part; guidance; or FDA form	Topic	OMB control No.
820 .....	Quality system regulation .....	0910–0073
812 .....	Investigational device exemption .....	0910–0078
807, subpart E .....	Premarket notification .....	0910–0120
860.123 .....	Reclassification petition .....	0910–0138
814, subparts A through E .....	Premarket approval .....	0910–0231
814, subpart H .....	Humanitarian device exemption .....	0910–0332
803 .....	Medical device reporting .....	0910–0437
822 .....	Postmarket surveillance .....	0910–0449
Form FDA 3670 .....	Adverse event reports/MedSun program .....	0910–0471



21 CFR part; guidance; or FDA form	Topic	OMB control No.
801 and 809	Labeling	0910-0485
"Recommendations: Clinical Laboratory Improvement Amendments of 1988 (CLIA) Waiver Applications for Manufacturers of In Vitro Diagnostic Devices".	CLIA waiver	0910-0598
807, subparts A through D	Registration and listing	0910-0625
"Requests for Feedback on Medical Device Submissions: The Pre-Submission Program and Meetings with Food and Drug Administration Staff".	Q-submissions	0910-0756
"De Novo Classification Process (Evaluation of Automatic Class III Designation)".	De Novo classification process	0910-0844

Dated: December 11, 2017.

**Leslie Kux,**

Associate Commissioner for Policy.

[FR Doc. 2017-26987 Filed 12-14-17; 8:45 am]

BILLING CODE 4164-01-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Resources and Services Administration**

**Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: Rural Health Opioid Program Grant Performance Measures, OMB No. 0906-xxxx-New**

**AGENCY:** Health Resources and Services Administration (HRSA), Department of Health and Human Services.

**ACTION:** Notice

**SUMMARY:** In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

**DATES:** Comments on this ICR should be received no later than February 13, 2018.

**ADDRESSES:** Submit your comments to [paperwork@hrsa.gov](mailto:paperwork@hrsa.gov) or mail the HRSA

Information Collection Clearance Officer, Room 14N39, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email [paperwork@hrsa.gov](mailto:paperwork@hrsa.gov) or call Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at (301) 443-1984.

**SUPPLEMENTARY INFORMATION:** When submitting comments or requesting information, please include the information request collection title for reference.

*Information Collection Request Title:* Rural Health Opioid Program Grant Performance Measures.

OMB No. 0906-xxxx-New.

*Abstract:* The Rural Health Opioid Program aims to promote rural health care services outreach by expanding the delivery of opioid related health care services to rural communities. The program will work to reduce the morbidity and mortality related to opioid overdoses in rural communities through the development of broad community consortiums to prepare individuals with opioid-use disorder to start treatment, implement care coordination practices to organize patient care activities, and support individuals in recovery through the enhancement of behavioral counselling and peer support activities.

*Need and Proposed Use of the Information:* For this program, performance measures were drafted to provide data to the program and to

enable HRSA to provide aggregate program data required by Congress under the Government Performance and Results Act (GPRA) of 1993. These measures cover the principal topic areas of interest to the Federal Office of Rural Health Policy (FORHP), including: (a) Target population demographics; (b) referrals to substance abuse treatment; (c) substance abuse treatment process and outcomes; (d) education of health care providers and community members; and (e) rates of fatal and non-fatal opioid-related overdose. All measures will speak to FORHP's progress toward meeting the goals set.

*Likely Respondents:* The respondents would be recipients of the Rural Health Opioid Program grant funding.

*Burden Statement:* Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

*Total Estimated Annualized Burden Hours:*

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Rural Health Opioid Program Grant Performance Measures	10	1	10	11	110
	10		10		110

HRSA specifically requests comments on: (1) The necessity and utility of the proposed information collection for the

proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance

the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques

or other forms of information technology to minimize the information collection burden.

Amy McNulty,

Acting Director, Division of the Executive Secretariat.

[FR Doc. 2017-27013 Filed 12-14-17; 8:45 am]

BILLING CODE 4165-15-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Determination Concerning a Petition To Add a Class of Employees to the Special Exposure Cohort

**AGENCY:** National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** HHS gives notice of a determination concerning a petition to add a class of employees from the Carborundum Company, in Niagara Falls, New York, to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA).

**FOR FURTHER INFORMATION CONTACT:** Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 1090 Tusculum Avenue, MS C-46, Cincinnati, OH 45226-1938, Telephone 1-877-222-7570. Information requests can also be submitted by email to [DCAS@CDC.GOV](mailto:DCAS@CDC.GOV).

#### SUPPLEMENTARY INFORMATION:

**Authority:** [42 U.S.C.7384q].

On November 16, 2017, the Acting Secretary of HHS determined that the following class of employees does not meet the statutory criteria for addition to the SEC as authorized under EEOICPA:

All employees who worked in any area of the Carborundum Company facility on Buffalo Avenue, Niagara Falls, New York, from January 1, 1943, through December 31, 1976.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2017-27039 Filed 12-14-17; 8:45 am]

BILLING CODE 4163-19-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

#### Findings of Research Misconduct

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Notice.

**SUMMARY:** Findings of research misconduct have been made on the part of Matthew Endo, former graduate student, Department of Chemistry, University of Illinois at Urbana-Champaign. The questioned research was supported by National Institute of General Medical Sciences (NIGMS), National Institutes of Health (NIH), grant R01 GM080436. The administrative actions, including three (3) years of supervision, which are implemented beginning on November 16, 2017, are detailed below.

#### FOR FURTHER INFORMATION CONTACT:

Wanda K. Jones, Dr.P.H., Interim Director, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453-8200.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

*Matthew Endo, University of Illinois at Urbana-Champaign:* Based on the Respondent's admission, an assessment conducted by University of Illinois at Urbana-Champaign (UIUC), and analysis conducted by ORI in its oversight review, ORI found that Mr. Matthew Endo, a former graduate student, Department of Chemistry, UIUC, engaged in research misconduct in research supported by National Institute of General Medical Sciences (NIGMS), National Institutes of Health (NIH), grant R01 GM080436.

ORI found that Respondent engaged in research misconduct by intentionally, knowingly, or recklessly causing false data to be recorded, falsifying and/or fabricating data and related images by alteration and/or reuse and/or relabeling of experimental data, and reporting falsified and/or fabricated data in one (1) manuscript subsequently submitted for publication:

- "Amphotericin primarily kills human cells by binding and extracting cholesterol." Submitted for publication to the *Proceedings of the National Academy of Sciences* [withdrawn prior to peer review] (hereafter referred to as "Manuscript 1")

Specifically, ORI found that:

- In Manuscript 1, Respondent caused falsified and/or fabricated results to

be recorded by knowingly requesting biological testing of a mixture of compounds that he falsely claimed to be a single compound

- In Manuscript 1, Respondent falsified and/or fabricated the results on page S26 of the Supporting Information by modifying the HPLC trace through peak erasure to make the preparation of C35deOAmB appear more pure than in the actual results of experimentation
- In Manuscript 1, Respondent falsified and/or fabricated the results of Surface Plasmon Resonance data on page S7 of the Supporting Information to make the error bars smaller than the actual results of experimentation
- In Manuscript 1, Respondent falsified and/or fabricated the results of a WST08 Cell Proliferation Assay on page S32 of the Supporting Information by falsely claiming to run the reaction in triplicate when it was only performed in duplicate
- In correspondence with his advisor, Respondent falsified and/or fabricated the results of the preparation of putative C2deoAmB where Respondent modified and relabeled a HPLC trace and relabeled an NMR spectrum to falsely claim characterization, purity, and identification of sample that was sent for biological assay

Mr. Endo entered into a Voluntary Settlement Agreement and voluntarily agreed for a period of three (3) years, beginning on November 16, 2017:

(1) To have his research supervised; Respondent agreed to ensure that prior to the submission of an application for PHS support for a research project on which Respondent's participation is proposed and prior to Respondent's participation in any capacity on PHS-supported research, the institution employing him must submit a plan for supervision of Respondent's duties to ORI for approval; the plan for supervision must be designed to ensure the scientific integrity of Respondent's research contribution; Respondent agreed that he will not participate in any PHS-supported research until a plan for supervision is submitted and approved by ORI;

(2) that any institution employing him must submit in conjunction with each application for PHS funds, or report, manuscript, or abstract involving PHS supported research in which Respondent is involved, a certification to ORI that the data provided by Respondent are based on actual experiments or are otherwise legitimately derived and that the data, procedures, and methodology are

accurately reported in the application, report, manuscript, or abstract;

(3) if no supervisory plan is provided to ORI, to provide certification to ORI on annual basis that he has not engaged in, applied for, or had his name included on any application, proposal, or other request for PHS funds without prior notification to ORI; and

(4) to exclude himself voluntarily from serving in any advisory capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

**Kathryn M. Partin,**

*Director, Office of Research Integrity.*

[FR Doc. 2017-26961 Filed 12-14-17; 8:45 am]

**BILLING CODE 4150-31-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Determination Concerning a Petition To Add a Class of Employees to the Special Exposure Cohort

**AGENCY:** National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** HHS gives notice of a determination concerning a petition to add a class of employees from the Rocky Flats Plant, in Golden, Colorado, to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA).

#### FOR FURTHER INFORMATION CONTACT:

Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 1090 Tusculum Avenue, MS C-46, Cincinnati, OH 45226-1938, Telephone 1-877-222-7570. Information requests can also be submitted by email to [DCAS@CDC.GOV](mailto:DCAS@CDC.GOV).

#### SUPPLEMENTARY INFORMATION:

**Authority:** [42 U.S.C. 7384q].

On November 16, 2017, the Acting Secretary of HHS determined that the following class of employees does not meet the statutory criteria for addition to the SEC as authorized under EEOICPA:

All employees of the Department of Energy, its predecessor agencies, and their contractors and subcontractors who worked in any area of the Rocky Flats Plant in

Golden, Colorado, from January 1, 1984, through December 31, 2005.

**John Howard,**

*Director, National Institute for Occupational Safety and Health.*

[FR Doc. 2017-27040 Filed 12-14-17; 8:45 am]

**BILLING CODE 4163-19-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Pre and Postnatal Neurologic Disorders.

*Date:* December 19, 2017.

*Time:* 8:00 a.m. to 8:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Suzan Nadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892, 301-435-1259, [nadis@csr.nih.gov](mailto:nadis@csr.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

*Dated:* December 12, 2017.

**Sylvia L. Neal,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017-27108 Filed 12-14-17; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the meeting of the Council of Councils.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (<http://videocast.nih.gov>).

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4), and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Council of Councils.

*Open:* January 26, 2018.

*Time:* 8:15 a.m. to 11:30 a.m.

*Agenda:* Call to Order and Introductions; Announcements and Updates; Common Fund 4D Nucleome Presentation; NIH Update; Common Fund Concepts.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

*Closed:* January 26, 2018.

*Time:* 12:15 p.m. to 1:30 p.m.

*Agenda:* Review of Grant Applications.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

*Open:* January 26, 2018.

*Time:* 1:30 p.m. to 4:00 p.m.

*Agenda:* Tribal Health Research Office Update and Input; Introduction of New Working Group to Council of Councils; Update & Input—Office of Research on Women's Health Strategic Plan; The ECHO Program at Year One; Closing Remarks.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

*Contact Person:* Franziska Grieder, D.V.M., Ph.D., Executive Secretary, Director, Office of Research Infrastructure Programs, Division of

Program Coordination, Planning, and Strategic Initiatives, Office of the Director, NIH, 6701 Democracy Boulevard, Room 948, Bethesda, MD 20892, *GriederF@mail.nih.gov*, 301-435-0744.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Council of Council's home page at <http://dpcpsi.nih.gov/council/> where an agenda will be posted before the meeting date.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: December 11, 2017.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017-27059 Filed 12-14-17; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Special Emphasis Panel, 2018 Beeson Review.

*Date:* January 12, 2018.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Double Tree Hotel, 8120 Wisconsin Ave., Bethesda, MD 20814.

*Contact Person:* Alexander Parsadonian, Ph.D., Scientific Review Officer, National Institute on Aging, Gateway Building 2C/212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301-496-9666, *PARSADANIANA@NIA.NIH.GOV*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 11, 2017.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017-27055 Filed 12-14-17; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Special Emphasis Panel; "Drug Repositioning and Combination Therapy for AD".

*Date:* January 18, 2018.

*Time:* 11:00 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, 2W200, 7201 Wisconsin Ave., Bethesda, MD 20892.

*Contact Person:* Alexander Parsadonian, Ph.D., Scientific Review Officer, National Institute on Aging, Gateway Building 2C/212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301-496-9666, *PARSADANIANA@NIA.NIH.GOV*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 11, 2017.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017-27056 Filed 12-14-17; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Initial Review Group Epidemiology, Prevention and Behavior Research Review Subcommittee.

*Date:* March 5, 2018.

*Time:* 8:30 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Terrace Level Conference Room, 5635 Fishers Lane, Bethesda, MD 20892.

*Contact Person:* Anna Ghambaryan, M.D., Ph.D., Scientific Review Officer, Extramural Project Review Branch, Office of Extramural Activities, National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, Room 2019, Rockville, MD 20852, 301-443-4032, *anna.ghambaryan@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: December 11, 2017.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017-27057 Filed 12-14-17; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Cancer Institute Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel; NCI SPORE III Review.

*Date:* January 30–31, 2018.

*Time:* 4:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

*Contact Person:* Majed H. Hamawy, Ph.D., Scientific Review Officer, Research Program Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W120, Bethesda, MD 20892–9750, 240–276–6457, [mh101v@nih.gov](mailto:mh101v@nih.gov).

*Name of Committee:* National Cancer Institute Special Emphasis Panel; NCI SPORE IV Review.

*Date:* February 1–2, 2018.

*Time:* 4:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Washington DC/Rockville Hotel & Executive Meeting Center, 1750 Rockville Pike, Bethesda, MD 20852.

*Contact Person:* Sanita Bharti, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W122, Bethesda, MD 20892–9750, 240–276–5909, [sanitab@mail.nih.gov](mailto:sanitab@mail.nih.gov).

*Name of Committee:* National Cancer Institute Special Emphasis Panel; SEP–4 For Provocative Questions.

*Date:* February 6–7, 2018.

*Time:* 6:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

*Contact Person:* Hasan Siddiqui, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical

Center Drive, Room 7W240, Bethesda, MD 20892–9750, 240–276–5122, [hasan.siddiqui@nih.gov](mailto:hasan.siddiqui@nih.gov).

*Name of Committee:* National Cancer Institute Initial Review Group; Subcommittee I—Transition to Independence.

*Date:* February 22–23, 2018.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Delia Tang, MD, Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W602, Bethesda, MD 20892–9750, 240–276–6465, [tangd@mail.nih.gov](mailto:tangd@mail.nih.gov).

*Name of Committee:* National Cancer Institute Special Emphasis Panel; NCI Program Project Review II.

*Date:* February 22, 2018.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Cambria Hotel & Suites Rockville, 1 Helen Heneghan Way, Rockville, MD 20850.

*Contact Person:* Sanita Bharti, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W122, Bethesda, MD 20892–9750, 240–276–5909, [sanitab@mail.nih.gov](mailto:sanitab@mail.nih.gov).

*Name of Committee:* National Cancer Institute Special Emphasis Panel; SEP–3 For Provocative Questions.

*Date:* February 23, 2018.

*Time:* 8:00 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact Person:* Jennifer C. Schiltz, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W634, Bethesda, MD 20892–9750, 240–276–5864, [jennifer.schiltz@nih.gov](mailto:jennifer.schiltz@nih.gov).

*Name of Committee:* National Cancer Institute Special Emphasis Panel; SEP–2 for Provocative Questions.

*Date:* February 27, 2018.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Residence Inn Bethesda Downtown, 7335 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Ombretta Salvucci, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W264, Bethesda, MD 20892–9750, 240–276–7286, [salvucco@mail.nih.gov](mailto:salvucco@mail.nih.gov).

*Name of Committee:* National Cancer Institute Special Emphasis Panel; NCI Program Project Review III.

*Date:* February 27, 2018.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Washington DC/Rockville Hotel & Executive Meeting Center, 1750 Rockville Pike, Bethesda, MD 20852.

*Contact Person:* Majed H. Hamawy, Ph.D., Scientific Review Officer, Research Program Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W120, Bethesda, MD 20892–9750, 240–276–6457, [mh101v@nih.gov](mailto:mh101v@nih.gov).

*Name of Committee:* National Cancer Institute Special Emphasis Panel; NCI Program Project Review IV.

*Date:* February 27–28, 2018.

*Time:* 6:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

*Contact Person:* Adriana Stoica, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH 9609 Medical Center Drive, Room 7W234, Bethesda, MD 20892–9750, 240–276–6368, [Stoica2@mail.nih.gov](mailto:Stoica2@mail.nih.gov).

*Name of Committee:* National Cancer Institute Special Emphasis Panel; NCI Program Project Review VI.

*Date:* March 2, 2018.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.

*Contact Person:* Reed A. Graves, Ph.D., Scientific Review Officer, Research Program Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W106, Bethesda, MD 20892–9750, 240–276–6384, [gravesr@mail.nih.gov](mailto:gravesr@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 12, 2017.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017–27109 Filed 12–14–17; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory

### Council on Alcohol Abuse and Alcoholism.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Council on Alcohol Abuse and Alcoholism.  
*Date:* February 8, 2018.

*Closed:* 9:00 a.m. to 9:30 a.m.

*Agenda:* Presentation of the BSC Report: Evaluation of NIAAA Intramural Staff.

*Place:* National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Terrace Conference Rooms, 5635 Fishers Lane, Bethesda, MD 20892.

*Closed:* 9:45 a.m. to 10:45 a.m.

*Agenda:* To review and evaluate grant applications and cooperative agreements.

*Place:* National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Terrace Conference Rooms, 5635 Fishers Lane, Bethesda, MD 20892.

*Open:* 10:45 a.m. to 3:15 p.m.

*Agenda:* Presentations and other business of the council.

*Place:* National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Terrace Conference Rooms, 5635 Fishers Lane, Bethesda, MD 20892.

*Contact Person:* Abraham P. Bautista, Ph.D., Executive Secretary, National Advisory Council, National Institute on Alcohol Abuse & Alcoholism, National Institutes of Health, 5635 Fishers Lane, Room 2085, Rockville, MD 20852, 301-443-9737, [bautista@mail.nih.gov](mailto:bautista@mail.nih.gov).

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: <http://www.niaaa.nih.gov/AboutNIAAA/AdvisoryCouncil/Pages/default.aspx>, where an agenda and any additional information for the meeting will be posted when available. (Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research

Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: December 11, 2017.

#### David Clary,

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017-27058 Filed 12-14-17; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute on Deafness and Other Communication Disorders; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Deafness and Other Communication Disorders Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Deafness and Other Communication Disorders Advisory Council.

*Date:* January 26, 2018.

*Closed:* 8:30 a.m. to 10:30 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Building 31, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

*Open:* 10:30 a.m. to 2:00 p.m.

*Agenda:* Staff reports on divisional, programmatic, and special activities.

*Place:* National Institutes of Health, Building 31, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

*Contact Person:* Craig A. Jordan, Ph.D., Director, Division of Extramural Activities, NIDCD, NIH, Room 8345, MSC 9670, 6001 Executive Blvd., Bethesda, MD 20892-9670, 301-496-8693, [jordanc@nidcd.nih.gov](mailto:jordanc@nidcd.nih.gov).

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: <http://www.nidcd.nih.gov/about/Pages/Advisory-Groups-and-Review-Committees.aspx>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: December 12, 2017.

#### Sylvia L. Neal,

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017-27110 Filed 12-14-17; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

[CIS No. 2612-17; DHS Docket No. USCIS-2014-0007]

RIN 1615-ZB68

#### Extension of the Designation of Honduras for Temporary Protected Status

**AGENCY:** U.S. Citizenship and Immigration Services, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** The designation of Honduras for Temporary Protected Status (TPS) is set to expire on January 5, 2018. At least 60 days before the expiration of a country's TPS designation or extension, the Secretary of Homeland Security (Secretary), after consultation with appropriate Government agencies, must review the conditions in a foreign state designated for TPS to determine whether the conditions for the TPS designation continue to be met. If the

Secretary does not make a determination that a foreign state no longer meets the conditions for designation for TPS at least 60 days before the current expiration of the country's TPS designation, the period of designation is automatically extended for 6 additional months (or, in the Secretary's discretion, 12 or 18 months). The Secretary did not make a determination on Honduras's designation by November 6, 2017, the statutory deadline. Accordingly, the TPS designation of Honduras is automatically extended for 6 months, from January 6, 2018 through July 5, 2018.

TPS beneficiaries are reminded that, prior to July 5, 2018, the Secretary will review the conditions in Honduras and decide whether extension, redesignation, or termination is warranted in accordance with the TPS statute. During this period, beneficiaries are encouraged to prepare for their return to Honduras in the event Honduras's designation is not extended again and if they have no other lawful basis for remaining in the United States, including requesting updated travel documents from the Government of Honduras.

**DATES:** The 6-month extension of Honduras's TPS designation is effective January 6, 2018, and will remain in effect through July 5, 2018. The 60-day re-registration period runs from December 15, 2017 through February 13, 2018.

**FOR FURTHER INFORMATION CONTACT:**

- You may contact Alexander King, Branch Chief, Waivers and Temporary Services Branch, Service Center Operations Directorate, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW, Washington, DC 20529–2060; or by phone at (202) 272–8377 (this is not a toll-free number). **Note:** The phone number provided here is solely for questions regarding this TPS Notice. It is not for individual case status inquiries.

- For further information on TPS, including guidance on the re-registration process and additional information on eligibility, please visit the USCIS TPS web page at <http://www.uscis.gov/tps>. You can find specific information about this extension of Honduras's TPS by selecting "Honduras" from the menu on the left side of the TPS web page.

- Applicants seeking information about the status of their individual cases can check Case Status Online, available on the USCIS website at <http://www.uscis.gov> or call the USCIS

National Customer Service Center at 800–375–5283 (TTY 800–767–1833). Service is available in English and Spanish.

- Further information will also be available at local USCIS offices upon publication of this Notice.

**SUPPLEMENTARY INFORMATION:**

**Table of Abbreviations**

BIA—Board of Immigration Appeals  
 CFR—Code of Federal Regulations  
 DHS—Department of Homeland Security  
 DOS—Department of State  
 EAD—Employment Authorization Document  
 FNC—Final Nonconfirmation  
 FR—Federal Register  
 Government—U.S. Government  
 IJ—Immigration Judge  
 INA—Immigration and Nationality Act  
 IER—U.S. Department of Justice Civil Rights Division, Immigrant and Employee Rights Section  
 SAVE—USCIS Systematic Alien Verification for Entitlements Program  
 Secretary—Secretary of Homeland Security  
 TNC—Tentative Nonconfirmation  
 TPS—Temporary Protected Status  
 TTY—Text Telephone  
 USCIS—U.S. Citizenship and Immigration Services  
 U.S.C.—United States Code

The extension allows TPS beneficiaries to maintain TPS through July 5, 2018, so long as they continue to meet the eligibility requirements for TPS. Through this Notice, DHS sets forth procedures necessary for eligible nationals of Honduras (or aliens having no nationality who last habitually resided in Honduras) to re-register for TPS and to apply for renewal of their EADs with USCIS.

For individuals who have already been granted TPS under Honduras's designation, the 60-day re-registration period runs from December 15, 2017 through February 13, 2018. USCIS will issue EADs with a July 5, 2018 expiration date to eligible Honduran TPS beneficiaries who timely re-register and apply for EADs under this extension. Given the timeframes involved with processing TPS re-registration applications, DHS recognizes that not all re-registrants will receive new EADs before their current EADs expire on January 5, 2018. Accordingly, through this Notice, DHS automatically extends the validity of EADs issued under the TPS designation of Honduras for 180 days, through July 4, 2018. This Notice explains how TPS beneficiaries and their employers may determine which EADs are automatically extended and how this affects the Form I–9, Employment Eligibility Verification, and E-Verify processes.

**What is Temporary Protected Status (TPS)?**

- TPS is a temporary immigration status granted to eligible nationals of a country designated for TPS under the Immigration and Nationality Act (INA), or to eligible persons without nationality who last habitually resided in the designated country.

- During the TPS designation period, TPS beneficiaries are eligible to remain in the United States, may not be removed, and are authorized to work and obtain EADs so long as they continue to meet the requirements of TPS.

- TPS beneficiaries may also apply for and be granted travel authorization as a matter of discretion.

- The granting of TPS does not automatically result in or lead to lawful permanent resident status.

- To qualify for TPS, beneficiaries must meet the eligibility standards at INA section 244(c)(2), 8 U.S.C. 1254a(c)(2).

- When the Secretary terminates a country's TPS designation, beneficiaries return to one of the following:

- The same immigration status or category they maintained before TPS, if any (unless that status or category has since expired or been terminated); or
- Any other lawfully obtained immigration status or category they received while registered for TPS, as long as it is still valid on the date TPS terminates.

**When was Honduras designated for TPS?**

Honduras was initially designated for TPS on January 5, 1999, on environmental disaster grounds, specifically the devastation caused by Hurricane Mitch. *See* Designation of Honduras Under Temporary Protected Status, 64 FR 524 (Jan. 5, 1999). The last extension of Honduras's designation for TPS was announced on May 16, 2016, based on the determination that the conditions warranting the designation continued to be met. *See* Extension of the Designation of Honduras for Temporary Protected Status, 81 FR 30331 (May 16, 2016).

**Why is the TPS designation for Honduras being extended through July 5, 2018?**

The designation of Honduras for TPS is set to expire on January 5, 2018. At least 60 days before the expiration of a country's TPS designation or extension, the Secretary, after consultation with appropriate Government agencies, must review the conditions in a foreign state designated for TPS to determine



whether the conditions for the TPS designation continue to be met.<sup>1</sup> If the Secretary does not make a determination that a foreign state no longer meets the conditions for designation for TPS at least 60 days before the current expiration of the country's TPS designation, the period of designation is automatically extended for 6 additional months (or, in the Secretary's discretion, 12 or 18 months). See INA section 244(b)(3)(A) and (C). The Secretary did not make a determination on Honduras's designation by November 6, 2017, the statutory deadline, and did not elect to extend the designation beyond the automatic six months. Accordingly, the TPS designation of Honduras is automatically extended for 6 months, from January 6, 2018 to July 5, 2018. DHS estimates that there are approximately 86,000 nationals of Honduras (and aliens having no nationality who last habitually resided in Honduras) who hold TPS under Honduras's designation.

**Notice of Extension of the TPS Designation of Honduras**

Pursuant to INA section 244(b)(3)(A) and (C), the TPS designation for Honduras is automatically extended for 6 months, from January 6, 2018 to July 5, 2018.

**Elaine C. Duke,**  
*Acting Secretary.*

**Required Application Forms and Application Fees To Re-Register for TPS**

To re-register for TPS based on the designation of Honduras, you *must* submit an Application for Temporary Protected Status (Form I-821). You do not need to pay the filing fee for the Form I-821. See 8 CFR 244.17. You may be required to pay the biometrics services fee. Please see additional information under the "Biometric Services Fee" section of this Notice.

Through operation of this Notice, your existing EAD issued under the TPS

designation of Honduras with an expiration date of January 5, 2018, is automatically extended for 180 days, through July 4, 2018. You do not need to apply for a new EAD in order to benefit from this 180-day automatic extension. However, if you want to obtain a new EAD with an expiration date of July 5, 2018 on its face, you must file an Application for Employment Authorization (Form I-765) and pay the Form I-765 fee in addition to filing your re-registration application (Form I-821). If you do not want to request an EAD now, you may also file Form I-765 at a later date to request an EAD and pay the fee (or request a fee waiver), provided that you still have TPS or a pending TPS application.

If you are seeking an EAD with your re-registration for TPS, please submit both the Form I-821 and Form I-765 together. If you are unable to pay the application fee and/or biometrics fee, you may complete a Request for Fee Waiver (Form I-912) or submit a personal letter requesting a fee waiver with satisfactory supporting documentation. For more information on the application forms and fees for TPS, please visit the USCIS TPS web page at <http://www.uscis.gov/tps>. Fees for the Form I-821, the Form I-765, and biometric services are also described in 8 CFR 103.7(b)(1)(i).

**Biometric Services Fee**

Biometrics (such as fingerprints) are required for all applicants 14 years and older. Those applicants must submit a biometric services fee. As previously stated, if you are unable to pay for the biometric services fee, you may complete a Form I-912 or submit a personal letter requesting a fee waiver with satisfactory supporting documentation. For more information on the biometric services fee, please visit the USCIS website at <http://www.uscis.gov>. If necessary, you may be required to visit an Application Support Center to have your biometrics captured. For additional information on the USCIS biometrics screening process

please see the USCIS Customer Profile Management Service Privacy Impact Assessment, available at [www.dhs.gov/privacy](http://www.dhs.gov/privacy).

**Re-Filing a Re-Registration TPS Application After Receiving a Denial of a Fee Waiver Request**

You should file as soon as possible within the 60-day re-registration period so USCIS can process your application and issue any EAD promptly. Properly filing early will also allow you to have time to re-file your application before the deadline, should USCIS deny your fee waiver request. If, however, you receive a denial of your fee waiver request and are unable to re-file by the re-registration deadline, you may still re-file your Form I-821 with the biometrics fee. This situation will be reviewed to determine whether your established good cause for late TPS re-registration. However, you are urged to re-file within 45 days of the date on any USCIS fee waiver denial notice, if possible. See INA section 244(c)(3)(C); 8 U.S.C. 1254a(c)(3)(C); 8 CFR 244.17(b). For more information on good cause for late re-registration, visit the USCIS TPS web page at <http://www.uscis.gov/tps>. Following denial of your fee waiver request, you may also file your Form I-765 with fee either with your Form I-821 or at a later time, if you choose.

**Note:** Although a re-registering TPS beneficiary age 14 and older must pay the biometric services fee (but not the Form I-821 fee) when filing a TPS re-registration application, you may decide to wait to request an EAD. Therefore, you do not have to file the Form I-765 or pay the associated Form I-765 fee (or request a fee waiver) at the time of re-registration, and could wait to seek an EAD until after USCIS has approved your TPS re-registration, if you are eligible. If you choose to do this, to re-register for TPS you would only need to file the Form I-821 with the biometrics services fee, if applicable (or request a fee waiver).

**Mailing Information**

Mail your application for TPS to the proper address in Table 1.

TABLE 1—MAILING ADDRESSES

If . . .	Mail to . . .
You are applying through the U.S. Postal Service . . . . .	USCIS, Attn: TPS Honduras, P.O. Box 6943, Chicago, IL 60680-6943.
For FedEx, UPS, and DHL deliveries . . . . .	USCIS, Attn: TPS Honduras, 131 S. Dearborn Street, 3rd Floor, Chicago, IL 60603-5517.

<sup>1</sup> As of March 1, 2003, in accordance with section 1517 of title XV of the Homeland Security Act of 2002, Public Law 107-296, 116 Stat. 2135, any reference to the Attorney General in a provision of

the INA describing functions transferred from the Department of Justice to the Department of Homeland Security (DHS) "shall be deemed to refer to the Secretary" of Homeland Security. See 6

U.S.C. 557 (codifying the Homeland Security Act of 2002, tit. XV, section 1517).



If you were granted TPS by an immigration judge (IJ) or the Board of Immigration Appeals (BIA) and you wish to request an EAD or are re-registering for the first time following a grant of TPS by an IJ or the BIA, please mail your application to the appropriate mailing address in Table 1. When re-registering and requesting an EAD based on an IJ/BIA grant of TPS, please include a copy of the IJ or BIA order granting you TPS with your application. This will help us to verify your grant of TPS and process your application.

### Supporting Documents

The filing instructions on the Form I-821 list all the documents needed to establish eligibility for TPS. You may also find information on the acceptable documentation and other requirements for applying or registering for TPS on the USCIS website at [www.uscis.gov/tps](http://www.uscis.gov/tps) under “Honduras.”

### Employment Authorization Document (EAD)

*How can I obtain information on the status of my EAD request?*

To get case status information about your TPS application, including the status of an EAD request, you can check Case Status Online at <http://www.uscis.gov>, or call the USCIS National Customer Service Center at 800-375-5283 (TTY 800-767-1833). If your Form I-765 has been pending for more than 90 days, and you still need assistance, you may request an EAD inquiry appointment with USCIS by using the InfoPass system at <https://infopass.uscis.gov>. However, we strongly encourage you first to check Case Status Online or call the USCIS National Customer Service Center for assistance before making an InfoPass appointment.

*Am I eligible to receive an automatic 180 day extension of my current EAD through July 4, 2018, using this **Federal Register** notice?*

Yes. Provided that you currently have TPS under the designation of Honduras, this Notice automatically extends your EAD by 180 days if you:

- Are a national of Honduras (or an alien having no nationality who last habitually resided in Honduras); and
- Have an EAD under the designation of TPS for Honduras with a marked expiration date of January 5, 2018, bearing the notation A-12 or C-19 on the face of the card under Category.

Although this Notice automatically extends your EAD through July 4, 2018, you must re-register timely for TPS in accordance with the procedures

described in this Notice if you would like to maintain your TPS.

*When hired, what documentation may I show to my employer as evidence of employment authorization and identity when completing Employment Eligibility Verification (Form I-9)?*

You can find a list of acceptable document choices on the “Lists of Acceptable Documents” for Form I-9. Employers must complete Form I-9 to verify the identity and employment authorization of all new employees. Within three days of hire, employees must present acceptable documents to their employers as evidence of identity and employment authorization to satisfy Form I-9 requirements.

You may present any document from List A (which provides evidence of both identity and employment authorization), or one document from List B (which provides evidence of your identity) together with one document from List C (which is evidence of employment authorization), or you may present an acceptable receipt for List A, List B, or List C documents as described in the Form I-9 Instructions. Employers may not reject a document based on a future expiration date. You can find additional detailed information about Form I-9 on USCIS’s I-9 Central web page at <http://www.uscis.gov/I-9Central>.

An EAD is an acceptable document under List A. If your EAD has an expiration date of January 5, 2018, and states “A-12” or “C-19” under “Category,” it has been extended automatically for 180 days by virtue of this Notice, and you may choose to present your EAD to your employer as proof of identity and employment authorization for Form I-9 through July 4, 2018, unless your TPS has been withdrawn or your request for TPS has been denied. If you properly filed an EAD renewal application in accordance with this Notice, you may choose to present your EAD to your employer together with the Form I-797C Notice of Action (showing the qualifying eligibility category of either A-12 or C-19) as a List A document that provides evidence of your identity and employment authorization for Form I-9 through July 4, 2018, unless your TPS has been finally withdrawn or your request for TPS has been finally denied. See the subsection titled, “How do my employer and I complete the Employment Eligibility Verification (Form I-9) using an automatically extended EAD for a new job?” for further information.

To reduce confusion over this extension at the time of hire, you should explain to your employer that the

validity of your EAD has been automatically extended through July 4, 2018. You may also provide your employer with a copy of this Notice, which explains that your EAD has been automatically extended. As an alternative to presenting evidence showing your EAD has been automatically extended, you may choose to present any other acceptable document from List A, a combination of one selection from List B and one selection from List C, or a valid receipt.

*What documentation may I present to my employer for Employment Eligibility Verification (Form I-9) if I am already employed but my current TPS-related EAD is set to expire?*

Even though your EAD has been automatically extended, your employer is required to ask you about your continued employment authorization by the expiration date listed on your current EAD. You will need to present your employer with evidence that you are still authorized to work. Once presented, you may correct your employment authorization expiration date in Section 1 and your employer should correct the EAD expiration date in Section 2 of Form I-9. See the subsection titled, “What corrections should my current employer and I make to Employment Eligibility Verification (Form I-9) if my EAD has been automatically extended?” for further information. You may also show this Notice to your employer to explain what to do for Form I-9.

Your employer may need to reinspect your automatically extended EAD to check the expiration date and Category code to record the updated expiration date on your Form I-9 if your employer did not keep a copy of this EAD when you initially presented it. In addition, if you properly filed Form I-765 to obtain a new EAD, you will receive a Form I-797C. The receipt notice will state that your current “A-12” or “C-19” coded EAD is automatically extended for 180 days. You may present Form I-797C to your employer along with your EAD to confirm the validity of your EAD has been automatically extended through July 4, 2018, unless your TPS has been finally withdrawn or your request for TPS has been finally denied. You may also show this **Federal Register** notice to your employer to show that the validity of your EAD has been automatically extended until July 4, 2018.

The last day of the automatic EAD extension is July 4, 2018. Before you start work on July 5, 2018, your employer must reverify your employment authorization. At that time,

you must present any document from List A or any document from List C on Form I-9 Lists of Acceptable Documents, or an acceptable List A or List C receipt described in the Form I-9 Instructions to reverify employment authorization.

By July 5, 2018, your employer must complete Section 3 of the current version of the form, Form I-9 07/17/17 N, and attach it to the previously completed Form I-9, if your original Form I-9 was a previous version. Your employer can check the USCIS's I-9 Central web page <http://www.uscis.gov/I-9Central> for the most current version of Form I-9.

Note that your employer may not specify which List A or List C document you must present and cannot reject an acceptable receipt.

*Can my employer require that I provide any other documentation to prove my status, such as proof of my Honduran citizenship?*

No. When completing Form I-9, including reverifying employment authorization, employers must accept any documentation that appears on the Form I-9 Lists of Acceptable Documents that reasonably appears to be genuine and that relates to you, or an acceptable List A, List B, or List C receipt. Employers need not reverify List B identity documents. Employers may not request documentation that does not appear on the "Lists of Acceptable Documents." Therefore, employers may not request proof of Honduran citizenship or proof of re-registration for TPS when completing Form I-9 for new hires or reverifying the employment authorization of current employees. If presented with EADs that have been automatically extended, employers should accept such documents as a valid List A document so long as the EAD reasonably appears to be genuine and relates to the employee. Refer to the Note to Employees section of this Notice for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you based on your citizenship or immigration status, or your national origin.

*How do my employer and I complete Employment Eligibility Verification (Form I-9) using my automatically extended EAD for a new job?*

When using an automatically extended EAD to complete Form I-9 for a new job before July 5, 2018, you and your employer should do the following:

1. For Section 1, you should:

- a. Check "An alien authorized to work until" and enter July 4, 2018, the automatically extended EAD expiration date as the "expiration date, if applicable, mm/dd/yyyy"; and

- b. Enter your Alien Number/USCIS number or A-Number where indicated (your EAD or other document from DHS will have your USCIS number or A-Number printed on it; the USCIS number is the same as your A-Number without the A prefix).

2. For Section 2, employers should:

- a. Determine if the EAD is auto-extended for 180 days by ensuring it is in category A-12 or C-19 and has a January 5, 2018 expiration date;
- b. Write in the document title;
- c. Enter the issuing authority;
- d. Provide the document number; and
- e. Insert July 4, 2018, the date that is 180 days from the date the current EAD expires.

If you also filed for a new EAD, as proof of the automatic extension of your employment authorization, you may present your expired EAD with category A-12 or C-19 in combination with the Form I-797C Notice of Action showing that the EAD renewal application was filed and that the qualifying eligibility category is either A-12 or C-19. Unless your TPS has been finally withdrawn or your request for TPS has been finally denied, this document combination is considered an unexpired EAD (Form I-766) under List A. In these situations, to complete Section 2, employers should:

- a. Determine if the EAD is auto-extended for 180 days by ensuring:
  - It is in category A-12 or C-19; and
  - The category code on the EAD is the same category code on Form I-797C, noting that employers should consider category codes A-12 and C-19 to be the same category code.
- b. Write in the document title;
- c. Enter the issuing authority;
- d. Provide the document number; and
- e. Insert July 4, 2018, the date that is 180 days from the date the current EAD expires.

Before the start of work on July 5, 2018, employers must reverify the employee's employment authorization in Section 3 of Form I-9.

*What corrections should my current employer and I make to Employment Eligibility Verification (Form I-9) if my EAD has been automatically extended?*

If you presented a TPS-related EAD that was valid when you first started your job and your EAD has now been automatically extended, your employer may need to reinspect your automatically extended EAD if your employer does not have a copy of the EAD on file. You and your employer

should correct your previously completed Form I-9 as follows:

1. For Section 1, you may
  - a. Draw a line through the expiration date in Section 1;
  - b. Write July 4, 2018 which is the date that is 180 days from the date your current EAD expires above the previous date (January 5, 2018); and
  - c. Initial and date the correction in the margin of Section 1.
2. For Section 2, employers should:
  - a. Draw a line through the expiration date written in Section 2;
  - b. Write July 4, 2018, the date that is 180 days from the date the employee's current EAD expires above the previous date (January 5, 2018); and
  - c. Initial and date the correction in the Additional Information field of Section 2.

In the alternative, if you properly applied for a new EAD, you may present your expired EAD with category A-12 or C-19 in combination with the Form I-797C Notice of Action. The Form I-797C should show that the EAD renewal application was filed and that the qualifying eligibility category is either A-12 or C-19. To avoid confusion, you may also provide your employer a copy of this Notice. Your employer should correct your previously completed Form I-9 as follows:

- For Section 2, employers should:
- a. Determine if the EAD is auto-extended for 180 days by ensuring:
    - It is in category A-12 or C-19; and
    - The category code on the EAD is the same category code on Form I-797C, noting that employers should consider category codes A-12 and C-19 to be the same category code.
  - b. Draw a line through the expiration date written in Section 2;
  - c. Write July 4, 2018, the date that is 180 days from the date the employee's current EAD expires above the previous date (January 5, 2018); and
  - d. Initial and date the correction in the Additional Information field in Section 2.

**Note:** This is not considered a reverification. Employers do not need to complete Section 3 until either the 180-day extension has ended or the employee presents a new document to show continued employment authorization, whichever is sooner. By July 5, 2018, when the employee's automatically extended EAD has expired, employers must reverify the employee's employment authorization in Section 3.

*If I am an employer enrolled in E-Verify, how do I verify a new employee whose EAD has been automatically extended?*

Employers may create a case in E-Verify for a new employee using the EAD with expiration date January 5,

2018, or the Form I-797C receipt information provided on Form I-9. In either case, the number entered as the document number on Form I-9 should be entered into the document number field in E-Verify.

*If I am an employer enrolled in E-Verify, what do I do when I receive a “Work Authorization Documents Expiration” alert for an automatically extended EAD?*

E-Verify automated the verification process for employees whose TPS-related EAD was automatically extended. If you have employees who are TPS beneficiaries who provided a TPS-related EAD when they first started working for you, you will receive a “Work Authorization Documents Expiring” case alert when the auto-extension period for this EAD is about to expire. This indicates that you should update Form I-9 in accordance with the instructions above. Before the employee starts to work on July 5, 2018, employment authorization must be reverified in Section 3. Employers should not use E-Verify for reverification.

#### **Note to All Employers**

Employers are reminded that the laws requiring proper employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This Notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For general questions about the employment eligibility verification process, employers may call USCIS at 888-464-4218 (TTY 877-875-6028) or email USCIS at [I9Central@dhs.gov](mailto:I9Central@dhs.gov). Calls and emails are accepted in English and many other languages. For questions about avoiding discrimination during the employment eligibility verification process (Form I-9 and E-Verify), employers may call the U.S. Department of Justice’s Civil Rights Division, Immigrant and Employee Rights Section (IER) (formerly the Office of Special Counsel for Immigration-Related Unfair Employment Practices) Employer Hotline at 800-255-8155 (TTY 800-237-2515). IER offers language interpretation in numerous languages. Employers may also email IER at [IER@usdoj.gov](mailto:IER@usdoj.gov).

#### **Note to Employees**

For general questions about the employment eligibility verification process, employees may call USCIS at 888-897-7781 (TTY 877-875-6028) or

email USCIS at [I9Central@dhs.gov](mailto:I9Central@dhs.gov). Calls are accepted in English, Spanish, and many other languages. Employees or applicants may also call the IER Worker Hotline at 800-255-7688 (TTY 800-237-2515) for information regarding employment discrimination based upon citizenship, immigration status, or national origin, including discrimination related to Employment Eligibility Verification (Form I-9) and E-Verify. The IER Worker Hotline provides language interpretation in numerous languages.

To comply with the law, employers must accept any document or combination of documents from the Lists of Acceptable Documents if the documentation reasonably appears to be genuine and to relate to the employee, or an acceptable List A, List B, or List C receipt as described in the (Form I-9) Instructions. Employers may not require extra or additional documentation beyond what is required for (Form I-9) completion. Further, employers participating in E-Verify who receive an E-Verify case result of “Tentative Nonconfirmation” (TNC) must promptly inform employees of the TNC and give such employees an opportunity to contest the TNC. A TNC case result means that the information entered into E-Verify from (Form I-9) differs from Federal or state government records.

Employers may not terminate, suspend, delay training, withhold pay, lower pay, or take any adverse action against an employee based on the employee’s decision to contest a TNC or because the case is still pending with E-Verify. A Final Nonconfirmation (FNC) case result is received when E-Verify cannot verify an employee’s employment eligibility. An employer may terminate employment based on a case result of FNC. Work-authorized employees who receive an FNC may call USCIS for assistance at 888-897-7781 (TTY 877-875-6028). For more information about E-Verify-related discrimination or to report an employer for discrimination in the E-Verify process based on citizenship, immigration status, or national origin, contact IER’s Worker Hotline at 800-255-7688 (TTY 800-237-2515). Additional information about proper nondiscriminatory (Form I-9) and E-Verify procedures is available on the IER website at <https://www.justice.gov/ier> and the USCIS website at <http://www.dhs.gov/E-verify>.

#### **Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)**

While Federal Government agencies must follow the guidelines laid out by the Federal Government, state and local government agencies establish their own rules and guidelines when granting certain benefits. Each state may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. Whether you are applying for a Federal, state, or local government benefit, you may need to provide the government agency with documents that show you are a TPS beneficiary and/or show you are authorized to work based on TPS. Examples of such documents are:

- (1) Your current EAD;
- (2) A copy of your receipt notice (Form I-797C) for your application to renew your current EAD providing an automatic extension of your currently expired or expiring EAD;
- (3) A copy of your Application for Temporary Protected Status Notice of Action (Form I-797) for this re-registration; and
- (4) A copy of your past or current Application for Temporary Protected Status Notice of Action (Form I-797), if you received one from USCIS.

Check with the government agency regarding which document(s) the agency will accept. Some benefit-granting agencies use the USCIS Systematic Alien Verification for Entitlements (SAVE) program to confirm the current immigration status of applicants for public benefits. In most cases, SAVE provides an automated electronic response to benefit-granting agencies within seconds, but, occasionally, verification can be delayed.

You can check the status of your SAVE verification by using CaseCheck at the following link: <https://save.uscis.gov/casecheck/>, then by clicking the “Check Your Case” button. CaseCheck is a free service that lets you follow the progress of your SAVE verification using your date of birth and one immigration identifier number. If an agency has denied your application based solely or in part on a SAVE response, the agency must offer you the opportunity to appeal the decision in accordance with the agency’s procedures. If the agency has received and acted upon or will act upon a SAVE verification and you do not believe the response is correct, you may make an InfoPass appointment for an in-person interview at a local USCIS office. Detailed information on how to make corrections, make an appointment, or

submit a written request to correct records under the Freedom of Information Act can be found on the SAVE website at <http://www.uscis.gov/save>.

[FR Doc. 2017-27140 Filed 12-14-17; 8:45 am]

BILLING CODE 9111-97-P

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

[CIS No. 2613-17; DHS Docket No. USCIS-2014-0006]

RIN 1615-ZB69

#### Termination of the Designation of Nicaragua for Temporary Protected Status

**AGENCY:** U.S. Citizenship and Immigration Services, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** The designation of Nicaragua for Temporary Protected Status (TPS) is set to expire on January 5, 2018. After reviewing country conditions and consulting with the appropriate U.S. Government agencies, the Secretary of Homeland Security (Secretary) has determined that conditions in Nicaragua no longer support its designation for TPS and is therefore terminating the TPS designation of Nicaragua. To provide for an orderly transition, this termination is effective on January 5, 2019, which is 12 months following the end of the current designation.

Nationals of Nicaragua (and aliens having no nationality who last habitually resided in Nicaragua) who have been granted TPS and wish to maintain their TPS and receive TPS-based Employment Authorization Documents (EAD) valid through January 5, 2019, must re-register for TPS in accordance with the procedures set forth in this Notice. On January 6, 2019, nationals of Nicaragua (and aliens having no nationality who last habitually resided in Nicaragua) who have been granted TPS under the Nicaragua designation will no longer have TPS.

**DATES:** The designation of Nicaragua for TPS is terminated effective at 11:59 p.m., local time, on January 5, 2019. The 60-day re-registration period runs from December 15, 2017 through February 13, 2018. (**Note:** It is important for re-registrants to timely re-register during this 60-day period and not to wait until their EADs expire.)

**FOR FURTHER INFORMATION CONTACT:**

- You may contact Alexander King, Branch Chief, Waivers and Temporary Services Branch, Service Center Operations Directorate, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW, Washington, DC 20529-2060; or by phone at (202) 272-8377 (this is not a toll-free number). **Note:** The phone number provided here is solely for questions regarding this TPS Notice. It is not for individual case status inquiries.

- For further information on TPS, including guidance on the re-registration process and additional information on eligibility, please visit the USCIS TPS web page at <http://www.uscis.gov/tps>. You can find specific information about this termination of Nicaragua's TPS by selecting "Nicaragua" from the menu on the left side of the TPS web page.

- Applicants seeking information about the status of their individual cases can check Case Status Online, available on the USCIS website at <http://www.uscis.gov>, or call the USCIS National Customer Service Center at 800-375-5283 (TTY 800-767-1833). Service is available in English and Spanish.

- Further information will also be available at local USCIS offices upon publication of this Notice.

#### SUPPLEMENTARY INFORMATION:

##### Table of Abbreviations

BIA—Board of Immigration Appeals  
 CFR—Code of Federal Regulations  
 DHS—Department of Homeland Security  
 DOS—Department of State  
 EAD—Employment Authorization Document  
 FNC—Final Nonconfirmation  
 FR—Federal Register  
 Government—U.S. Government  
 IJ—Immigration Judge  
 INA—Immigration and Nationality Act  
 IER—U.S. Department of Justice Civil Rights Division, Immigrant and Employee Rights Section  
 SAVE—USCIS Systematic Alien Verification for Entitlements Program  
 Secretary—Secretary of Homeland Security  
 TNC—Tentative Nonconfirmation  
 TPS—Temporary Protected Status  
 TTY—Text Telephone  
 USCIS—U.S. Citizenship and Immigration Services  
 U.S.C.—United States Code

Through this Notice, DHS sets forth procedures necessary for eligible nationals of Nicaragua (or aliens having no nationality who last habitually resided in Nicaragua) to re-register for TPS and to apply for renewal of their EADs with USCIS. Re-registration is limited to persons who have previously registered for TPS under the designation of Nicaragua and whose applications have been granted.

For individuals who have already been granted TPS under Nicaragua's designation, the 60-day re-registration period runs from December 15, 2017 through February 13, 2018. USCIS will issue new EADs with a January 5, 2019 expiration date to eligible Nicaraguan TPS beneficiaries who timely re-register and apply for EADs. Given the timeframes involved with processing TPS re-registration applications, DHS recognizes that not all re-registrants will receive new EADs before their current EADs expire on January 5, 2018. Accordingly, through this Notice, DHS automatically extends the validity of EADs issued under the TPS designation of Nicaragua for 60 days, through March 6, 2018. Additionally, provided a Nicaraguan TPS beneficiary timely re-registers and properly files an application for an EAD in accordance with this Notice, the validity of his or her EAD will be automatically extended by regulation for up to 180 days from the date the current EAD expires, *i.e.*, through July 4, 2018. *See* 8 CFR 274a.13(d)(1). This Notice explains how TPS beneficiaries and their employers may determine which EADs are automatically extended and how this affects the Form I-9, Employment Eligibility Verification, and E-Verify processes.

What is Temporary Protected Status (TPS)?

- TPS is a temporary immigration status granted to eligible nationals of a country designated for TPS under the Immigration and Nationality Act (INA), or to eligible persons without nationality who last habitually resided in the designated country.

- During the TPS designation period, TPS beneficiaries are eligible to remain in the United States, may not be removed, and are authorized to work and obtain EADs so long as they continue to meet the requirements of TPS.

- TPS beneficiaries may also apply for and be granted travel authorization as a matter of discretion.

- The granting of TPS does not result in or lead to lawful permanent resident status.

- To qualify for TPS, beneficiaries must meet the eligibility standards at INA section 244(c)(2), 8 U.S.C. 1254a(c)(2).

- When the Secretary terminates a country's TPS designation, beneficiaries return to one of the following:

- The same immigration status or category that they maintained before TPS, if any (unless that status or category has since expired or been terminated); or

○ Any other lawfully obtained immigration status or category they received while registered for TPS, as long as it is still valid on the date TPS terminates.

#### **When was Nicaragua designated for TPS?**

Nicaragua was initially designated for TPS on January 5, 1999, based on environmental disaster grounds, specifically the devastation caused by Hurricane Mitch. *See* Designation of Nicaragua Under Temporary Protected Status, 64 FR 526 (Jan. 5, 1999). The last extension of Nicaragua's designation for TPS was announced on May 16, 2016, based on the determination that the conditions warranting the designation continued to be met. *See* Extension of the Designation of Nicaragua for Temporary Protected Status, 81 FR 30325 (May 16, 2016).

#### **What authority does the Secretary have to terminate the designation of Nicaragua for TPS?**

Section 244(b)(1) of the INA, 8 U.S.C. 1254a(b)(1), authorizes the Secretary, after consultation with appropriate U.S. Government agencies, to designate a foreign state (or part thereof) for TPS if the Secretary determines that certain country conditions exist.<sup>1</sup> The Secretary may then grant TPS to eligible nationals of that foreign state (or eligible aliens having no nationality who last habitually resided in the designated country). *See* INA section 244(a)(1)(A), 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of a country's TPS designation or extension, the Secretary, after consultation with appropriate Government agencies, must review the conditions in a foreign state designated for TPS to determine whether the conditions for the TPS designation continue to be met. *See* INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). If the Secretary determines that a foreign state continues to meet the conditions for TPS designation, the designation must be extended for an additional period of 6 months and, in the Secretary's discretion, may be extended for 12 or 18 months. *See* INA section 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C). If the Secretary determines that the foreign state no longer meets the conditions for

TPS designation, the Secretary must terminate the designation, but such termination may not take effect earlier than 60 days after the date the **Federal Register** notice of termination is published, or if later, the expiration of the most recent previous extension of the country designation. *See* INA section 244(b)(3)(B), 8 U.S.C. 1254a(b)(3)(B). The Secretary may determine the appropriate effective date of the termination and the expiration of any TPS-related documentation, such as EADs, for the purpose of providing an orderly transition. *See id.*; INA section 244(d)(3), 8 U.S.C. 1254a(d)(3).

#### **Why is the Secretary terminating the TPS designation for Nicaragua as of January 5, 2019?**

DHS has reviewed conditions in Nicaragua. Based on the review, including input received from other relevant U.S. Government agencies, the Secretary has determined that conditions for Nicaragua's 1999 designation for TPS on the basis of environmental disaster due to the damage caused by Hurricane Mitch are no longer met. It is no longer the case that Nicaragua is unable, temporarily, to handle adequately the return of nationals of Nicaragua. Recovery efforts relating to Hurricane Mitch have largely been completed. The social and economic conditions affected by Hurricane Mitch have stabilized, and people are able to conduct their daily activities without impediments directly related to damage from the storm.

Nicaragua received a significant amount of international aid to assist in its Hurricane Mitch-related recovery efforts, and many reconstruction projects have now been completed. Hundreds of homes destroyed by the storm have been rebuilt. The government of Nicaragua has been working to improve access to remote communities and has built new roads in many of the areas affected by Hurricane Mitch, including the first paved road to connect the Pacific side of the country to the Caribbean Coast, which is nearly completed. Access to drinking water and sanitation has improved. Electrification of the country has increased from 50% of the country in 2007 to 90% today. Nearly 1.5 million textbooks have been provided to 225,000 primary students of the poorest regions of the country. Internet access is also now widely available.

In addition, Nicaragua's relative security has helped attract tourism and foreign investment. The Nicaraguan economy has strengthened due to increased foreign direct investment and exports of textiles and commodities.

Nicaragua's Gross Domestic Product (GDP) reached an all-time high of \$13.23 billion (USD) in 2016, has averaged over 5% growth since 2010, and Nicaragua's GDP per capita is higher today than in 1998. Public infrastructure investment has been a high priority for the government, and the government has demonstrated its ability to provide basic services to its citizens. The U.S. Department of State does not have a current travel warning for Nicaragua. DHS estimates that there are approximately 5,300 nationals of Nicaragua (and aliens having no nationality who last habitually resided in Nicaragua) who hold TPS under Nicaragua's designation.

#### **Notice of Termination of the TPS Designation of Nicaragua**

By the authority vested in me under INA section 244, 8 U.S.C. 1254a, I have determined, after consultation with the appropriate U.S. Government agencies, that Nicaragua no longer meets the conditions for designation of TPS under section 244(b)(1) of the INA, 8 U.S.C. 1254a(b)(1). Accordingly, I order as follows:

(1) Pursuant to INA section 244(b)(3)(B), to provide for an orderly transition, the designation of Nicaragua for TPS is terminated at 11:59 p.m., local time, on January 5, 2019, 12 months following the end of the current designation.

(2) Information concerning the termination of TPS for nationals of Nicaragua (and aliens having no nationality who last habitually resided in Nicaragua) will be available at local USCIS offices upon publication of this Notice and through the USCIS National Customer Service Center at 1-800-375-5283. This information will be published on the USCIS website at [www.uscis.gov](http://www.uscis.gov).

**Elaine C. Duke,**  
*Acting Secretary.*

#### **Required Application Forms and Application Fees To Re-Register for TPS**

To re-register for TPS based on the designation of Nicaragua, you *must* submit an Application for Temporary Protected Status (Form I-821). You do not need to pay the filing fee for the Form I-821. *See* 8 CFR 244.17. You may be required to pay the biometric services fee. Please see additional information under the "Biometric Services Fee" section of this Notice.

Through operation of this Notice, your existing EAD issued under the TPS designation of Nicaragua with the expiration date of January 5, 2018, is

<sup>1</sup> As of March 1, 2003, in accordance with section 1517 of title XV of the Homeland Security Act of 2002, Public Law 107-296, 116 Stat. 2135, any reference to the Attorney General in a provision of the INA describing functions transferred from the Department of Justice to the Department of Homeland Security (DHS) "shall be deemed to refer to the Secretary" of Homeland Security. *See* 6 U.S.C. 557 (codifying the Homeland Security Act of 2002, tit. XV, section 1517).

automatically extended for 60 days, through March 6, 2018. You do not need to apply for a new EAD in order to benefit from this 60-day automatic extension. However, if you want to obtain a new EAD valid through January 5, 2019, you must also file an Application for Employment Authorization (Form I-765) and pay the Form I-765 fee. Note, if you do not want a new EAD, you do not have to file Form I-765 or pay the Form I-765 fee. If you do not want to request a new EAD now, you may also file Form I-765 at a later date to request a new EAD and pay the fee (or request a fee waiver), provided that you still have TPS or a pending TPS application.

In addition to the automatic 60-day EAD extension provided through this notice, if you timely re-register for TPS and properly file an application for an EAD in accordance with this Notice, the validity of your EAD will be automatically extended by regulation for up to 180 days from the date the current EAD expires, *i.e.*, through July 4, 2018. See 8 CFR 274a.13(d)(1). But unless you timely re-register for TPS and properly file an EAD application in accordance with this Notice, the validity of your current EAD will end on March 6, 2018. You may file the application for your EAD either prior to or after it has expired and your EAD will be automatically extended for up to 180 days (*i.e.*, through July 4, 2018). See 8 CFR 274a.13(d). You are strongly encouraged to properly file your EAD application as early as possible to avoid gaps in your employment authorization documentation and to ensure that you receive your Form I-797C Notice of Action prior to March 6, 2018. However, you may file your EAD application even

if your current TPS-related EAD has expired.

If you are seeking an EAD with your re-registration for TPS, please submit both the Form I-821 and Form I-765 together. If you are unable to pay the application fee and/or biometrics fee, you may complete a Request for Fee Waiver (Form I-912) or submit a personal letter requesting a fee waiver with satisfactory supporting documentation. For more information on the application forms and fees for TPS, please visit the USCIS TPS web page at <http://www.uscis.gov/tps>. Fees for the Form I-821, the Form I-765, and biometric services are also described in 8 CFR 103.7(b)(1)(i).

**Biometric Services Fee**

Biometrics (such as fingerprints) are required for all applicants 14 years and older. Those applicants must submit a biometric services fee. As previously stated, if you are unable to pay for the biometric services fee, you may complete a Form I-912 or submit a personal letter requesting a fee waiver with satisfactory supporting documentation. For more information on the biometric services fee, please visit the USCIS website at <http://www.uscis.gov>. If necessary, you may be required to visit an Application Support Center to have your biometrics captured. For additional information on the USCIS biometrics screening process please see the USCIS Customer Profile Management Service Privacy Impact Assessment, available at [www.dhs.gov/privacy](http://www.dhs.gov/privacy).

**Re-Filing a Re-Registration TPS Application After Receiving a Denial of a Fee Waiver Request**

You should file as soon as possible within the 60-day re-registration period

so USCIS can process your application and issue any EAD promptly. Properly filing early will also allow you to have time to re-file your application before the deadline and, if you also file Form I-765, receive a Form I-797C demonstrating your EAD's 180-day automatic extension, should USCIS deny your fee waiver request. If, however, you receive a denial of your fee waiver request and are unable to re-file by the re-registration deadline, you may still re-file your Form I-821 with the biometrics fee. This situation will be reviewed to determine whether you established good cause for late TPS re-registration. However, you are urged to re-file within 45 days of the date on any USCIS fee waiver denial notice, if possible. See INA section 244(c)(3)(C); 8 U.S.C. 1254a(c)(3)(C); 8 CFR 244.17(b). For more information on good cause for late re-registration, visit the USCIS TPS web page at <http://www.uscis.gov/tps>. Following denial of your fee waiver request, you may also re-file your Form I-765 with fee either with your Form I-821 or at a later time, if you choose.

**Note:** Although a re-registering TPS beneficiary age 14 and older must pay the biometric services fee (but not the Form I-821 fee) when filing a TPS re-registration application, you may decide to wait to request an EAD. Therefore, you do not have to file the Form I-765 or pay the associated Form I-765 fee (or request a fee waiver) at the time of re-registration, and could wait to seek an EAD until after USCIS has approved your TPS re-registration. If you choose to do this, to re-register for TPS you would only need to file the Form I-821 with the biometrics services fee, if applicable, (or request a fee waiver).

**Mailing Information**

Mail your application for TPS to the proper address in Table 1.

TABLE 1—MAILING ADDRESSES

If . . .	Mail to . . .
You are applying through the U.S. Postal Service .....	USCIS, Attn: TPS Nicaragua, P.O. Box 4413, Chicago, IL 60680.
For FedEx, UPS, and DHL deliveries .....	USCIS, Attn: TPS Nicaragua, 131 S. Dearborn Street, 3rd Floor, Chicago, IL 60603-5517.

If you were granted TPS by an immigration judge (IJ) or the Board of Immigration Appeals (BIA) and you wish to request an EAD or are re-registering for the first time following a grant of TPS by an IJ or the BIA, please mail your application to the appropriate mailing address in Table 1. When re-registering and requesting an EAD based on an IJ/BIA grant of TPS, please include a copy of the IJ or BIA order granting you TPS with your application.

This will help us to verify your grant of TPS and process your application.

**Supporting Documents**

The filing instructions on the Form I-821 list all the documents needed to establish eligibility for TPS. You may also find information on the acceptable documentation and other requirements for applying or registering for TPS on the USCIS website at [www.uscis.gov/tps](http://www.uscis.gov/tps) under "Nicaragua."

**Employment Authorization Document (EAD)**

*How can I obtain information on the status of my EAD request?*

To get case status information about your TPS application, including the status of an EAD request, you can check Case Status Online at <http://www.uscis.gov>, or call the USCIS National Customer Service Center at 800-375-5283 (TTY 800-767-1833). If

your Form I-765 has been pending for more than 90 days, and you still need assistance, you may request an EAD inquiry appointment with USCIS by using the InfoPass system at <https://infopass.uscis.gov>. However, we strongly encourage you first to check Case Status Online or call the USCIS National Customer Service Center for assistance before making an InfoPass appointment.

*Am I eligible to receive an automatic 60-day extension of my current EAD through March 6, 2018?*

Yes. Provided that you currently have TPS under the designation of Nicaragua, this Notice automatically extends your EAD by 60 days if you:

- Are a national of Nicaragua (or an alien having no nationality who last habitually resided in Nicaragua); and
- Have an EAD under the designation of TPS for Nicaragua with a marked expiration date of January 5, 2018, bearing the notation A-12 or C-19 on the face of the card under Category.

Although this Notice automatically extends your EAD through March 6, 2018, you must re-register timely for TPS in accordance with the procedures described in this Notice if you would like to maintain your TPS.

*Am I eligible to receive an extension of my current EAD beyond March 6, 2018, while I wait for my new one to arrive?*

Provided that you currently have a Nicaragua TPS-based EAD, you may be eligible to have the validity of your current EAD extended for up to 180 days from its current expiration date (through July 4, 2018) if you:

- Are a national of Nicaragua (or an alien having no nationality who last habitually resided in Nicaragua);
- Have an EAD under the designation of Nicaragua for TPS;
- Have an EAD with a marked expiration date of January 5, 2018, bearing the notation “A-12” or “C-19” on the face of the card under “Category”; and
- Properly filed an application for an EAD in accordance with this Notice.

You must timely re-register for TPS as described in this Notice if you would like to maintain your TPS. This **Federal Register** Notice automatically extends your EAD with an expiration date of January 5, 2018, for 60 days until March 6, 2018. If you would like to have the validity of your current EAD automatically extended for up to 180 days from January 5, 2018, you must properly file Form I-765 for a new EAD when you file to re-register for TPS or at any other time before July 4, 2018, if you file Form I-765 after you re-register

for TPS. In either case, your current EAD will be auto-extended through July 4, 2018. You are strongly encouraged to file your EAD renewal application as early as possible to avoid gaps in documentation of your employment authorization.

*When hired, what documentation may I show to my employer as evidence of employment authorization and identity when completing Employment Eligibility Verification (Form I-9)?*

You can find a list of acceptable document choices on the “Lists of Acceptable Documents” for Form I-9. Employers must complete Form I-9 to verify the identity and employment authorization of all new employees. Within three days of hire, employees must present acceptable documents to their employers as evidence of identity and employment authorization to satisfy Form I-9 requirements.

You may present any document from List A (which provides evidence of both identity and employment authorization), or one document from List B (which provides evidence of your identity) together with one document from List C (which is evidence of employment authorization), or you may present an acceptable receipt for List A, List B, or List C documents as described in the Form I-9 Instructions. Employers may not reject a document based on a future expiration date. You can find additional detailed information about Form I-9 on USCIS’s I-9 Central web page at <https://www.uscis.gov/i-9-central>.

An EAD is an acceptable document under List A. If your EAD has an expiration date of January 5, 2018, and states “A-12” or “C-19” under “Category,” it has been extended automatically for 60 days by virtue of this Notice, and you may choose to present your EAD to your employer as proof of identity and employment authorization for Form I-9 through March 6, 2018, unless your TPS has been withdrawn or your request for TPS has been denied. If you properly filed an EAD renewal application in accordance with this Notice, you will receive a Form I-797C Notice of Action (showing the qualifying eligibility category of either A-12 or C-19). You may choose to present your EAD to your employer together with the Form I-797C as a List A document that provides evidence of your identity and employment authorization for Form I-9 through July 4, 2018, unless your TPS has been finally withdrawn or your request for TPS has been finally denied. See the subsection titled, “*How do my employer and I complete the Employment*

*Eligibility Verification (Form I-9) using an automatically extended EAD for a new job?”* for further information.

To reduce confusion over this extension at the time of hire, you should explain to your employer that the validity of your EAD has been automatically extended by this Notice through March 6, 2018. If you have a Form I-797C, you should explain to your employer that your EAD has been automatically extended through July 4, 2018. You may also provide your employer with a copy of this Notice, which explains how your EAD is automatically extended. As an alternative to presenting evidence of your automatically extended EAD, you may choose to present any other acceptable document from List A, a combination of one selection from List B and one selection from List C, or a valid receipt.

*What documentation may I present to my employer for Employment Eligibility Verification (Form I-9) if I am already employed but my current TPS-related EAD is set to expire?*

Even though EADs with an expiration date of January 5, 2018 that state “A-12” or “C-19” under “Category” have been automatically extended for 60 days by this **Federal Register** notice, you are also eligible to have your EAD automatically extended for 180 days if you properly file for a new EAD in accordance with this Notice. Your employer will need to ask you about your continued employment authorization no later than before you start work on January 6, 2018. You will need to present your employer with evidence that you are still authorized to work. Once presented, you may correct your employment authorization expiration date in Section 1 and your employer should correct the EAD expiration date in Section 2 of Form I-9. See the subsection titled, “*What corrections should my current employer and I make to Employment Eligibility Verification (Form I-9) if my EAD has been automatically extended?*” for further information. You may also show this Notice to your employer to explain what to do for Form I-9.

Your employer may need to reinspect your automatically extended EAD to check the expiration date and Category code to record the updated expiration date on your Form I-9 if your employer did not keep a copy of this EAD when you initially presented it. In addition, if you properly file your Form I-765 to renew your current EAD in accordance with this Notice, you may present Form I-797C to your employer along with your EAD to confirm the validity of your



EAD has been automatically extended through July 4, 2018, unless your TPS has been finally withdrawn or your request for TPS has been finally denied. You may also show this **Federal Register** notice to your employer to reduce confusion. To avoid delays in receiving the Form I-797C and reduce the possibility of gaps in your employment authorization documentation, you should file your EAD renewal application as early as possible during the re-registration period.

The last day of the automatic EAD extension by this **Federal Register** notice is March 6, 2018. After this date, if you properly filed for a new EAD, you may demonstrate continued employment eligibility by providing your Form I-797C which will indicate that the last day of the automatic 180-day EAD extension is July 4, 2018. Before you start work on July 5, 2018, your employer must reverify your employment authorization. At that time, you must present any document from List A or any document from List C on Form I-9 Lists of Acceptable Documents, or an acceptable List A or List C receipt described in the Form I-9 Instructions to reverify employment authorization.

By July 5, 2018, your employer must complete Section 3 of the current version of the form, Form I-9 07/17/17 N, and attach it to the previously completed Form I-9, if your original Form I-9 was a previous version. Your employer can check the USCIS's I-9 Central web page at <https://www.uscis.gov/i-9-central> for the most current version of Form I-9.

Note that your employer may not specify which List A or List C document you must present and cannot reject an acceptable receipt.

*Can my employer require that I provide any other documentation to prove my status, such as proof of my Nicaraguan citizenship?*

No. When completing Form I-9, including reverifying employment authorization, employers must accept any documentation that appears on the Form I-9 Lists of Acceptable Documents that reasonably appears to be genuine and that relates to you, or an acceptable List A, List B, or List C receipt. Employers need not reverify List B identity documents. Employers may not request documentation that does not appear on the "Lists of Acceptable Documents." Therefore, employers may not request proof of Nicaraguan citizenship or proof of re-registration for TPS when completing Form I-9 for new hires or reverifying the employment

authorization of current employees. If presented with EADs that have been automatically extended, employers should accept such EADs as valid List A documents so long as the EADs reasonably appear to be genuine and to relate to the employee. In addition, if the EAD with a January 5, 2018 expiration date in category A-12 or C-19 is presented with the Form I-797C, an employer should accept this document combination as a valid List A document so long as the EAD reasonably appears to be genuine and relates to the employee. Refer to the Note to Employees section of this Notice for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you based on your citizenship or immigration status, or your national origin.

*How do my employer and I complete Employment Eligibility Verification (Form I-9) using my automatically extended EAD for a new job using this Federal Register notice?*

To complete Form I-9 for a new job using an automatically extended EAD with a January 5, 2018 expiration date and A-19 or C-12 under Category, you and your employer should do the following if using an EAD that has been automatically extended for 60 days by this **Federal Register** notice:

1. For Section 1, you should:
  - a. Check "An alien authorized to work until" and enter March 6, 2018 (the date that is 60 days after January 5, 2018) as the "expiration date, if applicable, mm/dd/yyyy" and;
  - b. Enter your Alien Number/USCIS number or A-Number where indicated (your EAD or other document from DHS will have your USCIS Number or A-Number printed on it; the USCIS number is the same as your A-Number without the A prefix).
2. For Section 2, employers should:
  - a. Determine if the EAD is auto-extended for 60 days by ensuring it is in category A-12 or C-19 and has a January 5, 2018 expiration date;
  - b. Write in the document title;
  - c. Enter the issuing authority;
  - d. Provide the document number; and
  - e. Insert March 6, 2018, the date that is 60 days from the date the current EAD expires.

Before the start of work on March 7, 2018, your employer will need to examine evidence that you continue to have employment authorization. If you properly filed an EAD application, see instructions below under "*What corrections should my current employer and I make to Employment Eligibility*

*Verification (Form I-9) if my EAD has been automatically extended?*

*How do my employer and I complete Employment Eligibility Verification (Form I-9) using my automatically extended EAD for a new job using Form I-797C Notice of Action?*

You may also complete Form I-9 for a new job using an EAD with a January 5, 2018 expiration date that has been automatically extended because you properly filed for a new EAD in accordance with this Notice. As proof of your employment authorization, you may present your EAD with expiration date January 5, 2018 with category A-12 or C-19 in combination with the Form I-797C showing that the EAD renewal application was filed and that the qualifying eligibility category is either A-12 or C-19. Unless your TPS has been finally withdrawn or your request for TPS has been finally denied, this document combination is considered an unexpired EAD (Form I-766) under List A. When completing Form I-9 for a new job you are starting before July 4, 2018, you and your employer should do the following:

1. For Section 1, you should:
  - a. Check "An alien authorized to work until" and enter July 4, 2018, the date that is 180 days from the date your current EAD expires as the "expiration date, if applicable, mm/dd/yyyy"; and
  - b. Enter your Alien Number/USCIS number or A-Number where indicated (your EAD or other document from DHS will have your USCIS Number or A-Number printed on it; the USCIS number is the same as your A-Number without the A prefix).
2. When completing Section 2, employers should:
  - a. Determine if the EAD is auto-extended for 180 days by ensuring:
    - It is in category A-12 or C-19; and
    - The category code on the EAD is the same category code on Form I-797C, noting that employers should consider category codes A-12 and C-19 to be the same category code.
  - b. Write in the document title;
  - c. Enter the issuing authority;
  - d. Provide the document number; and
  - e. Insert July 4, 2018, the date that is 180 days from the date the current EAD expires.

Before the start of work on July 5, 2018, employers must reverify the employee's employment authorization in Section 3 of Form I-9.



*What corrections should my current employer and I make to Employment Eligibility Verification (Form I-9) if my EAD has been automatically extended by this Federal Register notice?*

If you presented a TPS-related EAD that was valid when you first started your job and your EAD has now been automatically extended by this Notice, your employer may need to reinspect your automatically extended EAD if your employer does not have a copy of the EAD on file, and you and your employer should correct your previously completed Form I-9 as follows:

1. For Section 1, you may:
  - a. Draw a line through the expiration date in the first space;
  - b. Write March 6, 2018 above the previous date; and
  - c. Initial and date the correction in the margin of Section 1.
2. For Section 2, employers should:
  - a. Determine if the EAD is auto-extended for 60 days by ensuring that it is in category A-12 or C-19; and
  - b. Draw a line through the expiration date written in Section 2;
  - c. Write March 6, 2018, the date that is 60 days from the employee's current EAD expiration date above the previous date; and
  - d. Initial and date the correction in the Additional Information field in Section 2.

**Note:** This is not considered a reverification.

*What corrections should my current employer and I make to Employment Eligibility Verification (Form I-9) if my EAD has been automatically extended by Form I-797C?*

If you presented a TPS-related EAD that was valid when you first started your job and your EAD has now been automatically extended because you properly applied for an EAD, you may present your EAD with January 5, 2018 expiration date with category A-12 or C-19 in combination with the Form I-797C. The Form I-797C should show that the EAD renewal application was timely filed and that the qualifying eligibility category is either A-12 or C-19. To avoid confusion, you may also provide your employer a copy of this Notice. Your employer may need to reinspect your current EAD if they do not have a copy of the EAD on file. You and your employer should correct your previously completed Form I-9 as follows:

1. For Section 1, you may
  - a. Draw a line through the expiration date in Section 1;

- b. Write July 4, 2018, the date that is 180 days from the date your current EAD expires above the previous date; and

- c. Initial and date the correction in the margin of Section 1.

2. For Section 2, employers should:

- a. Determine if the EAD is auto-extended for 180 days by ensuring:
  - It is in category A-12 or C-19; and
  - The category code on the EAD is the same category code on Form I-797C, noting that employers should consider category codes A-12 and C-19 to be the same category code.

- b. Draw a line through the expiration date written in Section 2;

- c. Write July 4, 2018, the date that is 180 days from the date the employee's current EAD expires above the previous date; and

- d. Initial and date the correction in the margin of Section 2.

**Note:** This is not considered a reverification. Employers do not need to complete Section 3 until either the 180-day extension has ended or the employee presents a new document to show continued employment authorization, whichever is sooner. By July 5, 2018, when the employee's automatically extended EAD has expired, employers must reverify the employee's employment authorization in Section 3.

*If I am an employer enrolled in E-Verify, how do I verify a new employee whose EAD has been automatically extended?*

Employers may create a case in E-Verify for a new employee whose EAD has been automatically extended for 60 days by this Notice. Employers may also create an E-Verify case for an employee whose EAD has been automatically extended by properly filing for a new EAD in accordance with this Notice using the Form I-797C receipt information provided on Form I-9. In either case, the number entered as the document number on Form I-9 should be entered into the document number field in E-Verify.

*If I am an employer enrolled in E-Verify, what do I do when I receive a "Work Authorization Documents Expiration" alert for an automatically extended EAD?*

E-Verify automated the verification process for employees whose TPS-related EAD was automatically extended. If you have employees who are TPS beneficiaries who provided a TPS-related EAD when they first started working for you, you will receive a "Work Authorization Documents Expiring" case alert when the auto-extension period for this EAD is about to expire. This indicates that you should update Form I-9 in accordance with the

instructions above. Before the employee starts to work on July 5, 2018, employment authorization must be reverified in Section 3. Employers should not use E-Verify for reverification.

#### **Note to All Employers**

Employers are reminded that the laws requiring proper employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This Notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For general questions about the employment eligibility verification process, employers may call USCIS at 888-464-4218 (TTY 877-875-6028) or email USCIS at [I-9Central@dhs.gov](mailto:I-9Central@dhs.gov). Calls and emails are accepted in English and many other languages. For questions about avoiding discrimination during the employment eligibility verification process (Form I-9 and E-Verify), employers may call the U.S. Department of Justice's Civil Rights Division, Immigrant and Employee Rights Section (IER) (formerly the Office of Special Counsel for Immigration-Related Unfair Employment Practices) Employer Hotline at 800-255-8155 (TTY 800-237-2515). IER offers language interpretation in numerous languages. Employers may also email IER at [IER@usdoj.gov](mailto:IER@usdoj.gov).

#### **Note to Employees**

For general questions about the employment eligibility verification process, employees may call USCIS at 888-897-7781 (TTY 877-875-6028) or email USCIS at [I-9Central@dhs.gov](mailto:I-9Central@dhs.gov). Calls are accepted in English, Spanish, and many other languages. Employees or applicants may also call the IER Worker Hotline at 800-255-7688 (TTY 800-237-2515) for information regarding employment discrimination based upon citizenship, immigration status, or national origin, including discrimination related to Employment Eligibility Verification (Form I-9) and E-Verify. The IER Worker Hotline provides language interpretation in numerous languages.

To comply with the law, employers must accept any document or combination of documents from the Lists of Acceptable Documents if the documentation reasonably appears to be genuine and to relate to the employee, or an acceptable List A, List B, or List C receipt as described in the Form I-9 Instructions. Employers may not require extra or additional documentation

beyond what is required for Form I-9 completion. Further, employers participating in E-Verify who receive an E-Verify case result of "Tentative Nonconfirmation" (TNC) must promptly inform employees of the TNC and give such employees an opportunity to contest the TNC. A TNC case result means that the information entered into E-Verify from Form I-9 differs from Federal or state government records.

Employers may not terminate, suspend, delay training, withhold pay, lower pay, or take any adverse action against an employee based on the employee's decision to contest a TNC or because the case is still pending with E-Verify. A Final Nonconfirmation (FNC) case result is received when E-Verify cannot verify an employee's employment eligibility. An employer may terminate employment based on a case result of FNC. Work-authorized employees who receive an FNC may call USCIS for assistance at 888-897-7781 (TTY 877-875-6028). For more information about E-Verify-related discrimination or to report an employer for discrimination in the E-Verify process based on citizenship, immigration status, or national origin, contact IER's Worker Hotline at 800-255-7688 (TTY 800-237-2515). Additional information about proper nondiscriminatory Form I-9 and E-Verify procedures is available on the IER website at <https://www.justice.gov/ier> and the USCIS website at <http://www.dhs.gov/E-verify>.

#### Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)

While Federal Government agencies must follow the guidelines laid out by the Federal Government, state and local government agencies establish their own rules and guidelines when granting certain benefits. Each state may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. Whether you are applying for a Federal, state, or local government benefit, you may need to provide the government agency with documents that show you are a TPS beneficiary and/or show you are authorized to work based on TPS. Examples of such documents are:

- (1) Your current EAD;
- (2) A copy of your Form I-797C for your application to renew your current EAD providing an automatic extension of your currently expired or expiring EAD;
- (3) A copy of your Application for Temporary Protected Status Notice of

Action (Form I-797) for this re-registration; and

(4) A copy of your past or current Application for Temporary Protected Status Notice of Action (Form I-797), if you received one from USCIS.

Check with the government agency regarding which document(s) the agency will accept. Some benefit-granting agencies use the USCIS Systematic Alien Verification for Entitlements (SAVE) program to confirm the current immigration status of applicants for public benefits. In most cases, SAVE provides an automated electronic response to benefit-granting agencies within seconds, but, occasionally, verification can be delayed. You can check the status of your SAVE verification by using CaseCheck at the following link: <https://save.uscis.gov/casecheck/>, then by clicking the "Check Your Case" button. CaseCheck is a free service that lets you follow the progress of your SAVE verification using your date of birth and one immigration identifier number. If an agency has denied your application based solely or in part on a SAVE response, the agency must offer you the opportunity to appeal the decision in accordance with the agency's procedures. If the agency has received and acted upon or will act upon a SAVE verification and you do not believe the response is correct, you may make an InfoPass appointment for an in-person interview at a local USCIS office. Detailed information on how to make corrections, make an appointment, or submit a written request to correct records under the Freedom of Information Act can be found on the SAVE website at <http://www.uscis.gov/save>.

[FR Doc. 2017-27141 Filed 12-14-17; 8:45 am]

BILLING CODE 9111-97-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS-R3-ES-2017-N155; FXES 11130300000-178-FF03E00000]

#### Endangered and Threatened Wildlife and Plants; Permit Applications

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications for a permit to conduct activities intended to enhance the survival of endangered or threatened species. Federal law prohibits certain activities

with endangered species unless a permit is obtained.

**DATES:** We must receive any written comments on or before January 16, 2018.

**ADDRESSES:** Send written comments by U.S. mail to the Regional Director, Attn: Carlita Payne, U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437-1458; or by electronic mail to [permitsR3ES@fws.gov](mailto:permitsR3ES@fws.gov).

**FOR FURTHER INFORMATION CONTACT:** Carlita Payne, (612) 713-5343.

**SUPPLEMENTARY INFORMATION:** We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications for a permit to conduct activities intended to enhance the survival of endangered or threatened species. Federal law prohibits certain activities with endangered species unless a permit is obtained.

#### Background

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*; ESA), prohibits certain activities with endangered and threatened species unless the activities are specifically authorized by a Federal permit. The ESA and our implementing regulations in part 17 of title 50 of the Code of Federal Regulations (CFR) provide for the issuance of such permits and require that we invite public comment before issuing permits for activities involving endangered species.

A permit granted by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with U.S. endangered or threatened species for scientific purposes, enhancement of propagation or survival, or interstate commerce (the latter only in the event that it facilitates scientific purposes or enhancement of propagation or survival). Our regulations implementing section 10(a)(1)(A) of the ESA for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

#### Applications Available for Review and Comment

We invite local, State, Tribal, and Federal agencies and the public to comment on the following applications. Please refer to the permit number when you submit comments. Documents and other information the applicants have submitted with the applications are available for review, subject to the requirements of the Privacy Act

(5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

**Permit Applications**

Proposed activities in the following permit requests are for the recovery and

enhancement of survival of the species in the wild.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
TE207180 .....	Ohio Department of Natural Resources, Columbus, OH.	Karner blue butterfly ( <i>Lycaeides melissa samuelis</i> ).	Ohio .....	Capture, propagation, monitoring.	Capture, handle, hold, release.	Amend.
TE53616C .....	Illinois Natural History Survey, Champaign, IL.	Rusty patched bumble bee ( <i>Bombus affinis</i> ).	Illinois .....	Conduct presence/absence surveys.	Capture, handle .....	New.
TE41689C .....	Leif Richardson, Montpelier, VT.	Rusty patched bumble bee ( <i>Bombus affinis</i> ).	Illinois, Indiana, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Vermont, Virginia, West Virginia, Wisconsin.	Conduct presence/absence surveys.	Capture, handle, release	New.
TE54397C .....	Keifer Titus, Muncie, IN	Indiana bat ( <i>Myotis sodalis</i> ), northern long-eared bat ( <i>M. septentrionalis</i> ).	Indiana .....	Conduct presence/absence surveys and winter hibernacula surveys, document habitat use, conduct population monitoring, evaluate impacts.	Capture, handle, mist-net, radio-tag, band, wing biopsy, collect hair and fungal lift tape samples, swab, enter hibernacula, release, salvage.	New.

**Public Availability of Comments**

We seek public review and comments on these permit applications. Please refer to the permit number when you submit comments. Comments and materials we receive in response to this notice are available for public inspection, by appointment, during normal business hours at the address listed in **ADDRESSES**.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority**

We provide this notice under section 10 of the ESA (16 U.S.C. 1531 *et seq.*).

Dated: November 13, 2017.

**Lori H. Nordstrom,**

*Assistant Regional Director, Ecological Services, Midwest Region.*

[FR Doc. 2017-27045 Filed 12-14-17; 8:45 am]

**BILLING CODE 4333-15-P**

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

[LLNM950000L13400000.BX0000]

**Notice of Filing of Plats of Survey, New Mexico**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of filing of Plats of Survey.

**SUMMARY:** The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management (BLM), Santa Fe, New Mexico, thirty (30) calendar days from the date of this publication.

**FOR FURTHER INFORMATION CONTACT:**

These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, 301 Dinosaur Trail, Santa Fe, New Mexico. Copies may be obtained from this office upon payment. Contact Carlos Martinez at 505-954-2096, or by email at *cjmarti@blm.gov*, for assistance. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the above individual during normal business hours.

**SUPPLEMENTARY INFORMATION:**

**New Mexico Principal Meridian, New Mexico (NM)**

The plat representing the dependent resurvey and survey, in Townships 13 South, Range 11 West, of the New

Mexico Principal Meridian, accepted December 7, 2017, for Group 1169 NM.

**Indian Meridian, Oklahoma (OK)**

The plat representing the dependent resurvey and survey in Township 7 North, Range 9 West, of the Indian Meridian, accepted December 4, 2017, for Group 233 OK.

These plats are scheduled for official filing 30 days from this notice of publication in the **Federal Register**, as provided for in the BLM Manual, Section 2097—Opening Orders. If a protest against a survey, in accordance with 43 CFR 4.450-2, of any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed. A person or party who wishes to protest against any of these surveys must file a written protest with the New Mexico State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the Notice of Protest to the State Director or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

Dated: December 11, 2017.

**Charles I. Doman,**

*Chief Cadastral Surveyor for New Mexico.*

[FR Doc. 2017-27047 Filed 12-14-17; 8:45 am]

**BILLING CODE 4310-FB-P**

**DEPARTMENT OF THE INTERIOR****National Park Service**

[NPS–WASO–NRNHL–24723;  
PPWOCRADIO, PCU00RP14.R50000]

**National Register of Historic Places;  
Notification of Pending Nominations  
and Related Actions**

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The National Park Service is soliciting comments on the significance of properties nominated before November 25, 2017, for listing or related actions in the National Register of Historic Places.

**DATES:** Comments should be submitted by January 2, 2018.

**ADDRESSES:** Comments may be sent via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C St. NW, MS 7228, Washington, DC 20240.

**SUPPLEMENTARY INFORMATION:** The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before November 25, 2017. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State Historic Preservation Officers:

**KANSAS****Barton County**

Allen, A.S., Buildings, 1401 Main St. & 2006 Forest, Great Bend, SG100001944

**Cherokee County**

Big Brutus, 6509 NW 60th St., West Mineral, SG100001945

**Douglas County**

Santa Fe Depot, 413 E 7th St., Lawrence, MP100001946

**Montgomery County**

Inge, William, Boyhood Home, 514 N 4th St., Independence, SG100001947

**Pottawatomie County**

German Evangelical Church, NE corner of 6th & State Sts., Westmoreland, SG100001949

**Pottawatomie County Courthouse**

106 Main St., Westmoreland, MP100001950

**MASSACHUSETTS****Worcester County**

Moran Square Historic District, Myrtle Ave., Sawyer Passway, Summer, Lunenburg, Main & Willow Sts., Fitchburg, SG100001951

**NORTH DAKOTA****Burke County**

Burke County World War Memorial Hall, 101 1st St., Flaxton, SG100001952

**WISCONSIN****La Crosse County**

Gundersen, Dr. Adolf and Helga, Cottage, 1000 US 14/61, La Crosse, SG100001954

A request to move has been received for the following resource:

**KANSAS****Norton County**

Sand Creek Truss Leg Bedstead Bridge, (Metal Truss Bridges in Kansas 1861—1939 MPS), Rd. Y, 0.5 mi. W of int with KS 283, 2 mi. N of KS 9 and 6 mi. NE of Lenora, Lenora vicinity, MV03000365

Nominations submitted by Federal Preservation Officers:

The State Historic Preservation Officer reviewed the following nominations and responded to the Federal Preservation Officer within 45 days of receipt of the nominations and supports listing the properties in the National Register of Historic Places.

**PENNSYLVANIA****Lackawanna County**

U.S. Post Office and Court House, 235 N Washington Ave., Scranton, SG100001953

**WYOMING****Big Horn County**

Schunk Lodge, Approx. 1 mi. N of Red Grade Rd. & Big Goose RS, Bighorn NF, Big Horn vicinity, SG100001955

**Authority:** 60.13 of 36 CFR part 60.

Dated: December 1, 2017.

**Julie H. Ernstein,**

*Acting Chief, National Register of Historic Places/National Historic Landmarks Program.*

[FR Doc. 2017–27063 Filed 12–14–17; 8:45 am]

**BILLING CODE 4312–52–P**

**DEPARTMENT OF THE INTERIOR****Bureau of Ocean Energy Management**

[Docket No. BOEM–2017–0055]

**Notice of Availability for the Gulf of Mexico Outer Continental Shelf Lease Sale Final Supplemental Environmental Impact Statement 2018; MMAA10400**

**AGENCY:** Bureau of Ocean Energy Management, Interior.

**ACTION:** Notice of Availability.

**SUMMARY:** The Bureau of Ocean Energy Management (BOEM) is announcing the availability of the *Gulf of Mexico Outer Continental Shelf Lease Sale: Final Supplemental Environmental Impact Statement 2018* (2018 GOM Final Supplemental EIS). The 2018 GOM Final Supplemental EIS provides an analysis of the potential significant impacts of a proposed action (a regionwide lease sale), provides an analysis of reasonable alternatives to the proposed action, and identifies BOEM's preferred alternative. This Supplemental EIS is expected to be used to inform decisions on each of the two lease sales scheduled in 2018 (*i.e.*, proposed Lease Sales 250 and 251) and to be supplemented as necessary for future Gulf of Mexico regionwide lease sales.

**ADDRESSES:** The Final Supplemental EIS and associated information are available on BOEM's website at <http://www.boem.gov/nepaprocess/>. BOEM will primarily distribute digital copies of the Final Supplemental EIS on compact discs. You may request a compact disc, a paper copy, or the location of a library with a digital copy of the Final Supplemental EIS from the BOEM, Gulf of Mexico OCS Region, Public Information Office (GM 335A), 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394 or by telephone at 1–800–200–GULF.

**FOR FURTHER INFORMATION CONTACT:** For more information on the Final Supplemental EIS, you may contact Mr. Greg Kozlowski, Deputy Regional Supervisor, Bureau of Ocean Energy Management, Gulf of Mexico OCS Region, Office of Environment (GM 623E), 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. You may also contact Mr. Greg Kozlowski by telephone at 504–736–2512 or email at [greg.kozlowski@boem.gov](mailto:greg.kozlowski@boem.gov).

**Authority:** This Notice of Availability of a Final Supplemental EIS is published pursuant to the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and 43 CFR 46.415.

Dated: December 5, 2017.

**Walter D. Cruickshank,**

*Deputy Director, Bureau of Ocean Energy Management.*

[FR Doc. 2017-26972 Filed 12-14-17; 8:45 am]

BILLING CODE 4310-MR-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Ocean Energy Management

[Docket ID: BOEM-2018-0016;  
MMAA104000; OMB Control Number 1010-0151]

#### Agency Information Collection Activities; 30 CFR 550, Subpart B, Plans and Information

**AGENCY:** Bureau of Ocean Energy Management, Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Bureau of Ocean Energy Management (BOEM) is proposing to renew an information collection with revisions.

**DATES:** Interested persons are invited to submit comments on or before February 13, 2018.

**ADDRESSES:** Send your comments on the information collection request (ICR) by mail to the BOEM Information Collection Clearance Officer, Anna Atkinson, Bureau of Ocean Energy Management, 45600 Woodland Road, VA DIR-BOEM, Sterling, Virginia 20166 (mail); or by email to [anna.atkinson@boem.gov](mailto:anna.atkinson@boem.gov). Please reference OMB Control Number 1010-0151 in the subject line of your comment.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Anna Atkinson by email, or by telephone at 703-787-1025.

**SUPPLEMENTARY INFORMATION:** In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of BOEM; (2) will this information be processed and used

in a timely manner; (3) is the estimate of burden accurate; (4) how might BOEM enhance the quality, utility, and clarity of the information to be collected; and (5) how might BOEM minimize the burden of this collection on the respondents, including through the use of information technology?

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Abstract:** This information collection request concerns the paperwork requirements in the regulations under 30 CFR part 550, subpart B, Plans and Information.

The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of mineral resources on the OCS. Such rules and regulations apply to all operations conducted under a lease, or unit. The OCS Lands Act, at 43 U.S.C. 1340 and 1351, requires the holders of OCS oil and gas or sulphur leases to submit exploration plans (EPs) and development and production plans (DPPs) to the Secretary for approval prior to commencing these activities. Also, as a Federal agency, we have an affirmative duty to comply with the National Environmental Policy Act and the Endangered Species Act (ESA). Compliance with the ESA includes a substantive duty to carry out any agency action in a manner that is not likely to jeopardize protected species, as well as a procedural duty to consult with the United States Fish and Wildlife Service (USFWS) and National Oceanic and Atmospheric Administration Fisheries (NOAA Fisheries) before engaging in a discretionary action that may affect a protected species.

This authority and responsibility are among those delegated to BOEM. The regulations at 30 CFR part 550, subpart B, concern plans and information that must be submitted to conduct activities on a lease or unit, and are the subject of this collection. The collection also covers the related Notices to Lessees and Operators (NLTs) that BOEM issues

to clarify or provide additional guidance on some aspects of our regulations.

In 2016, BOEM published a final rule entitled "Oil and Gas and Sulfur Operations on the Outer Continental Shelf—Requirements for Exploratory Drilling on the Arctic Outer Continental Shelf." This rule finalized new regulations specific to activities conducted on the Arctic OCS that modify 30 CFR part 550, subpart B. The new regulations require operators to develop an Integrated Operations Plan (IOP) for each exploratory program on the Arctic OCS, as well as to submit additional planning information with the Exploration Plans. An additional 3,930 burden hours were approved as part of that rulemaking, and are included in the burden table for this control number. The Secretary's Order 3350 (May 1, 2017), which further implements the President's Executive Order entitled, "Implementing an America-First Offshore Energy Strategy" (82 FR 20815, May 3, 2017) directs BOEM to review the final rule. If the Secretary decides that the final determination is to suspend, revise, or rescind the rule, the related burden hours in this OMB control number will be adjusted accordingly.

BOEM geologists, geophysicists, and environmental scientists and other Federal agencies (*e.g.*, USFWS, NOAA Fisheries) analyze and evaluate the information and data collected under Subpart B to ensure that planned operations are safe; will not adversely affect the marine, coastal, or human environment; and will conserve the resources of the OCS. BOEM uses the information to make an informed decision on whether to approve the proposed exploration or development and production plan as submitted, or require plan modifications. The affected States also review the information collected to determine consistency with approved Coastal Zone Management plans.

**Estimated Reporting and Recordkeeping Hour Burden:** We expect the estimated annual reporting burden for this collection to be 436,438 hours. We are transferring 3,930 annual burden hours from OMB control number 1010-0189, 30 CFR 550, Subpart B, Arctic OCS Activities, to this information collection request. These 3,930 annual burden hours are for Arctic exploration requirements which were approved by OMB in the final rule for Requirements for Exploratory Drilling on the Arctic OCS, 81 FR 46478 (July 15, 2016). Once this information collection request is approved by OMB, we will be discontinuing OMB control number 1010-0189.

Title of Collection: 30 CFR 550, Subpart B, Plans and Information.

OMB Control Number: 1010-0151.

Form Number:

- BOEM-0137—OCS Plan Information Form
- BOEM-0138—Exploration Plan (EP) Air Quality Screening Checklist
- BOEM-0139—Development Operations Coordination Document (DOCD) Air Quality Screening Checklist
- BOEM-0141—ROV Survey Report
- BOEM-0142—Environmental Impact Analysis Worksheet

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Potential respondents comprise Federal OCS oil, gas, or sulphur lessees and operators.

Total Estimated Number of Annual Responses: 4,266.

Total Estimated Number of Annual Burden Hours: 436,438.

Respondent's Obligation: Mandatory. Frequency of Collection: On occasion, semi-monthly, and varies by section.

Total Estimated Annual Nonhour Cost: \$3,939,435.

We have identified three non-hour costs associated with this information

collection that are cost recovery fees. They consist of fees being submitted with EPs (\$3,673), DPPs or DOCDs (\$4,238), and CIDs (\$27,348).

There is also one non-hour cost associated with the protected Species Observer Program. The cost associated with this program is due to observation activities that are usually subcontracted to other service companies with expertise in these areas.

The following table details the individual components and respective hour burden estimates of this information collection request.

**BURDEN BREAKDOWN**

Citation 30 CFR 550 subpart B and NTLs	Reporting & recordkeeping requirement	Hour burden	Average Number of annual responses	Burden hours
<b>Non-hour Costs</b>				
200 thru 206 .....	General requirements for plans and information; fees/refunds, etc.	Burden included with specific requirements below.		0
201 thru 206; 211 thru 228; 241 thru 262.	BOEM posts EPs/DPPs/DOCDs on FDMS, and receives public comments for preparation of EAs.	Not considered IC as defined in 5 CFR 1320.3(h)(4).		0
204 .....	For new Arctic OCS exploration activities: submit IOP, including all required information.	2,880	1 .....	2,880
Subtotal .....	.....	.....	1 .....	2,880
<b>Ancillary Activities</b>				
208; NTL 2009-G34 * .....	Notify BOEM in writing and other users of the OCS before conducting ancillary activities.	11	61 notices .....	671
208; 210(a) .....	Submit report summarizing & analyzing data/information obtained or derived from ancillary activities.	2	61 reports .....	122
208; 210(b) .....	Retain ancillary activities data/information; upon request, submit to BOEM.	2	61 records .....	122
Subtotal .....	.....	.....	183 .....	915
<b>Contents of Exploration Plans (EP)</b>				
209; 231(b); 232(d); 234; 235; 281(3); 283; 284; 285; NTL 2015-N01.	Submit new, amended, modified, revised, or supplemental EP, or resubmit disapproved EP, including required information; withdraw your EP.	150	345 changed plans .....	51,750
209; 211 thru 228; NTL, 2015-N01.	Submit EP and all required information (including, but not limited to, submissions required by BOEM Forms 0137, 0138, 0142; lease stipulations; reports, including shallow hazards surveys; H2S; G&G; archaeological surveys & reports (550.194)), in specified formats. Provide notifications.	600	163 plans .....	97,800
		\$3,673 × 163 EP surface locations = \$598,699 non-hour cost.		
220 .....	Alaska-specific requirements .....	Burden included with EP requirements (30 CFR 550.211-228).		0
220 .....	For new Arctic OCS exploration activities: submit required Arctic-specific information with EP.	350	1 .....	350
220 .....	For existing Arctic OCS exploration activities: submit Arctic-specific information, as required.	700	1 .....	700
Subtotal .....	.....	.....	510 responses .....	150,600

BURDEN BREAKDOWN—Continued

Citation 30 CFR 550 subpart B and NTLs	Reporting & recordkeeping requirement	Hour burden	Average Number of annual responses	Burden hours
			\$598,699 Non-Hour Costs	
<b>Review and Decision Process for the EP</b>				
235(b); 272(b); 281(d)(3)(ii)	Appeal State's objection .....	Burden exempt as defined in 5 CFR 1320.4(a)(2), (c).		0
<b>Contents of Development and Production Plans (DPP) and Development Operations Coordination Documents (DOCD)</b>				
209; 266(b); 267(d); 272(a); 273; 281(3)(i); 283; 284; 285; NTL 2015–N01.	Submit amended, modified, revised, updated or supplemental DPP or DOCD, including required information, or resubmit disapproved DPP or DOCD.	235	353 changed plans .....	82,955
241 thru 262; 209; NTL 2015–N01.	Submit DPP/DOCD and required/supporting information (including, but not limited to, submissions required by BOEM Forms 0137, 0139, 0142; lease stipulations; reports, including shallow hazards surveys; archaeological surveys & reports such as shallow hazards surveys (CFR 550.194)), in specified formats. Provide notifications.	700	268 plans .....	187,600
		\$4,238 × 268 DPP/DOCD wells = \$1,135,784		
Subtotal .....	.....	.....	621 responses .....	270,555
		\$1,135,784 Non-hour costs		
<b>Review and Decision Process for the DPP or DOCD</b>				
267(a) .....	Once BOEM deemed DPP/DOCD submitted; Governor of each affected State, local government official; etc., submit comments/recommendations.	Not considered IC as defined in 5 CFR 1320.3(h)(4).		0
267(b) .....	General public comments/recommendations submitted to BOEM regarding DPPs or DOCDs.	Not considered IC as defined in 5 CFR 1320.3(h)(4).		0
269(b) .....	For leases or units in vicinity of proposed development and production activities RD may require those lessees and operators to submit information on preliminary plans for their leases and units.	3	1 response .....	3
Subtotal .....	.....	.....	1 responses .....	3
<b>Post-Approval Requirements for the EP, DPP, and DOCD</b>				
280(b) .....	In an emergency, request departure from your approved EP, DPP, or DOCD.	Burden included under 1010–0114.		0
281(a) .....	Submit various BSEE applications for approval and submit permits.	Burdens included under appropriate subpart or form (1014–0003; 1014–0011; 1014–0016; 1014–0018)		0
282 .....	Retain monitoring data/information; upon request, make available to BOEM.	4	150 records .....	600
	Prepare and submit monitoring plan for approval .....	2	6 plans .....	12
282(b) .....	Prepare and Submit monitoring reports and data (including BOEM Form 0141 used in GOMR).	3	12 reports .....	36
284(a) .....	Submit updated info on activities conducted under approved EP/DPP/DOCD.	4	56 updates .....	224
Subtotal .....	.....	.....	224 responses .....	872
<b>Submit CIDs</b>				
296(a); 297 .....	Submit CID and required/supporting information; submit CID for supplemental.	375	14 documents .....	5,250

BURDEN BREAKDOWN—Continued

Citation 30 CFR 550 subpart B and NTLs	Reporting & recordkeeping requirement	Hour burden	Average Number of annual responses	Burden hours
	DOCD or DPP		\$27,348 × 14 = \$382,872	
296(b); 297 .....	Submit a revised CID for approval. ....	100	13 revisions .....	1,300
Subtotal .....	.....	.....	27 responses .....	6,550
			\$382,872 non-hour costs	
<b>Seismic Survey Mitigation Measures and Protected Species Observer Program NTL *</b>				
NTL 2016–G02; 211 thru 228; 241 thru 262.	Submit to BOEM observer training requirement materials and information.	1.5	2 sets of material .....	3
	Training certification and recordkeeping .....	1	1 new trainee .....	1
	During seismic acquisition operations, submit daily observer reports semi-monthly.	1.5	344 reports .....	516
	If used, submit to BOEM information on any passive acoustic monitoring system prior to placing it in service.	2	6 submittals .....	12
	During seismic acquisition operations, submit to BOEM marine mammal observation report(s) semi-monthly or within 14 hours if air gun operations were shut down.	1.5	1,976 reports .....	2,964
	During seismic acquisition operations, when air guns are being discharged, submit daily observer reports semi-monthly.	1.5	344 reports .....	516
	Observation Duty (3 observers fulfilling an 8 hour shift each for 365 calendar days × 4 vessels = 35,040 man-hours). This requirement is contracted out; hence the non-hour cost burden.		3 observers × 8 hrs × 365 days = 8,760 hours × 4 vessels observing = 35,040 man-hours × \$52/hr = \$1,822,080 non-hour costs	
Subtotal .....	.....	.....	2,673 responses .....	4,012
			\$1,822,080 Non-Hour Costs	
<b>Vessel Strike Avoidance and Injured/Protected Species Reporting NTL *</b>				
NTL 2016–G01; 211 thru 228; 241 thru 262.	Notify BOEM within 24 hours of strike, when your vessel injures/kills a protected species (marine mammal/sea turtle).	1	1 notice .....	1
Subtotal .....	.....	.....	1 response .....	1
<b>General Departure and Alternative Compliance</b>				
200 thru 299 .....	General departure and alternative compliance requests not specifically covered elsewhere in Subpart B regulations.	2	25 requests .....	50
Subtotal .....	.....	.....	25 responses .....	50
Total Burden .....	.....	.....	4,266 Responses .....	436,438
			\$3,939,435 Non-Hour Costs	

\* The identification number of NTLs may change when NTLs are reissued periodically to update information.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

We will protect information considered proprietary under the Freedom of Information Act (5 U.S.C.

552) and Department of the Interior implementing regulations (43 CFR part 2), 30 CFR 550.197, “Data and information to be made available to the public or for limited inspection,” and 30 CFR part 552, “Outer Continental Shelf (OCS) Oil and Gas Information Program.”

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).



Dated: December 8, 2017.

**Deanna Meyer-Pietruszka,**

*Chief, Office of Policy, Regulation and Analysis.*

[FR Doc. 2017-27051 Filed 12-14-17; 8:45 am]

BILLING CODE 4310-MR-P

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1007;  
Investigation No. 337-TA-1021  
(Consolidated)]

### Certain Personal Transporters, Components Thereof, and Packaging and Manuals Therefor and Certain Personal Transporters and Components Thereof; Notice of a Commission Final Determination of Violation of Section 337; Issuance of Remedial Orders; Termination of Investigation

**AGENCY:** U.S. International Trade  
Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission (“the Commission”) has determined that there is a violation of section 337 of the Tariff Act of 1930, as amended in the above-captioned investigation. The Commission has issued a limited exclusion order (“LEO”) directed to products of respondents Swagway LLC of South Bend, Indiana (“Swagway”) and Segaway of Studio City, California (“Segaway”); and a cease and desist order (“CDO”) directed to respondent Swagway. The investigation has been terminated.

**FOR FURTHER INFORMATION CONTACT:** Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-3115. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by

contacting the Commission’s TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted Inv. No. 337-TA-1007, *Certain Personal Transporters, Components Thereof, and Packaging and Manuals Therefor* under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), on June 24, 2016, based on a complaint filed by Segway, Inc. of Bedford, New Hampshire; DEKA Products Limited Partnership of Manchester, New Hampshire; and Ninebot (Tianjin) Technology Co., Ltd. of Tianjin, China (collectively, “Complainants”). 81 FR 41342-43 (Jun. 24, 2016). The complaint alleges a violation of section 337 by reason of infringement of certain claims of U.S. Patent Nos. 6,302,230 (“the ’230 patent”); 6,651,763 (“the ’763 patent”); 7,023,330 (“the ’330 patent”); 7,275,607 (“the ’607 patent”); 7,479,872 (“the ’872 patent”); and 9,188,984 (“the ’984 patent”); and U.S. Trademark Registration Nos. 2,727,948 (“the ’948 TM”) and 2,769,942 (“the ’942 TM”). The named respondents for Investigation No. 337-TA-1007 are (“Inventist”), Inc. of Camas, Washington; PhunkeeDuck, Inc. of Floral Park, New York; Razor USA LLC of Cerritos, California; Swagway; Segaway; and Jetson Electric Bikes LLC of New York, New York. The Commission’s Office of Unfair Import Investigations (“OUII”) was also named as a party to this investigation. 81 FR 41342 (Jun. 24, 2016).

On September 21, 2016, the Commission instituted Inv. No. 337-TA-1021, *Certain Personal Transporters and Components Thereof*, based on a complaint filed by the same Complainants. 81 FR 64936-37 (Sept. 21, 2016). The complaint alleges a violation of section 337 by reason of infringement of certain claims of the ’230 and ’607 patents. The named respondents for Investigation No. 337-TA-1021 are Powerboard LLC of Scottsdale, Arizona; Metem Teknoloji Sistemleri San of Istanbul, Turkey; Changzhou Airwheel Technology Co., Ltd. of Jiangsu, China; Airwheel of Amsterdam, Netherlands; Nanjing Fastwheel Intelligent Technology Co., Ltd. of Nanjing, China; Shenzhen Chenduoxing Electronic, Technology Ltd., China, a.k.a. C-Star of Shenzhen, China; Hangzhou Chic Intelligent Technology Co., Ltd. of Hangzhou, China; Hovershop of Placentia, California; Shenzhen Jomo Technology Co., Ltd., a.k.a. Koowheel of Shenzhen City, China; Guangzhou Kebye Electronic Technology Co., Ltd., a.k.a.

Gotway of Shenzhen, China; and Inventist. OUII was also named as a party to this investigation. 81 FR 64936 (Sept. 21, 2016). The Commission directed the presiding ALJ to consolidate Inv. Nos. 337-TA-1007 and 337-TA-1021. *See id.* at 64937.

Subsequently, the Commission determined not to review an initial determination (“ID”) finding respondents PhunkeeDuck, Inc. and Segaway in default. Order No. 9 (Sept. 1, 2016) (*not reviewed* Oct. 3, 2016). The Commission further determined not to review an ID granting complainants’ corrected motion to amend the complaint and notice of investigation to assert the ’763, ’330, and ’872 patents against respondent Jetson Electric Bikes LLC, and to terminate the investigation with respect to all asserted claims of the ’984 patent as to all respondents. Order No. 17 (Nov. 14, 2016) (*not reviewed* Dec. 7, 2016). The Commission also determined not to review an ID terminating the investigation as to respondent Nanjing Fastwheel Intelligent Technology Co., Ltd. based on a Consent Order Stipulation. Order No. 18 (Nov. 15, 2016) (*not reviewed* Dec. 7, 2016). The Commission likewise determined not to review an ID granting a motion to terminate the investigation as to the ’763 patent. Order No. 19 (Dec. 16, 2016) (*not reviewed* Jan. 10, 2017). The Commission further determined not to review an ID finding respondents Shenzhen Chenduoxing Electronic, Technology Ltd., China, a.k.a. C-Star; Shenzhen Jomo Technology Co., Ltd., a.k.a. Koowheel; Guangzhou Kebye Electronic Technology Co., Ltd., a.k.a. Gotway; Metem Teknoloji Sistemleri San; and Airwheel Netherlands in default. Order No. 22 (Jan. 9, 2017) (*not reviewed* Feb. 7, 2017). The Commission also determined not to review an ID terminating this investigation with respect to all asserted claims of the ’330 patent and the ’872 patent as to all respondents. *See* Order No. 24 (Jan. 10, 2017) (*not reviewed* Feb. 7, 2017).

Furthermore, on January 17, 2017, Complainants and respondent Inventist filed a joint motion to terminate this investigation based on consent order stipulation and proposed consent order. On January 30, 2017, the ALJ issued an ID (Order No. 25) granting the joint motion. The Commission determined to review Order No. 25 because the proposed Consent Order contained express provisions that were mutually inconsistent, and multiple typographical and formatting errors. *See* Notice of Review dated February 22, 2017. The Commission requested corrections to be made in the proposed Consent Order. *See id.* at 2. The

corrected proposed Consent Order was filed with the Commission on February 27, 2017. On October 12, 2017, the Commission determined to affirm Order No. 25 based on the corrected proposed Consent Order.

As a result, the following two patents (with 13 asserted claims) and two trademarks remain at issue in this investigation: Claims 1, 3–5, and 7 of the '230 patent; claims 1–4 and 6 of the '607 patent; the '948 TM; and the '942 TM. *See* ID at 5.

The evidentiary hearing on the question of violation of section 337 was held from April 18 through April 21, 2017. The final ID finding a violation of section 337 was issued on August 10, 2017. On August 10, 2017, the ALJ issued his final ID finding a violation of section 337. The ID found that the accused products do not infringe the asserted claims of the '230 and '607 patents which were not found to be invalid. The ID also found that the technical prong of the domestic industry requirement was not satisfied for the '230 or '607 patents, and therefore the domestic industry requirement was not satisfied for those patents. The ID further found that the Swagway accused products infringe the '948 TM and '942 TM, for which the domestic industry requirement was satisfied. ID at 192–93; 82; 147.

The ALJ issued his recommended determination on remedy, the public interest and bonding on August 22, 2017. The ALJ recommended that if the Commission finds a violation of section 337 in the present investigation, the Commission should: (1) Issue a GEO covering accused products found to infringe the asserted patents; (2) issue a LEO covering accused products found to infringe the asserted patents if the Commission does not issue a GEO; (3) issue an LEO covering accused products found to infringe the asserted trademarks; (4) issue CDOs; and (5) not require a bond during the Presidential review period. RD at 1–18.

On August 23, 2017, the Commission issued a Notice of Request for Statements on the Public Interest. No written submissions from the public were filed with the Commission. Complainants timely filed a public interest submission on September 21, 2017. 19 CFR 210.50(a)(4).

All parties to this investigation that participated in the evidentiary hearing (with the exception of respondent Powerboard LLC) filed timely petitions for review of various portions of the final ID. The parties likewise filed timely responses to the petitions.

The Commission determined to review various portions of the final ID

and issued a Notice to that effect. 82 FR 48724–26 (Oct. 19, 2017) (“Notice of Review”). In the Notice of Review, the Commission also set a schedule for the filing of written submissions on the issues under review, including certain questions posed by the Commission, and on remedy, the public interest, and bonding. The parties have briefed, with initial and reply submissions, the issues under review and the issues of remedy, the public interest, and bonding.

Having examined the record in this investigation, including the parties’ submissions filed in response to the Notice of Review, the Commission has determined as follows:

(1) To affirm the ID’s determination that the claim term “maximum operating velocity” should be construed to mean “a variable maximum velocity where adequate acceleration potential is available to enable balance and control of the vehicle,” ID at 44;

(2) To affirm the ID’s determination that “nothing in the plain language of the disputed limitation [‘the motorized drive arrangement causing, when powered, automatically balanced operation of the system’] in claim 1 of the '230 patent requires the operation by a rider. The claim only requires the ‘motorized drive arrangement causing, when powered, automatically balanced operation of the system.’” *see* ID at 82;

(3) To affirm the ID’s infringement, validity, and domestic industry (technical prong) determinations pertaining to the '230 patent, with the exception of the ID’s findings and analysis pertaining to the discussion of the non-infringement determination regarding the '230 patent that are based on Complainants’ incorrect construction of the term “maximum operating velocity,” *see* ID at 51–77. The Commission takes no position on these findings and analysis. *See Beloit Corporation v. Valmet Oy*, 742 F.2d 1421, 1423 (Fed. Cir.1984);

(4) To modify, as detailed in the accompanying Commission Opinion, the ID’s discussion and conclusion with respect to the “actual confusion” factor regarding the SEGWAY mark on pages 171–172 of the ID, to find that the “actual confusion” factor does not weigh in favor of a finding of a likelihood of confusion.

Having reviewed the submissions on remedy, the public interest and bonding filed in response to the Commission’s Notice of Review, and the evidentiary record, the Commission has determined that the appropriate form of relief in this investigation is: (1) An LEO prohibiting the importation into the United States of (a) SWAGWAY-branded personal transporters, components thereof, and

packaging and manuals thereof manufactured outside the United States that infringe one or more of the '948 TM and '942 TM and that are manufactured abroad by or on behalf of, or imported by or on behalf of, Respondent Swagway; and (b) personal transporters, components thereof, and packaging and manuals therefor manufactured outside the United States that infringe one or more of the '948 TM and '942 TM, which cover the “SEGWAY” marks, and that are manufactured by or on behalf of, or imported by or on behalf of, Respondent Segaway; and (2) a CDO directed against Respondent Swagway.

The Commission has further determined that the public interest factors enumerated in subsections (d)(l), (f)(1), and (g)(1) (19 U.S.C. 1337(d)(l), (f)(1), (g)(1)) do not preclude issuance of the above-referenced remedial orders. Finally, the Commission has determined to set the bond amount at zero (0) percent of the entered value of Respondent Swagway’s accused products and at 100 percent of the entered value of defaulted Respondent Segaway’s accused products during the Presidential review period (19 U.S.C. 1337(j)). The investigation is terminated.

The Commission’s orders, opinion, and the record upon which it based its determination were delivered to the President and to the United States Trade Representative on the day of their issuance. The Commission has also notified the Secretary of the Treasury of the orders.

The authority for the Commission’s determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission’s Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: December 11, 2017.

**Katherine M. Hiner,**  
*Supervisory Attorney.*

[FR Doc. 2017–27030 Filed 12–14–17; 8:45 am]

**BILLING CODE 7020–02–P**

---

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Workforce Information Advisory Council (WIAC)

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice of virtual meeting.

**SUMMARY:** Pursuant to Section 308 of the Workforce Innovation and Opportunity Act of 2014 (WIOA), which amends

section 15 of the Wagner-Peyser Act of 1933, notice is hereby given that the WIAC will meet January 11, 2018, at 2:00 p.m. Eastern Standard Time (EST). The meeting will take place virtually at <https://meet617368056.adobeconnect.com/wiac/> or call 1-800-201-5203 and use conference code 333372. The WIAC was established in accordance with provisions of the Federal Advisory Committee Act (FACA), as amended and will act in accordance with the applicable provisions of FACA and its implementing regulation. The meeting will be open to the public.

**DATES:** The meeting will take place on Thursday, January 11, 2018, at 2:00 p.m. EST and conclude no later than 5:00 p.m. EST. Public statements and requests for special accommodations or to address the Advisory Council must be received by January 4, 2018.

**ADDRESSES:** The meeting will be held virtually at <https://meet617368056.adobeconnect.com/wiac/> or call 1-800-201-5203 and use conference code 333372. If problems arise accessing the meeting, please contact Michelle Serrano by telephone at 336-577-5334 or email at [mserrano@theinsgroup.com](mailto:mserrano@theinsgroup.com).

**FOR FURTHER INFORMATION CONTACT:** Steven Rietzke, Chief, Division of National Programs, Tools, and Technical Assistance, Employment and Training Administration, U.S. Department of Labor, Room C-4510, 200 Constitution Ave. NW, Washington, DC 20210; Telephone: 202-693-3912. Mr. Rietzke is the Designated Federal Officer for the WIAC.

**SUPPLEMENTARY INFORMATION:**

*Background:* The WIAC is an important component of the Workforce Innovation and Opportunity Act. The WIAC is a Federal Advisory Committee of workforce and labor market information experts representing a broad range of national, State, and local data and information users and producers. The purpose of the WIAC is to provide recommendations to the Secretary of Labor, working jointly through the Assistant Secretary for Employment and Training and the Commissioner of Labor Statistics, to address: (1) The evaluation and improvement of the nationwide workforce and labor market information (WLMI) system and statewide systems that comprise the nationwide system; and (2) how the Department and the States will cooperate in the management of those systems. These systems include programs to produce employment-related statistics and State and local workforce and labor market information.

The Department of Labor anticipates the WIAC will accomplish its objectives by: (1) Studying workforce and labor market information issues; (2) seeking and sharing information on innovative approaches, new technologies, and data to inform employment, skills training, and workforce and economic development decision making and policy; and (3) advising the Secretary on how the workforce and labor market information system can best support workforce development, planning, and program development. Additional information is available at [www.doleta.gov/wioa/wiac/](http://www.doleta.gov/wioa/wiac/).

*Purpose:* The WIAC is currently in the process of identifying and reviewing issues and aspects of the WLMI system and statewide systems that comprise the nationwide system and how the Department and the States will cooperate in the management of those systems. As part of this process, the Advisory Council meets to gather information and to engage in deliberative and planning activities to facilitate the development and provision of its recommendations to the Secretary in a timely manner.

*Agenda:* Members will report on and finalize subcommittee and full-committee recommendations for the Secretary. The committee may hear general information from subject matter experts in BLS and ETA.

The Advisory Council will open the floor for public comment periodically. The first opportunity for public comment is expected to be at 3:00 p.m. EST; however, that time may change at the WIAC chair's discretion. Once the member discussion, public comment period, and discussion of next steps and new business has concluded, the meeting will adjourn. The WIAC does not anticipate the meeting lasting past 5:00 p.m. EST.

The full agenda for the meeting, and changes or updates to the agenda, will be posted on the WIAC's web page, [www.doleta.gov/wioa/wiac/](http://www.doleta.gov/wioa/wiac/).

*Attending the meeting:* Members of the public who require reasonable accommodations to attend the meeting may submit requests for accommodations by mailing them to the person and address indicated in the **FOR FURTHER INFORMATION CONTACT** section by the date indicated in the **DATES** section or transmitting them as email attachments in PDF format to the email address indicated in the **FOR FURTHER INFORMATION CONTACT** section with the subject line "January 11 2018 WIAC Meeting Accommodations" by the date indicated in the **DATES** section. Please include a specific description of the accommodations requested and phone

number or email address where you may be contacted if additional information is needed to meet your request.

*Public statements:* Organizations or members of the public wishing to submit written statements may do so by mailing them to the person and address indicated in the **FOR FURTHER INFORMATION CONTACT** section by the date indicated in the **DATES** section or transmitting them as email attachments in PDF format to the email address indicated in the **FOR FURTHER INFORMATION CONTACT** section with the subject line "January 11 2018 WIAC Meeting Public Statements" by the date indicated in the **DATES** section. Submitters may include their name and contact information in a cover letter for mailed statements or in the body of the email for statements transmitted electronically. Relevant statements received before the date indicated in the **DATES** section will be included in the record of the meeting. No deletions, modifications, or redactions will be made to statements received, as they are public records. Please do not include personally identifiable information (PII) in your public statement.

*Requests to Address the Advisory Council:* Members of the public or representatives of organizations wishing to address the Advisory Council should forward their requests to the contact indicated in the **FOR FURTHER INFORMATION CONTACT** section, or contact the same by phone, by the date indicated in the **DATES** section. Oral presentations will be limited to 10 minutes, time permitting, and shall proceed at the discretion of the Council chair. Individuals with disabilities, or others, who need special accommodations, should indicate their needs along with their request.

**Rosemary Lahasky,**

*Deputy Assistant Secretary for Employment and Training Administration.*

[FR Doc. 2017-27106 Filed 12-14-17; 8:45 am]

**BILLING CODE 4510-FN-P**

**DEPARTMENT OF LABOR**

**Employment and Training Administration**

**Workforce Information Advisory Council (WIAC)**

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice of virtual meeting.

**SUMMARY:** Pursuant to Section 308 of the Workforce Innovation and Opportunity Act of 2014 (WIOA), which amends

section 15 of the Wagner-Peyser Act of 1933, notice is hereby given that the WIAC will meet January 25, 2018, at 2:00 p.m. Eastern Standard Time (EST). The meeting will take place virtually at <https://meet617368056.adobeconnect.com/wiac25/> or call 800-201-5203 and use conference code 333372. The WIAC was established in accordance with provisions of the Federal Advisory Committee Act (FACA), as amended and will act in accordance with the applicable provisions of FACA and its implementing regulation. The meeting will be open to the public.

**DATES:** The meeting will take place on Thursday, January 25, 2018, at 2:00 p.m. EST and conclude no later than 5:00 p.m. EST. Public statements and requests for special accommodations or to address the Advisory Council must be received by January 18, 2018.

**ADDRESSES:** The meeting will be held virtually at <https://meet617368056.adobeconnect.com/wiac25/> or call 800-201-5203 and use conference code 333372. If problems arise accessing the meeting, please contact Michelle Serrano by telephone at 336-577-5334 or email at [mserrano@theinsgroup.com](mailto:mserrano@theinsgroup.com).

**FOR FURTHER INFORMATION CONTACT:** Steven Rietzke, Chief, Division of National Programs, Tools, and Technical Assistance, Employment and Training Administration, U.S. Department of Labor, Room C-4510, 200 Constitution Ave. NW, Washington, DC 20210; Telephone: 202-693-3912. Mr. Rietzke is the Designated Federal Officer for the WIAC.

**SUPPLEMENTARY INFORMATION:**

*Background:* The WIAC is an important component of the Workforce Innovation and Opportunity Act. The WIAC is a Federal Advisory Committee of workforce and labor market information experts representing a broad range of national, State, and local data and information users and producers. The purpose of the WIAC is to provide recommendations to the Secretary of Labor, working jointly through the Assistant Secretary for Employment and Training and the Commissioner of Labor Statistics, to address: (1) The evaluation and improvement of the nationwide workforce and labor market information (WLMI) system and statewide systems that comprise the nationwide system; and (2) how the Department and the States will cooperate in the management of those systems. These systems include programs to produce employment-related statistics and State and local workforce and labor market information.

The Department of Labor anticipates the WIAC will accomplish its objectives by: (1) Studying workforce and labor market information issues; (2) seeking and sharing information on innovative approaches, new technologies, and data to inform employment, skills training, and workforce and economic development decision making and policy; and (3) advising the Secretary on how the workforce and labor market information system can best support workforce development, planning, and program development. Additional information is available at [www.doleta.gov/wioa/wiac/](http://www.doleta.gov/wioa/wiac/).

*Purpose:* The WIAC is currently in the process of identifying and reviewing issues and aspects of the WLMI system and statewide systems that comprise the nationwide system and how the Department and the States will cooperate in the management of those systems. As part of this process, the Advisory Council meets to gather information and to engage in deliberative and planning activities to facilitate the development and provision of its recommendations to the Secretary in a timely manner.

*Agenda:* Members will achieve consensus on and finalize subcommittee and full-committee recommendations for the Secretary. The committee may hear general information from subject matter experts in BLS and ETA.

The Advisory Council will open the floor for public comment periodically. The first opportunity for public comment is expected to be at 3:00 p.m. EST; however, that time may change at the WIAC chair's discretion. Once the member discussion, public comment period, and discussion of next steps and new business has concluded, the meeting will adjourn. The WIAC does not anticipate the meeting lasting past 5:00 p.m. EST.

The full agenda for the meeting, and changes or updates to the agenda, will be posted on the WIAC's web page, [www.doleta.gov/wioa/wiac/](http://www.doleta.gov/wioa/wiac/).

*Attending the meeting:* Members of the public who require reasonable accommodations to attend the meeting may submit requests for accommodations by mailing them to the person and address indicated in the **FOR FURTHER INFORMATION CONTACT** section by the date indicated in the **DATES** section or transmitting them as email attachments in PDF format to the email address indicated in the **FOR FURTHER INFORMATION CONTACT** section with the subject line "January 25 2018 WIAC Meeting Accommodations" by the date indicated in the **DATES** section. Please include a specific description of the accommodations requested and phone

number or email address where you may be contacted if additional information is needed to meet your request.

*Public statements:* Organizations or members of the public wishing to submit written statements may do so by mailing them to the person and address indicated in the **FOR FURTHER INFORMATION CONTACT** section by the date indicated in the **DATES** section or transmitting them as email attachments in PDF format to the email address indicated in the **FOR FURTHER INFORMATION CONTACT** section with the subject line "January 25 2018 WIAC Meeting Public Statements" by the date indicated in the **DATES** section. Submitters may include their name and contact information in a cover letter for mailed statements or in the body of the email for statements transmitted electronically. Relevant statements received before the date indicated in the **DATES** section will be included in the record of the meeting. No deletions, modifications, or redactions will be made to statements received, as they are public records. Please do not include personally identifiable information (PII) in your public statement.

*Requests to Address the Advisory Council:* Members of the public or representatives of organizations wishing to address the Advisory Council should forward their requests to the contact indicated in the **FOR FURTHER INFORMATION CONTACT** section, or contact the same by phone, by the date indicated in the **DATES** section. Oral presentations will be limited to 10 minutes, time permitting, and shall proceed at the discretion of the Council chair. Individuals with disabilities, or others, who need special accommodations, should indicate their needs along with their request.

**Rosemary Lahasky,**

*Deputy Assistant Secretary for Employment and Training Administration.*

[FR Doc. 2017-27107 Filed 12-14-17; 8:45 am]

**BILLING CODE 4510-FN-P**

**LIBRARY OF CONGRESS**

**U.S. Copyright Office**

[Docket No. 2017-20]

**Scope of Preexisting Subscription Services**

**AGENCY:** U.S. Copyright Office, Library of Congress.

**ACTION:** Final order.

**SUMMARY:** The Copyright Royalty Judges referred novel material questions of

substantive law to the Register of Copyrights for resolution in connection with the SDARS III proceeding. The Register responded with a written opinion that is reproduced below.

**DATES:** Opinion dated November 20, 2017.

**FOR FURTHER INFORMATION CONTACT:** Sarang V. Damle, General Counsel and Associate Register of Copyrights, by email at [sdam@loc.gov](mailto:sdam@loc.gov), or Jason E. Sloan, Attorney-Advisor, by email at [jslo@loc.gov](mailto:jslo@loc.gov). Each can be contacted by telephone by calling (202) 707-8350.

**SUPPLEMENTARY INFORMATION:** The Copyright Royalty Judges (“CRJs”) are tasked with determining and adjusting rates and terms of royalty payments for statutory licenses under the Copyright Act. *See* 17 U.S.C. 801. If, in the course of proceedings before the CRJs, novel material questions of substantive law concerning the interpretation of provisions of title 17 arise, the CRJs are required by statute to refer those questions to the Register of Copyrights for resolution. 17 U.S.C. 802(f)(1)(B).

On October 23, 2017, the CRJs, acting pursuant to 17 U.S.C. 802(f)(1)(B), referred to the Register novel material questions of substantive law in connection with the SDARS III proceeding, Docket No. 16–CRB–0001 SR/PSSR (2018–2022). The referred questions asked whether a preexisting subscription service’s transmissions of multiple, unique channels of music that are accessible through that entity’s website and through a mobile application are “subscription transmissions by preexisting subscription services” for which the CRJs are required to determine rates and terms of royalty payments under 17 U.S.C. 114(f)(1)(A), and, if so, whether there are any conditions a service must satisfy to qualify for a license under section 114(f)(1)(A). On November 20, 2017, the Register resolved these questions in a Memorandum Opinion that she transmitted to the CRJs. To provide the public with notice of the decision rendered by the Register, the Memorandum Opinion is reproduced in its entirety below.

Dated: December 6, 2017.

**Karyn Temple Claggett,**

*Acting Register of Copyrights and Director of the U.S. Copyright Office.*

**Before the U.S. Copyright Office,  
Library of Congress, Washington, DC  
20559**

*In the Matter of:* DETERMINATION OF ROYALTY RATES AND TERMS FOR TRANSMISSION OF SOUND RECORDINGS BY SATELLITE RADIO AND

“PREEXISTING” SUBSCRIPTION SERVICES (SDARS III)

Docket No. 16–CRB–0001 SR/PSSR (2018–2022)

### MEMORANDUM OPINION ON NOVEL MATERIAL QUESTIONS OF LAW

The Copyright Royalty Judges (“CRJs” or “Judges”) concluded the hearing in the above-captioned proceeding with closing arguments of counsel on July 18, 2017. In the course of their deliberations, the CRJs determined that novel material questions of substantive law arose regarding the interpretation of provisions of the Copyright Act and, as required under 17 U.S.C. 802(f)(1)(B), referred them to the Register of Copyrights for resolution. The questions were referred to the Register by the CRJs on October 23, 2017. The Register’s determination follows.

#### I. Background

##### A. Statutory Background

In 1995, Congress enacted the Digital Performance Right in Sound Recordings Act of 1995 (“DPRSRA”),<sup>1</sup> recognizing the exclusive right of copyright owners to perform sound recordings “publicly by means of a digital audio transmission.”<sup>2</sup> The DPRSRA also established a statutory license to allow certain noninteractive digital audio services to make such performances of sound recordings, provided the services pay a royalty fee and comply with the terms of the license. Under the DPRSRA, nonexempt subscription transmissions were subject to statutory licensing if they satisfied certain requirements, and the royalty rates and terms for the statutory license were to be set in accordance with the objectives set forth in 17 U.S.C. 801(b)(1).<sup>3</sup>

In 1998, the statutory license was amended by the Digital Millennium Copyright Act (“DMCA”),<sup>4</sup> a major goal of which was to establish a market-based standard for setting royalty rates paid to copyright owners for use of their

works under the statutory license.<sup>5</sup> In doing so, Congress drew a distinction between preexisting subscription services (“PSSs”) on the one hand and nonsubscription services and new subscription services on the other. A “preexisting subscription service” is defined in 17 U.S.C. 114(j)(11) as:

[A] service that performs sound recordings by means of noninteractive audio-only subscription digital audio transmissions, which was in existence and was making such transmissions to the public for a fee on or before July 31, 1998, and may include a limited number of sample channels representative of the subscription service that are made available on a nonsubscription basis in order to promote the subscription service.<sup>6</sup>

Section 114 contains two grandfathering provisions that apply to PSSs and provide benefits to those services not available to new subscription services or nonsubscription services. The first, section 114(d)(2)(B), preserves the DPRSRA’s limited qualifications for entitlement to the statutory license, but only for transmissions *made in the same transmission medium* used by the PSS on July 31, 1998. The second, to which the referred questions most directly pertain, is the grandfathered method of setting royalty rates under section 114(f)(1), which applies to a PSS regardless of the transmission medium.

Under this scheme, PSS transmissions in the same transmission medium used on July 31, 1998, are still subject to the DPRSRA’s requirements under section 114(d)(2)(B) and are to still have royalty rates and terms set in accordance with the objectives of section 801(b)(1).<sup>7</sup> Nonsubscription services and new subscription services, however, are subject to a more expansive set of qualifications under section 114(d)(2)(C), and are to have their royalty rates and terms set to reflect those that “would have been negotiated in the marketplace between a willing buyer and a willing seller.”<sup>8</sup> PSS transmissions made in a *new transmission medium* are subject to the more expansive set of qualifications under section 114(d)(2)(C) imposed on nonsubscription and new subscription services.<sup>9</sup>

The Register has explained that “the rationale for [section 114’s] grandfathering provisions is to ‘prevent disruption of the existing operations by

<sup>1</sup> Public Law 104–39, 109 Stat. 336 (1995).

<sup>2</sup> 17 U.S.C. 106(6).

<sup>3</sup> Section 801(b)(1) provides that the rates “shall be calculated to achieve the following objectives: (A) To maximize the availability of creative works to the public. (B) To afford the copyright owner a fair return for his or her creative work and the copyright user a fair income under existing economic conditions. (C) To reflect the relative roles of the copyright owner and the copyright user in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of new markets for creative expression and media for their communication. (D) To minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices.” 17 U.S.C. 801(b)(1).

<sup>4</sup> Public Law 105–304, 112 Stat. 2860 (1998).

<sup>5</sup> 71 FR 64639, 64641 (Nov. 3, 2006).

<sup>6</sup> 17 U.S.C. 114(j)(11).

<sup>7</sup> *See id.* at 114(d)(2)(B), (f)(1).

<sup>8</sup> *See id.* at 114(d)(2)(C), (f)(2).

<sup>9</sup> *Id.* at 114(d)(2)(C).

[preexisting subscription] services.’”<sup>10</sup> In discussing the legislative history explaining the objectives of the grandfathering provisions, the Register elaborated:

While it would appear . . . that Congress’s purpose in grandfathering these services was to preserve a particular program offering, it was not its only purpose or even necessarily its major goal. The Conference Report also makes clear that Congress distinguished between preexisting subscription services and new subscription services as a way to prevent disruption of the existing operations of the services that were in existence and operating before July 31, 1998. It understood that the entities so designated as preexisting had invested a great deal of resources into developing their services under the terms established in 1995 as part of the Digital Performance Right in Sound Recording Act of 1995, and that those services deserved to develop their businesses accordingly.<sup>11</sup>

### B. Procedural History

The instant proceeding will establish royalty rates and terms for PSSs’ (as well as preexisting satellite digital audio radio services’) digital performance of sound recordings and the making of ephemeral recordings under the statutory licenses set forth in sections 112(e) and 114(f)(1) of the Copyright Act. Music Choice is the only PSS that participated in the current rate-setting proceedings. The CRJs explain that the referred questions arose in this proceeding because SoundExchange, Inc.,<sup>12</sup> for the first time, is seeking two separate royalty payments from PSSs: (1) For all licensed transmissions and related ephemeral recordings through a television-based service qualifying as a PSS, SoundExchange requests a per-subscriber, per-month royalty; and (2) for all licensed transmissions and related ephemeral recordings through an internet streaming service qualifying as a PSS (or any similar service capable of tracking the individual sound recordings received by any particular consumer and qualifying as a PSS), SoundExchange seeks a per-performance royalty fee that is the same as commercial webcasters are currently

required to pay under 37 CFR 380.10 (or, in the alternative, a royalty based on aggregate tuning hours for a PSS that does not have the technological capability to track individual performances).<sup>13</sup> The parties dispute whether it is necessary for the CRJs to decide whether Music Choice’s internet and mobile transmissions qualify as part of its PSS.<sup>14</sup>

In response to this dispute, the CRJs found that “consideration of the appropriate royalty rates and terms for a PSS’s digital audio transmissions through a website or mobile application in which the PSS streams a variable number of unique channels of music presents a novel material question of substantive law,” and referred the following questions to the Register pursuant to 17 U.S.C. 802(f)(1)(B):

1. Are a preexisting subscription service’s transmissions of multiple, unique channels of music that are accessible through that entity’s website and through a mobile application “subscription transmissions by preexisting subscription services” for which the Judges are required to determine rates and terms of royalty payments under Section 114(f)(1)(A) of the Copyright Act?

2. If yes, what conditions, if any, must the PSS meet with regard to streaming channels to qualify for a license under Section 114(f)(1)(A)? For example, must the streamed stations be identical to counterpart stations made available through cable television? Is there a limitation on the number of channels that the PSS may stream? Is there a limitation on the number or type of customers that may access the website or the mobile application?<sup>15</sup>

## II. Summary of the Parties’ Arguments

### A. Music Choice’s Position

Music Choice argues that the statutory language, legislative history, and factual record all support its position that its internet transmissions are part of its PSS and subject to section 114(f)(1). Music Choice begins by disputing, as a factual matter, the claim that its internet transmissions are an “expansion” of its service into a new medium—which it perceives as the premise for the CRJs’ referred questions—on the grounds that its “internet transmissions are merely an ancillary part of its residential audio service,” the value of its internet transmissions “has always been included in the bundled per-subscriber fee,” and “the undisputed evidence

establishes that Music Choice has been providing its subscribers with internet-based access to its audio channels since 1996, long before the PSS license was created in the DMCA, and has always included these internet transmissions as a part of its PSS since that time.”<sup>16</sup> Music Choice also disputes SoundExchange’s claim that webcasting was becoming an “increasingly important part” of its business, claiming that record evidence shows that “usage of Music Choice’s internet transmissions has consistently remained at de minimis levels, and today comprises less than one hundredth of one percent of Music Choice’s overall audio channel usage.”<sup>17</sup> Music Choice contends that, in any event, because it was making internet transmissions prior to the codification of the PSS definition in section 114(j)(11), “[u]nder any reasonable interpretation of [the] statutory language, Music Choice’s internet transmissions fall squarely within the definition of a PSS.”<sup>18</sup>

Music Choice also argues that even if its internet transmissions did constitute an expansion of its services to a new medium, such expansion is permitted and “would not require any new, additional license fee or rate.”<sup>19</sup> Music Choice contends that in grandfathering the existing three PSSs, Congress sought to protect their “need for access to the works at a price that would not hamper their growth” and did not “intend[] to limit PSS status to the PSS offerings as they existed in 1998 or otherwise freeze the PSS in time.”<sup>20</sup> Music Choice claims that “Congress’s intent to provide the PSS with long-term protection is further evinced by the absence of any sunset provision anywhere in the statutory language or discussion of such a provision in the legislative history”<sup>21</sup> and argues that in enacting the DMCA, “the overarching intent of Congress was decidedly not to move the *entire* market to marketplace rates,” but rather “to protect the PSS’ unique business expectancies.”<sup>22</sup>

Citing to Congress’s discussion in the DMCA Conference Report, Music Choice asserts that Congress created a “unique feature of the PSS license that allows a PSS to expand into new services in new transmission media while retaining PSS status for those new services, so long as the new service is similar in character to the original PSS

<sup>10</sup> 71 FR at 64641 (quoting H.R. Rep. No. 105–796, at 81 (1998) (Conf. Rep.)); *accord SoundExchange, Inc. v. Muzak LLC*, 854 F.3d 713, 719 (D.C. Cir. 2017) (“The grandfather provisions were intended to protect prior investments the three [PSS] business entities had made during a more favorable pre-1998 rate-setting regulatory climate.”).

<sup>11</sup> 71 FR at 64645 (internal citation omitted).

<sup>12</sup> SoundExchange appears in this proceeding on behalf of the American Association of Independent Music; the American Federation of Musicians of the United States and Canada; the Recording Industry Association of America; the Screen Actors Guild and American Federation of Television and Radio Artists; Sony Music Entertainment; Universal Music Group; and Warner Music Group. Referral Order at 2 n.4.

<sup>13</sup> *Id.* at 2–3.

<sup>14</sup> *Id.* at 3.

<sup>15</sup> *Id.* at 3–4. Section 802(f)(1)(B) provides that “[i]n any case in which a novel material question of substantive law concerning an interpretation of those provisions of [title 17] that are the subject of the proceeding is presented, the Copyright Royalty Judges shall request a decision of the Register of Copyrights, in writing, to resolve such novel question.” 17 U.S.C. 802(f)(1)(B).

<sup>16</sup> Music Choice Brief at 1–2, 4–5.

<sup>17</sup> *Id.* at 6.

<sup>18</sup> *Id.* at 18–19, 30.

<sup>19</sup> *Id.* at 2, 30.

<sup>20</sup> *Id.* at 14, 19–23.

<sup>21</sup> *Id.* at 15.

<sup>22</sup> *Id.* at 16–17.

offering, *i.e.*, does not take advantage of unique features of the new medium to provide a different listening experience or interactivity while listening to the audio channel.”<sup>23</sup> Music Choice further explains that “[a]lthough Congress did not intend to allow the PSS to create fundamentally different types of services, with fundamentally different types of content or interactive audio functionality . . . , it did intend to allow the PSS to continue their development, evolution, and growth of their non-interactive, subscription audio services.”<sup>24</sup> Thus, Music Choice argues that “there is no statutory requirement that a PSS offer the exact same channels to all of its subscribers or through each of its different transmission media,”<sup>25</sup> and “there is no hint in the statute or the legislative history of any intent to impose restrictions on the number of channels that may be provided . . . or the number or type of subscribers that Music Choice may serve.”<sup>26</sup> Music Choice specifically argues that section 114 cannot be read to require the same exact channels in a new transmission medium as it offers in its original medium because the statute “expressly acknowledges that the programming of a PSS’s transmissions in a new medium may be different than those in the original medium, and in some instances requires that they be programmed differently.”<sup>27</sup> More generally, Music Choice asserts that its internet transmissions are permissible because they “do not take advantage of the internet’s technological capabilities,” providing several fact-based arguments for why its internet service is comparable to its television service.<sup>28</sup>

Music Choice rests its argument in part on the U.S. Court of Appeals for the District of Columbia Circuit’s recent opinion in *SoundExchange, Inc. v. Muzak LLC*, which held that a music service acquired by Muzak was not entitled to the grandfathered rate that applied to its preexisting subscription service.<sup>29</sup> Music Choice claims that this decision “demonstrate[s] that the PSS definition was not intended to freeze the PSS in time, nor limit PSS status to channels (or customers) that are exactly the same as the channels that were

transmitted in 1998 (or the customers who received them at that time)” and that “any rule limiting PSS status to internet-based channels that are exactly the same as those transmitted through cable or satellite, or limiting the number of channels that may be provided by a PSS, would be inconsistent with [the court’s] interpretation of the PSS definition.”<sup>30</sup> Music Choice concludes that it would be contrary to the court’s interpretation of the PSS definition to limit “the expansion of a PSS’s service under the same brand” beyond the limitation “that the service must remain within the general category of transmissions identified in the . . . definition: noninteractive audio-only subscription digital audio transmissions made by an entity that was in existence and making that category of transmissions on or before July 31, 1998.”<sup>31</sup>

#### B. SoundExchange’s Position

SoundExchange argues that the CRJs should set “distinct statutory royalty rates for delivery of a PSS to television sets and for any webcasting that is provided as part of a PSS,” with the rate for webcasting that is part of a PSS set “at the same level as the statutory rate for other subscription webcasters, because Music Choice’s webcasting is equivalent to that provided by other webcasting services, and competes with other webcasting services.”<sup>32</sup> SoundExchange argues that this position responds to the “rapid growth in Music Choice’s webcasting,” which it asserts is demonstrated by record evidence it describes regarding Music Choice’s mobile application and website and how Music Choice’s internet transmissions differ from its television-based service.<sup>33</sup>

Pointing to the same discussion in the DMCA Conference Report referenced by Music Choice, SoundExchange argues that “Congressional intent was to limit the grandfathering of the PSS to transmissions similar to the cable or satellite service offerings their providers offered on July 31, 1998,” meaning that PSS status “extends to a qualifying entity’s cable and satellite offerings as they existed at July 31, 1998 . . . and also may extend to a qualifying entity’s transmissions in a new medium such as the internet, if the transmissions are sufficiently similar to the 1998 offerings.”<sup>34</sup> SoundExchange contends that assessing similarity “is a fact-

intensive inquiry that requires comparison of a PSS provider’s new offering with the provider’s 1998 offerings,” and that “[i]t is not enough to consider only whether a qualifying entity’s new offerings makes noninteractive audio-only subscription digital audio transmissions,” but rather, “it is necessary to consider the medium used, and the functionality and content provided, in the new offerings.”<sup>35</sup> SoundExchange claims that “Congress gave *no* indication that . . . a PSS provider should enjoy PSS rates if it provided an offering *different* from its 1998 offering in a new medium.”<sup>36</sup> SoundExchange interprets the legislative history to suggest that Congress “grandfathered the PSS to protect investments that qualifying entities had *already* made at the time the DMCA was under consideration in 1998.”<sup>37</sup> SoundExchange understands the D.C. Circuit’s decision in *SoundExchange* to be consistent with its interpretation of the legislative history.<sup>38</sup>

SoundExchange argues that the PSS definition must be construed narrowly, particularly in the case of webcasting given that “[i]nternet-based streaming services are a rapidly-growing means of music consumption,” and “webcasting by a PSS provider competes with webcasting by services that are currently paying for their use of sound recordings at much higher royalty rates.”<sup>39</sup> Such an interpretation, SoundExchange claims, would “ensure that webcasters compete on level terms, eliminating distortions in the market and effectuating the Congressional intent to shift rates towards those that reflect arms-length market transactions.”<sup>40</sup>

SoundExchange further argues that, “[a]s a matter of law,” “webcast transmissions made through a mobile app, or through a version of a provider’s website that has been optimized for display using the browser on a mobile device, are not transmissions by a PSS for which the Judges are to set rates and terms under Section 114(f)(1).”<sup>41</sup> SoundExchange contends that the PSSs’ “1998 offerings were residential offerings delivered by means of cable or satellite to fixed points in subscribers’ homes,” while “[t]he Internet and the wireless networks that are used to deliver service to mobile devices are a different medium than the PSS used in

<sup>23</sup> *Id.* at 15, 17, 23–25.

<sup>24</sup> *Id.* at 24–25, 30.

<sup>25</sup> *Id.* at 19, 27. Music Choice specifically notes that, “of the 75 channels available through the internet, 50 of those are identical to the channels broadcast over the television” and the “additional 25 are identical to the television channels in every way except the genre or sub-genre in which they are programmed.” *Id.* at 19.

<sup>26</sup> *Id.* at 2.

<sup>27</sup> *Id.* at 27.

<sup>28</sup> *Id.* at 25–26.

<sup>29</sup> 854 F.3d at 719.

<sup>30</sup> Music Choice Brief at 21.

<sup>31</sup> *Id.* 29–30 (internal quotation marks omitted).

<sup>32</sup> SoundExchange Brief at 5.

<sup>33</sup> *Id.* at 2–5.

<sup>34</sup> *Id.* at 9–10.

<sup>35</sup> *Id.* at 10.

<sup>36</sup> *Id.* at 11.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* 11–12.

<sup>39</sup> *Id.* at 12.

<sup>40</sup> *Id.* at 12–13.

<sup>41</sup> *Id.* at 13.



1998.”<sup>42</sup> Furthermore, SoundExchange contends that mobile services “take[] advantage of the capability of wireless networks to provide portability, allowing listeners to access music anytime and virtually anywhere” as well as offering “different opportunities for user interaction and navigation” that “provide a very different user experience than the stereo receivers and television sets that could receive the PSS’ 1998 offerings.”<sup>43</sup>

While SoundExchange claims that internet streaming channels could qualify as part of a PSS, so long as it is “sufficiently similar to the provider’s 1998 offerings,” SoundExchange asserts that this standard requires that the “PSS provider’s webcast channels [to] be identical to counterpart stations made available through cable television” in order to qualify for a rate set under section 114(f)(1), as a service offering internet-only channels would lack sufficient similarity to the PSS’ 1998 offerings which did not include any internet-only offerings.<sup>44</sup>

SoundExchange argues that a PSS’s internet transmissions are similarly disqualified if the “number of webcasting channels is [not] sufficiently similar to the provider’s pre-1998 offerings.”<sup>45</sup> SoundExchange further contends that the number and type of subscribers to the transmission must also be substantially similar, and that a PSS cannot include video programming “other than video related to the service or recording being performed” in order for its webcasting service to qualify as a PSS.<sup>46</sup> SoundExchange also asserts that “[a] trier of fact may also consider other factors that bear on similarity of the service offerings, including any differences between Internet-based platforms and cable- and satellite-based platforms.”<sup>47</sup>

### III. Register’s Determination

Although the parties’ briefs discuss at length the factual nature of Music Choice’s particular internet transmissions, questions of fact are beyond the scope of the Register’s inquiry under section 802(f)(1)(B). Thus, without judging the facts as they may pertain to Music Choice (or any other PSS), and having considered the relevant statutory language, legislative history, and the input from the parties, the Register determines that transmissions by a PSS entity that are

accessible to a cable or satellite television subscriber through that entity’s website and through a mobile application can be “subscription transmissions by preexisting subscription services” for which the CRJs must determine rates and terms of royalty payments under section 114(f)(1)(A), but only if such transmissions are sufficiently similar to the transmissions made to those subscribers via the entity’s preexisting residential cable or satellite music service.

#### A. Legal Standard

Before addressing the appropriate legal standard for determining whether a particular subscription transmission by a preexisting subscription service is subject to the grandfathered method of setting royalty rates for such service offerings under section 114(f)(1), the Register makes a few threshold points about the statute.

First, in analyzing the grandfathering provisions, the Register interprets them narrowly.<sup>48</sup>

Second, as the Register has previously held, the definition of “preexisting subscription service” in section 114(j)(11) can pertain to both the business entity operating a service offering and the service offering itself.<sup>49</sup> The D.C. Circuit recently agreed with the Register that “the word ‘service,’ as used both in the statute as well as the legislative history, sometimes referred to the business entity and sometimes the program offerings.”<sup>50</sup> For clarity’s sake, the Register generally refers below to a “PSS entity” or a “PSS offering” to distinguish between a preexisting business itself and a specific preexisting program offering by such business.

Third, as a corollary to the second point, the Register concurs with the D.C. Circuit’s holding that, under the grandfathering provisions, “the term ‘service’ contemplates a double limitation; both the business and the program offering must qualify before the transmissions are eligible for the favorable rate.”<sup>51</sup> Indeed, Congress was clear that not every subscription transmission made by a PSS entity is subject to section 114(f)(1).<sup>52</sup> Thus, as

used in section 114(f)(1)(A), “subscription transmissions by preexisting subscription services” must refer only to the PSS offerings made by a PSS entity, rather than referring to all subscription transmissions made by a PSS entity.

Fourth, the Register has previously determined “that the preexisting services must be limited to the three named entities in the [DMCA] Conference Report, *i.e.*, DMX (operated by TGI Music), Music Choice (operated by Digital Cable Radio Associates), and [DiSHCD]<sup>53</sup> (operated by Muzak).”<sup>54</sup> Thus, it is long-settled that these three entities are the only PSS entities. What offerings by these entities may constitute PSS offerings, however, has continued to be unsettled, but is now resolved by this memorandum opinion.<sup>55</sup>

Fifth, the Register observes that PSS offerings are not limited solely to the offerings made by PSS entities prior to July 31, 1998. Rather, the statute and legislative history both confirm that Congress intended for PSS entities to be able to expand their service offerings to some limited extent and still have those service offerings be considered PSS offerings. Two provisions of the statute

“subscription transmissions made by a preexisting subscription service other than those that qualify under subsection (f)(1)” in addition to new subscription services and eligible nonsubscription transmissions). Similarly, previous statements made by the Register that preexisting subscription “services deserved to develop their businesses accordingly” pertained to the businesses of the pre-July 31, 1998 PSS offerings—not all businesses engaged in by the PSS entities. *See* 71 FR at 64645. For example, later in the same opinion, the Register elaborated that while “Muzak was the pioneer music service that incurred both the benefits and risks that came with its investment, and one such benefit was its status as a preexisting subscription service,” that benefit only exists “so long as [Muzak] provided its music offerings over [DiSHCD],” as it did as of July 31, 1998. *Id.* at 64646.

<sup>53</sup> The Register believes that the DMCA Conference Report’s reference to “DiSH Network” was a typo, and that Congress intended to refer to Muzak’s “DiSHCD” service, which was transmitted over Echostar’s DiSH Network. *See* Report of the Copyright Arbitration Royalty Panel, *In re: Determination of Statutory License Terms and Rates for Certain Digital Subscription Transmissions of Sound Recordings*, No. 96–5 CARP DSTR A ¶ 27 (Nov. 28, 1997) (“CARP Report”) (“Muzak . . . began providing . . . digital music under the name DiSH CD, as part of Echostar’s satellite-based DiSH Network.”); 63 FR 25394, 25395 (May 8, 1998) (same); *see also* Muzak Limited Partnership, Initial Notice of Digital Transmission of Sound Recordings under Statutory License (July 2, 1998) (listing the service name as “dishCD”).

<sup>54</sup> 71 FR at 64646; *see* H.R. Rep. No. 105–796, at 81, 85, 89.

<sup>55</sup> The D.C. Circuit correctly recognized that the Register’s previous “opinion did not address whether those three business entities’ grandfather status was further limited to the programs they were offering at the time the statute was passed.” *See SoundExchange*, 854 F.3d at 718.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 13–14.

<sup>44</sup> *Id.* at 15–16.

<sup>45</sup> *Id.* 16–17.

<sup>46</sup> *Id.* 17–18.

<sup>47</sup> *Id.* at 17.

<sup>48</sup> *See* 71 FR at 64646; *accord SoundExchange*, 854 F.3d at 719.

<sup>49</sup> 71 FR at 64646, 64647 (“In construing the statutory language together with the legislative history, the logical conclusion is that Congress did use the term ‘service’ to mean both the program offerings made on a subscription basis to the public and the business entity that secures the license to make the subscription transmissions.”).

<sup>50</sup> *SoundExchange*, 854 F.3d at 718.

<sup>51</sup> *See id.* at 719.

<sup>52</sup> *See* H.R. Rep. No. 105–796, at 84–85

(explaining that section 114(f)(2) applies to



in particular reflect this congressional intent. Section 114(d)(2)(C) sets out more expansive qualifications for the statutory license for transmissions made by a PSS “other than in the same transmission medium used by such service on July 31, 1998.” In other words, Congress suggested that a PSS could deliver its offering in a new transmission medium without affecting its status as a PSS offering. Section 114(f)(1)(C), in turn, provides for an out-of-cycle rate proceeding to be held where “a new type of subscription digital audio transmission service on which sound recordings are performed is or is about to become operational.” The statute further makes clear that this rate proceeding is to be conducted with reference to the grandfathered rate standard. Such a provision would be unnecessary if PSS offerings were limited to the exact offerings made in 1998; there would never be a “new type of . . . service.”

Thus, the ultimate question is whether a particular program offering by a PSS entity qualifies as a PSS offering within the meaning of section 114(j)(11), and is therefore subject to the grandfathered rate standard under section 114(f)(1). The DMCA Conference Report provides particularly helpful guidance in answering this question concerning section 114(f)(1):

In grandfathering these services, the conferee’s objective was to limit the grandfather to their existing services in the same transmission medium and to any new services in a new transmission medium where only transmissions similar to their existing service are provided. Thus, if a cable subscription music service making transmissions on July 31, 1998, were to offer the same music service through the Internet, then such Internet service would be considered part of a preexisting subscription service. If, however, a subscription service making transmissions on July 31, 1998, were to offer a new service either in the same or new transmission medium by taking advantages of the capabilities of that medium, such new service would not qualify as a preexisting subscription service.<sup>56</sup>

This passage, consistent with the statutory language in sections 114(d)(2) and 114(f), demonstrates Congress’s intent to distinguish among three different possibilities:

1. A service offering identified by Congress as being a PSS offering as of July 31, 1998, that is still offered today *in the same transmission medium* identified by Congress in 1998 (referred to here as an “existing service offering”).<sup>57</sup> Such a service offering

would be entitled to *both* a rate established under the grandfathered rate standard under section 114(f)(1) and the grandfathered license requirements in section 114(d)(2)(B).

2. A service offering identified by Congress as being a PSS offering as of July 31, 1998, that is still offered today, but *in a different transmission medium* than the one identified by Congress in 1998, *where only transmissions similar to the existing service offering are provided* (referred to here as an “expanded service offering”).<sup>58</sup> Such a service offering would be entitled to a rate established under the grandfathered rate standard under section 114(f)(1), but would not be able to take advantage of the grandfathered license requirements in section 114(d)(2)(B). Instead, it would be required to comply with more detailed license requirements in section 114(d)(2)(C).

3. A service offering that is not an existing service offering or an expanded service offering (referred to here as a “different service offering”).<sup>59</sup> This would include any offering that is insufficiently similar to an existing service offering to be considered an expanded service offering. A different service offering would not be entitled to either a rate established under the grandfathered rate standard under section 114(f)(1) or the grandfathered license requirements in section 114(d)(2)(B). Instead, the rate would be set under the willing buyer/willing seller standard in section 114(f)(2), and would be required to comply with the license requirements in section 114(d)(2)(C).

These categorizations presume that a service is eligible for the section 114 license. The purpose of separating them into these groups is to determine whether the rate for a service is

<sup>58</sup> See *id.* (grandfathered services can be “new services in a new transmission medium where only transmissions similar to their existing service are provided”). While the Conference Report refers to “new services,” in the next sentence, it provides an example of a “cable . . . service” expanding into an “Internet service” by “offer[ing] the same music service through the Internet.” See *id.* Thus, in context, such services are what the Register has here called “expanded services,” and are not meant to encompass wholly new services that are unrelated to an existing service offering. By the same logic, other references in the statute and legislative history to “new” service offerings should be similarly interpreted as being what is referred to here as expanded service offerings. See, e.g., 17 U.S.C. 114(f)(1)(C) (permitting out-of-cycle rate-setting proceedings for a “new type of . . . service”).

<sup>59</sup> See H.R. Rep. No. 105–796, at 89 (grandfathering “limited”) to “existing services in the same transmission medium and to any new services in a new transmission medium where only transmissions similar to their existing service are provided”) (emphasis added).

determined pursuant to section 114(f)(1) or section 114(f)(2). Thus, if a PSS entity began offering, for example, an interactive service, it would not fall into one of these categories, as it is ineligible for the statutory license. The following sections describe the types of service offerings that fall within these three categories.

#### 1. Existing Service Offerings

Implicit in the Register’s previous determination that the only PSS entities are the three entities Congress named in the DMCA Conference Report,<sup>60</sup> is that, as a matter of law, the service offerings that Congress sought to identify as PSS offerings as of July 31, 1998, were the ones offered by those entities prior to that date. The legislative history makes clear that Congress further intended to limit what it identified as a PSS offering at that time to the PSS entities’ offerings in the specific transmission media affirmatively identified in the DMCA Conference Report: “cable” or “satellite” for DMX and Music Choice, and “satellite” for DiSHCD.<sup>61</sup> Thus, to qualify as an “existing service offering,” the service must not only have existed as of July 31, 1998, but it must have also been providing its offering in the specific transmission media identified by Congress.

Music Choice urges that it was already making internet transmissions of its subscription music service as of July 31, 1998.<sup>62</sup> In so doing, it is effectively asking for its current internet transmissions to be treated as an “existing service offering” under the rubric set forth above. But even assuming Music Choice, or another service, were making such pre-1998 internet transmissions,<sup>63</sup> it was clearly to an inconsequential degree: Any such transmissions were entirely unacknowledged by the Copyright Arbitration Royalty Panel (“CARP”), in setting royalty rates for the statutory license under the DPRSRA; the Librarian of Congress and the Register of Copyrights, in reviewing that CARP decision; and Congress, in enacting the DMCA in 1998. The CARP report describes the three PSSs at length and, notably, makes an explicit finding of fact that the services are the “only three digital audio music subscription

<sup>60</sup> See 71 FR at 64646.

<sup>61</sup> See H.R. Rep. No. 105–796, at 89 (“As of July 31, 1998, DMX and Music Choice made transmissions via both cable and satellite media; the [DiSHCD service] was available only via satellite.”).

<sup>62</sup> Music Choice Brief at 1–2, 4–6, 18–19, 30.

<sup>63</sup> The Register notes that the only apparent evidence offered by Music Choice of such pre-1998 internet transmissions is the testimony of Music Choice CEO David Del Beccaro. See *id.* at 5.

<sup>56</sup> H.R. Rep. No. 105–796, at 89.

<sup>57</sup> See *id.* (grandfathered services can be “existing services in the same transmission medium”).

services available to residential subscribers in the United States” and that they “offer their digital music via satellite, or cable, or both,” making no mention of any internet retransmissions.<sup>64</sup> In comprehensively reviewing the CARP report and adopting rates and terms for PSSs, the Register of Copyrights and the Librarian of Congress made no mention of any internet transmissions by those PSS entities.<sup>65</sup> To the contrary, that decision concluded that the PSSs “face new competition *from the internet*.”<sup>66</sup> These factual findings are further reflected in the DMCA Conference Report, where Congress clearly identified the three qualifying services and only described them as making transmissions via cable and/or satellite media.<sup>67</sup> Given this background, it is highly improbable that Congress would have intended, *sub silentio*, to treat internet transmissions as subject to the grandfathering provision under section 114(d)(2)(B).

This understanding is strongly reinforced by the new requirements Congress added in section 114(d)(2)(C) that webcasting services and new subscription services, as well as preexisting subscription services other than in the same transmission medium used by such service on July 31, 1998, had to comply with to qualify for the statutory license. The rationale behind the DMCA’s amendments to the DPRSRA, including the new requirements in section 114(d)(2)(C), was to “address[] unique programming and other issues raised by *Internet transmissions*.”<sup>68</sup> If a PSS were permitted to make internet transmissions under the less stringent requirements of section 114(d)(2)(B), it would undermine the design of this statutory scheme and blur the distinction that Congress intended to draw when dividing PSS transmissions between paragraphs (B) and (C) based on the transmission medium used on July 31, 1998.<sup>69</sup>

Thus, in accordance with the principles of narrow construction afforded to grandfathering provisions, the Register finds that, as a matter of law, it is irrelevant whether or not Music Choice or another PSS entity, to some limited degree, was making transmissions via a different medium than those specified in the legislative history on July 31, 1998, such as the internet. If such a service was in fact doing so, it would not be as part of an existing service offering—any such transmissions today would be considered either an expanded service offering or a different service offering, depending on the analysis described below.

At the same time, the Register emphasizes that an existing service offering can grow and expand significantly within the same transmission medium while remaining a PSS offering. The Register has found no indication that Congress meant to freeze existing service offerings exactly as they were on July 31, 1998, in order for them to continue to qualify for the grandfathering provisions. The user interface can be updated, certain functionality can be changed, the number of subscribers can grow, and channels can be added, subtracted, or otherwise changed.<sup>70</sup> The only restriction is that the existing service offering as it is today must be fundamentally the same type of offering that it was on July 31, 1998—*i.e.*, it must be a noninteractive, residential, cable or satellite digital audio transmission subscription service.<sup>71</sup>

## 2. Expanded Service Offerings

In addition to expanding within its congressionally-recognized transmission medium, an existing service offering can also expand to a *different* transmission medium, provided that the subscription transmissions are similar.<sup>72</sup>

This expansion, however, is subject to an important threshold limitation. For a service offering to qualify as an

expanded service offering, the PSS entity must continue to operate its existing service offering. The basis for the grandfathering provisions is to protect existing service offerings and limited direct outgrowths of them. If such a limited outgrowth—*i.e.*, an expanded service offering—were to exist alone, divorced from the existing service offering, the rationale for including them within the existing service offering’s grandfather protection becomes less tenable. Furthermore, the legislative history is explicit that a service offering that is not an existing service offering can only be subject to the grandfathering provision if it provides “transmissions similar to their existing service.”<sup>73</sup> Ascertaining similarity requires comparison, and if a PSS entity discontinues its existing service offering, there would be nothing to compare against.<sup>74</sup>

As Music Choice and SoundExchange agree, in assessing whether a service offering is an expanded service offering, and thus qualifies as a PSS offering, a comparison must be made between the service offering in question and the existing service offering to see if it is sufficiently similar. Because, as discussed above, an existing service offering can expand over time while remaining a PSS offering, the comparison should be made to the existing service offering as it exists *at the time of the comparison*, not, as SoundExchange argues, as it existed on July 31, 1998.

To determine whether or not such a service offering is sufficiently similar to the existing service offering, the fact-finder should compare the offerings by analyzing certain factors, including but not limited to:

(1) Whether the service offering has a similar effect on displacing or promoting sales of phonorecords.<sup>75</sup>

(2) Whether the quantity and nature of the use of sound recordings by the service offering is similar.<sup>76</sup>

<sup>64</sup> CARP Report ¶ 43.

<sup>65</sup> See 63 FR 25394.

<sup>66</sup> *Id.* at 25407 (emphasis added).

<sup>67</sup> See H.R. Rep. No. 105–796, at 81, 89.

<sup>68</sup> See Staff of H. Comm. on the Judiciary, 105th Cong., Section-By-Section Analysis of H.R. 2281 as Passed by the United States House of Representatives on August 4th, 1998, at 50 (Comm. Print 1998) (emphasis added); *id.* at 51 (“At the time the DPRSRA was crafted, Internet transmissions were not the focus of Congress’ efforts.”); see also H.R. Rep. No. 105–796, at 83 (explaining explicitly that the reason for one of the new requirements was because of “a disturbing trend on the Internet” pertaining to the “unauthorized performance of sound recordings not yet released for broadcast or sale to the public”).

<sup>69</sup> See 17 U.S.C. 114(d)(2)(B)–(C); see also H.R. Rep. No. 105–796, at 89 (indicating that a “cable subscription music service” that offers “the same

music service through the Internet” is engaged in the delivery of its service “in a new transmission medium”).

<sup>70</sup> See, e.g., 78 FR 23054, 23085 (Apr. 17, 2013) (increasing the royalty rate due to Music Choice’s announced intention to increase its number of channels from 46 to 300).

<sup>71</sup> See 17 U.S.C. 114(j)(11); H.R. Rep. No. 105–796, at 81, 89; 63 FR at 25414; CARP Report ¶¶ 43–44, 51–78, 109.

<sup>72</sup> See H.R. Rep. No. 105–796, at 89 (the grandfathering covers “a new transmission medium [but] where only transmissions similar to their existing service are provided”); 71 FR at 64641 (“[A] preexisting service does not lose its designation as such in the event the service decides to utilize a new transmission medium, provided that the subscription transmissions are similar.”) (emphasis added).

<sup>73</sup> See H.R. Rep. No. 105–796, at 89.

<sup>74</sup> In the event that technology evolves such that a PSS decides to completely discontinue its cable or satellite service and limit its offerings solely to another transmission medium, such as the internet, this limitation would act as a type of “sunset provision,” which, contrary to Music Choice’s argument with respect to such provisions, demonstrates that Congress did not in fact intend for the grandfather status to apply to a service indefinitely regardless of the offerings it provides and the way it is transmitted.

<sup>75</sup> See 17 U.S.C. 114(f)(2)(B) (providing this as one of the examples of criteria to be used in distinguishing among different types of non-PSSs).

<sup>76</sup> See *id.* (providing this as one of the examples of criteria to be used in distinguishing among different types of non-PSSs).

(3) Whether the service offering provides similar content to similar groups of users.

(4) Whether the service offering is consumed in a similar manner, provides a similar user experience, and has similar form, feel, and functionality.

(5) Whether and to what degree the service offering relates to the same pre-July 31, 1998 investments Congress sought to protect.<sup>77</sup>

(6) Whether and to what degree the service offering takes advantage of the capabilities of the medium through which it is transmitted (*i.e.*, whether and the extent to which differences between the service offerings are due to limitations in the existing service offering's transmission medium that are not present in the other service offering's transmission medium).<sup>78</sup>

Note that even if a service offering is found to be an expanded service offering qualifying for the section 114(f)(1) grandfathering provision, it would still not be eligible for the section 114(d)(2)(B) grandfathering provision by virtue of its being transmitted via a different transmission medium. Such an offering would be subject to the requirements in section 114(d)(2)(C).

### 3. Different Service Offerings

As a matter of law, a wholly different service offering can never qualify as a PSS offering because it would not be one of the specifically identified pre-July 31, 1998, business operations (*i.e.*, the three PSS offerings) Congress sought to protect when it enacted the DMCA.<sup>79</sup> This is true regardless of whether the service offering is developed internally or acquired. As the D.C. Circuit recently held, the DMCA's amendments to section 114 were "designed to move the industry to market rates," and if a PSS entity "were permitted to pay the grandfather rate for transmissions made to customers who subscribed to a 'service' that was previously provided by [a different, non-PSS entity], what would prevent \* \* \* the complete elimination of the market-rate regime by

[such PSS entity's] acquisitions strategy."<sup>80</sup> The Register agrees that "when [such entity] expands its operations and provides additional transmissions to subscribers to a *different* 'service,' \* \* \* this is an entirely new investment" and is not a PSS offering.<sup>81</sup>

#### B. Transmission Medium

As noted above, the statute and legislative history focus extensively on whether a PSS offering is being provided through the same or a different "transmission medium" than the one identified by Congress in 1998, and the analysis above follows Congress's lead in that regard. At first blush, one might conclude that Congress intended to draw a distinction among the kinds of physical wires or radiofrequency channels used to deliver signals from a service to a listener—*e.g.*, coaxial cable, optical fiber, radio spectrum. But this would not be a proper understanding of the statutory scheme. The legislative history makes repeated references to "cable," "satellite," and the "internet" as different "transmission[] \* \* \* media."<sup>82</sup> Congress surely understood that the internet is a layer of services that can be reached through a variety of delivery mechanisms, for example, through phone lines, satellite signals, and optical fiber. Similarly, a "cable" service can be transmitted over different media, such as coaxial cable, optical fiber, or microwaves—a fact Congress explicitly understands.<sup>83</sup>

Thus, for section 114 purposes, the better understanding is that, in referring to the "transmission medium" in the context of a PSS offering, Congress was referring to the basic *telecommunications service* through which that offering is being delivered to the user. For example, an existing service offering that on July 31, 1998, was delivered to residential cable television subscribers through coaxial cable, may today be delivered to such cable television subscribers through optical fiber without constituting an expansion to a new "transmission medium" within the meaning of section 114. In other words, this service offering

would still be an existing service offering, rather than an expanded service offering or different service offering, because it would still be part of what is traditionally considered to be a residential cable television service; this is true even though optical fiber may provide certain advantages over coaxial cable. By the same token, however, when an existing cable music service is made available to cable television subscribers over the internet, it is being transmitted through a *different* transmission medium regardless of how the internet is being reached; for section 114 purposes, internet service is a different telecommunications service from a residential cable service, even if delivered by the same operator through the same infrastructure.<sup>84</sup>

#### C. Application to the Referred Questions

The CRJs' referral to the Register of Copyrights specifically asked how the legal analysis would apply specifically to "transmissions of multiple, unique channels of music that are accessible through that entity's website and through a mobile application," and the degree to which differences between a PSS entity's internet service and its existing service in terms of the numbers or types of channels or subscribers would result in the exclusion of the internet service from a grandfathered rate.<sup>85</sup> Although ultimately it is not for the Register to apply the above-described inquiry to Music Choice's current program offerings, the Register offers the following observations about transmissions made via the internet and made available on portable devices, and general guidance about application of the analysis to the scenarios identified in the referral order.

Under the standard articulated above, the mere fact that a service offering is transmitted to cable or satellite television subscribers over the internet does not automatically disqualify the service offering from being an expanded service offering subject to the grandfathered rate standard, so long as the service offering, as a factual matter, after considering the factors described above, is sufficiently similar to the PSS entity's existing cable or satellite service offering.

In evaluating whether a service offering is "sufficiently similar" to the PSS entity's existing cable or satellite service offering so as to qualify as an

<sup>77</sup> See 71 FR at 64641 ("[T]he rationale for [the] grandfathering provisions is to 'prevent disruption of the existing operations by such services.'") (quoting H.R. Rep. No. 105-796, at 81); *SoundExchange*, 854 F.3d at 719 ("The grandfather provisions were intended to protect prior investments the three [PSS] business entities had made during a more favorable pre-1998 rate-setting regulatory climate.").

<sup>78</sup> See H.R. Rep. No. 105-796, at 89 ("If . . . a subscription service making transmissions on July 31, 1998, were to offer a new service either in the same or new transmission medium by taking advantages of the capabilities of that medium, such new service would not qualify as a preexisting subscription service.").

<sup>79</sup> See *id.* at 81, 89; 71 FR at 64641, 64645-46; *SoundExchange*, 854 F.3d at 719.

<sup>80</sup> *SoundExchange*, 854 F.3d at 719.

<sup>81</sup> See *id.* (emphasis added). The Register thus agrees with the D.C. Circuit's holding that a service offering that is acquired by a PSS entity does not qualify as a PSS offering.

<sup>82</sup> See H.R. Rep. No. 105-796, at 81, 89 (referring to "transmissions via both cable and satellite media" and explaining that under appropriate circumstances, a "cable . . . service" may be transmitted "through the Internet").

<sup>83</sup> Cf. 17 U.S.C. 111(f)(3) (defining a "cable system" as, among other things, making transmission by "wires, cables, microwave, or other communications channels").

<sup>84</sup> To be clear, this discussion relates to the meaning of section 114 and should not be construed as having broader application to other areas of copyright law, such as the section 111 cable retransmission license.

<sup>85</sup> Referral Order at 3-4.

“expanded service offering,” the CRJs should consider the degree to which making the existing service offering accessible outside the home of the subscriber constitutes a fundamental change to the offering. One notable fact about PSS offerings in 1998 is that they were all limited to listening to music within the subscriber’s home. Indeed, in the first ratesetting proceeding under the DPRSRA, portable listening does not appear to have been considered and the final rate was based on a percentage of gross revenues “resulting from residential services in the United States”<sup>86</sup>—which is how the rate is currently calculated.<sup>87</sup> To be sure, technological developments since that time have made it easier to deliver digital audio transmissions outside the home (including over mobile networks). But, at least in the cable television market, there appears to be a distinction drawn between accessing content within the home and accessing that same content outside of it.<sup>88</sup> To be clear, this distinction is one based on the *location* where the PSS offering is consumed, not the type of device on which the service is accessed. If the service offering is available through an internet-connected smartphone or tablet, but is designed so that the service offering will only work when accessed within the confines of the subscriber’s residence, then it would be within the home and more similar to the PSS entity’s existing cable or satellite service offering.

As the second referred question specifically asks about differences in channel offerings and customers, the Register offers the following guidance. In comparing the number and type of channels offered by a service offering to an existing service offering, examples of

factors to consider could include how many additional or fewer channels there are, how many channels offer different programming, and how different that programming is. One should also consider the reasons why any such differences exist. For example, if the service offering in question has more channels because of some benefit the internet affords, such as greater bandwidth or different contractual arrangements with cable operators, then it would be taking advantage of the capabilities of the internet as a transmission medium. Depending on the evaluation of the other factors discussed above and how much weight is ultimately given to the difference in channels in an overall comparison between the service offerings, it may or may not be enough to disqualify the offering from the grandfathered royalty calculation method. The number and type of customers should be similarly compared.

At the same time, the Register agrees with Music Choice that differences in a service offering that directly and solely result from the imposition of the section 114(d)(2)(C) requirements that do not apply to the existing service offering (which is subject to section 114(d)(2)(B)), should not alone disqualify it from the grandfathered rate. Similarly, minor differences in the user interface necessitated by the change in medium also should not alone disqualify the service offering, even if they are perceived as an advantage offered by the medium. For example, a service offering should not be disqualified from being an expanded service offering merely because instead of needing to press a button on a remote control, the user can click a mouse or navigate using a touch screen. Additionally, minor differences in visual presentation, such as having a different aspect ratio or displaying less content due to differences in screen size, would not be so significant as to disqualify a service offering from being an expanded service offering.

#### *D. CRJs’ Ability to Set Different Rates*

In closing, the Register briefly notes that, even if a service offering qualifies for the grandfathered method of setting rates, the CRJs still have the authority under section 114(f)(1)(A) to “distinguish among the different types of digital audio transmission services . . . in operation.” Thus, if there are material differences between an existing service offering and an expanded service offering, the CRJs can set separate rates and terms based on those differences, albeit using the section 801(b)(1) standard, and not under the

willing buyer/willing seller standard under section 114(f)(2).

November 20, 2017.

**Karyn Temple Claggett,**

*Acting Register of Copyrights and Director of the U.S. Copyright Office.*

[FR Doc. 2017–27088 Filed 12–14–17; 8:45 am]

**BILLING CODE 1410–30–P**

## **NUCLEAR REGULATORY COMMISSION**

**[Docket No. 70–7028; NRC–2017–0233]**

### **Johns Hopkins Applied Physics Laboratory**

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** License application; opportunity to request a hearing and to petition for leave to intervene; order imposing procedures.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has received an application from the Johns Hopkins Applied Physics Laboratory for a license which authorizes possession and use of Special Nuclear Materials (SNM) for analytical or scientific research and development. The license application request contains sensitive unclassified non-safeguards information (SUNSI).

**DATES:** A request for a hearing or petition for leave to intervene must be filed by February 13, 2018. Any potential party, as defined in § 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to SUNSI is necessary to respond to this notice must request document access by December 26, 2017.

**ADDRESSES:** Please refer to Docket ID NRC–2017–0233 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to <http://www.regulations.gov> and search for Docket ID: NRC–2017–0233. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC’s Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select

<sup>86</sup> See 63 FR at 25414 (to be codified at 37 CFR 260.2(a)) (emphasis added); see also CARP Report ¶ 109 (“The Panel finds that the Services are primarily responsible for creating a new media and market for digital music subscription services for residential consumers.”) (emphasis added). It also bears noting that in the last rate proceeding, the CRJs deleted the word “Residential” and its definition from the rate provision for preexisting satellite digital audio radio services because it was argued that “the concept is a confusing artifact of a comparable term used in the PSS regulations” because “the SDARS service is not primarily residential in terms of being delivered to homes and the term residential subscriber simply means a subscriber,” yet the term remained for purposes of the PSS rate. 78 FR at 23074–75, 23096, 23098 (internal quotation marks omitted).

<sup>87</sup> 37 CFR 382.3(a).

<sup>88</sup> See, e.g., *Out of Home—XFINITY Stream App Error Message*, XFINITY, <https://www.xfinity.com/support/xfinity-apps/xfinity-tv-app-unable-to-connect/> (last visited Nov. 17, 2017) (“In order to watch live TV or XFINITY On Demand content using the XFINITY Stream app, you’ll need to be connected to your in-home XFINITY WiFi network.”).

“ADAMS Public Documents” and then select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- *NRC’s PDR*: You may examine and purchase copies of public documents at the NRC’s PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Merritt N. Baker, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7119; email: [Merritt.Baker@nrc.gov](mailto:Merritt.Baker@nrc.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Introduction**

The U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated December 23, 2016 (ADAMS Accession No. ML17013A240), from the Johns Hopkins Applied Physics Laboratory (JH/APL), an application to possess and use SNM in an amount less than the maximum amount described as a Category III quantity as defined in 10 CFR 70.4. If the NRC approves the application, JH/APL will possess, store, and use SNM in sealed test objects for general use in analytical or scientific research and development. The application is available at ADAMS Accession No. ML17018A080.

An NRC administrative completeness review found the application acceptable for a technical review (ADAMS Accession No. ML17058A414). Prior to approving the application, the NRC will need to make the findings required by the Atomic Energy Act of 1954 as amended (the Act), and the NRC’s regulations. The NRC’s findings will be documented in a Safety Evaluation Report (SER) and an environmental assessment.

##### **II. Opportunity To Request a Hearing and Petition for Leave To Intervene**

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission’s “Agency Rules of Practice and Procedure” in 10 CFR part 2. Interested persons should consult a current copy

of 10 CFR 2.309. The NRC’s regulations are accessible electronically from the NRC Library on the NRC’s website at <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. Alternatively, a copy of the regulations is available at the NRC’s Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner’s right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner’s property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner’s interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party’s admitted contentions, including the opportunity to present

evidence, consistent with the NRC’s regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the “Electronic Submissions (E-Filing)” section of this document.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner’s interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the “Electronic Submissions (E-Filing)” section of this document, and should meet the requirements for petitions set forth in this section. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

##### **III. Electronic Submissions (E-Filing)**

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance

with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at [hearing.docket@nrc.gov](mailto:hearing.docket@nrc.gov), or by telephone at 301-415-1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at <http://www.nrc.gov/site-help/e-submittals/getting-started.html>. Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at <http://www.nrc.gov/site-help/electronic-sub-ref-mat.html>. A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who

have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the "Contact Us" link located on the NRC's public website at <http://www.nrc.gov/site-help/e-submittals.html>, by email to [MSHD.Resource@nrc.gov](mailto:MSHD.Resource@nrc.gov), or by a toll-free call at 1-866-672-7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at <https://adams.nrc.gov/ehd>, unless excluded pursuant to an order of the Commission or the presiding officer. If you do not

have an NRC-issued digital ID certificate as described above, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

#### **Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation**

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing sensitive unclassified information (including Sensitive Unclassified Non-Safeguards Information (SUNSI). Requirements for access to SGI are primarily set forth in 10 CFR parts 2 and 73.

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request access to SUNSI or SGI. A "potential party" is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI, SGI, or both to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. The expedited delivery or courier mail address for both offices is: U.S.

Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov*, respectively.<sup>1</sup> The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) If the request is for SUNSI, the identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. For requests for access to SUNSI, if the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement

or Affidavit, or Protective Order<sup>2</sup> setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and requisite need, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requester may challenge the NRC staff's adverse determination with respect to access to SUNSI by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311. Review of Grants of Access. A party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within

5 days of the notification by the NRC staff of its grant of access and must be filed with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer. If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.<sup>3</sup> The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. The attachment to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

*It is so ordered.*

Dated at Rockville, Maryland, this 11th day of December 2017.

For the U.S. Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**  
*Secretary of the Commission.*

**Attachment 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information in This Proceeding**

Day	Event/activity
0 .....	Publication of <b>Federal Register</b> notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10 .....	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: Supporting the standing of a potential party identified by name and address; Describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60 .....	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).

<sup>1</sup> While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's "E-Filing Rule," the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

<sup>2</sup> Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must

be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

<sup>3</sup> Requesters should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012) apply to appeals of NRC

staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.



Day	Event/activity
20 .....	U.S. Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25 .....	If NRC staff finds no "need" or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30 .....	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40 .....	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A .....	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3 .....	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28 .....	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of opportunity to request a hearing and petition for leave to intervene), the petitioner may file its SUNSI contentions by that later deadline.
A + 53 .....	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60 .....	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60 .....	Decision on contention admission.

[FR Doc. 2017-27031 Filed 12-14-17; 8:45 am]

BILLING CODE 7590-01-P

**NUCLEAR REGULATORY COMMISSION**

[NRC-2017-0001]

**Sunshine Act Meeting Notice**

**DATE:** Weeks of December 18, 25, 2017, January 1, 8, 15, 22, 2018.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**Week of December 18, 2017**

There are no meetings scheduled for the week of December 18, 2017.

**Week of December 25, 2017—Tentative**

There are no meetings scheduled for the week of December 25, 2017.

**Week of January 1, 2018—Tentative**

There are no meetings scheduled for the week of January 1, 2018.

**Week of January 8, 2018—Tentative**

There are no meetings scheduled for the week of January 8, 2018.

**Week of January 15, 2018—Tentative**

*Thursday, January 18, 2018*

9:00 a.m. Strategic Programmatic Overview of the Decommissioning and Low-Level Waste and Spent Fuel Storage and Transportation Business Lines (Public Meeting)

(Contact: Damaris Marcano: 301-415-7328)

This meeting will be webcast live at the Web address—<http://www.nrc.gov/>.

**Week of January 22, 2018—Tentative**

*Tuesday, January 23, 2018*

9:00 a.m. Hearing on Construction Permit for Northwest Medical Isotopes Production Facility: Section 189a of the Atomic Energy Act Proceeding (Public Meeting) (Contact: Michael Balazik: 301-415-2856)

This meeting will be webcast live at the Web address—<http://www.nrc.gov/>.

*Thursday, January 25, 2018*

10:00 a.m. Strategic Programmatic Overview of the New Reactors Business Line (Public Meeting) (Contact: Donna Williams: 301-415-1322)

This meeting will be webcast live at the Web address—<http://www.nrc.gov/>.

The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Denise McGovern at 301-415-0681 or via email at [Denise.McGovern@nrc.gov](mailto:Denise.McGovern@nrc.gov).

The NRC Commission Meeting Schedule can be found on the internet at: <http://www.nrc.gov/public-involve/public-meetings/schedule.html>.

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301-287-0739, by videophone at 240-428-3217, or by email at [Kimberly.Meyer-Chambers@nrc.gov](mailto:Kimberly.Meyer-Chambers@nrc.gov). Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

\* \* \* \* \*

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301-415-1969), or email [Patricia.Jimenez@nrc.gov](mailto:Patricia.Jimenez@nrc.gov) or [Jennifer.BorgesRoman@nrc.gov](mailto:Jennifer.BorgesRoman@nrc.gov).

Dated: December 12, 2017.

**Denise L. McGovern,**  
*Policy Coordinator, Office of the Secretary.*

[FR Doc. 2017-27136 Filed 12-13-17; 11:15 am]

BILLING CODE 7590-01-P

\* \* \* \* \*



**NUCLEAR REGULATORY COMMISSION**

[Docket No. 40–8943; NRC–2012–0281]

**Crow Butte Resources, Inc.; Marsland Expansion Area****AGENCY:** Nuclear Regulatory Commission.**ACTION:** Draft environmental assessment and draft finding of no significant impact; notice of availability and request for comments.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft environmental assessment (EA) and draft finding of no significant impact (FONSI) for a proposed amendment of NRC source materials license SUA–1534 that would authorize Crow Butte Resources, Inc., to construct and operate an in situ uranium recovery (ISR) expansion area at the Marsland Expansion Area (MEA) site in Dawes County, Nebraska. The draft EA, “*Environmental Assessment for the Marsland Expansion Area License Amendment Application*,” documents the NRC staff’s environmental review of the license amendment application.

**DATES:** Submit comments by January 29, 2018. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

**ADDRESSES:** You may submit comments by any of the following methods:

- *Federal Rulemaking website:* Go to <http://www.regulations.gov> and search for Docket ID NRC–2012–0281. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the Office of Nuclear Material Safety and Safeguards individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Mail comments to:* May Ma, Office of Administration, Mail Stop: OWFN–2–A13, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Jean Trefethen, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–0867, email: [Jean.Trefethen@nrc.gov](mailto:Jean.Trefethen@nrc.gov), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

**SUPPLEMENTARY INFORMATION:****1. Obtaining Information and Submitting Comments***A. Obtaining Information*

Please refer to Docket ID NRC–2012–0281 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to <http://www.regulations.gov> and search for Docket ID NRC–2012–0281.
- *NRC’s Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “ADAMS Public Documents” and then select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced. The ADAMS Accession Number for the MEA draft EA is ML17334A870.

- *NRC’s PDR:* You may examine and purchase copies of public documents at the NRC’s PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

*B. Submitting Comments*

Please include Docket ID NRC–2012–0281 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <http://www.regulations.gov> as well as enter the comment submissions into the ADAMS Public Documents collection. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or

entering the comment into the ADAMS Public Documents collection.

**I. Introduction**

The NRC is considering a request for an amendment to NRC source materials license SUA–1534, issued to Crow Butte Resources, Inc. (CBR or the licensee), to authorize construction and operation of the MEA, an ISR expansion facility that would be located in Dawes County, Nebraska. In accordance with NRC’s regulations in part 51 of title 10 of the *Code of Federal Regulations* (10 CFR), “Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,” that implement the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), the NRC staff has prepared a draft EA documenting its environmental review of the license amendment application that included an environmental report (ADAMS Accession No. ML17325B322) and technical report, as amended (ADAMS Accession Nos. ML15328A422, ML16155A267, ML16155A268, and ML17193A314). Based on the environmental review, the NRC has made a preliminary determination that the proposed action will not significantly affect the quality of the human environment and that a FONSI is therefore appropriate.

By this notice, the NRC is requesting public comment on the draft FONSI and supporting draft EA.

**II. Summary of Draft Environmental Assessment.**

The draft EA is publicly available in ADAMS using ADAMS Accession No. ML17334A870. A summary description of the proposed action and expected environmental impacts is provided below. The draft EA and the draft FONSI for the proposed MEA will also be available at the following public libraries: Crawford Public Library, 601 2nd Street, Crawford, NE 69339, and Chadron Public Library, 507 Bordeaux Street, Chadron, NE 69337.

*Description of the Proposed Action*

The proposed Federal action is approval of CBR’s license amendment application, which would authorize the expansion of CBR’s commercial-scale uranium recovery operations to the MEA. Under the proposed action, the licensee would perform construction, uranium recovery operations, aquifer restoration, and decommissioning activities at the proposed MEA, which would encompass approximately 4,622 acres (1,870 hectares). CBR has proposed eleven production units in the MEA, which is located 11.1 miles (17.9

kilometers) south-southeast of the central processing facility (CPF) at the existing Crow Butte license area. Uranium recovery operations at the MEA would include injection of lixiviant into and pumping of water from the uranium-bearing aquifer, removal of uranium from the pumped water using ion exchange, and transport of loaded ion exchange resin to the existing Crow Butte CPF for further processing into yellowcake. Approval of the proposed action would authorize CBR to conduct uranium recovery operations at the MEA in accordance with its license amendment application, NRC source materials license SUA-1534, and the requirements in 10 CFR part 40, "Domestic Licensing of Source Material."

#### *Environmental Impacts of the Proposed Action*

In the draft EA, the NRC staff assessed the potential environmental impacts from the construction, operation, aquifer restoration, and decommissioning of the proposed MEA on the following resource areas: land use; geology and soils; water resources; ecological resources; climatology, meteorology, and air quality; historic and cultural resources; demographics and socioeconomics; environmental justice; transportation; noise; scenic and visual resources; public and occupational health; and hazardous materials and waste management. The NRC staff also considered the cumulative impacts from past, present, and reasonably foreseeable future actions when combined with the proposed action.

All long-term impacts were determined to be SMALL. The NRC staff concluded that approval of the proposed action would not result in a significant increase in short-term or long-term radiological risk to public health or the environment. The NRC staff identified a potential for MODERATE short-term impacts to a few resource areas, including noise (temporary impacts to the nearest resident to the MEA during construction), ecological resources (localized and temporary impacts resulting from the loss and slow recovery of forest habitat), and groundwater resources (short-term lowering of the potentiometric surface of the Basal Chadron Sandstone aquifer). While potential MODERATE impacts would be expected for specific aspects of these resource areas, the impacts are short-term and temporary. Therefore, the NRC staff concluded that the overall impacts related to these resource areas would be SMALL. Furthermore, the NRC staff found that there would be no significant negative

cumulative impact to any resource area from the MEA when added to other past, present, and reasonably foreseeable future actions, and that a potential positive cumulative socioeconomic impact could result from additional tax revenue, employment, and local purchases.

#### *Environmental Impacts of the Alternatives to the Proposed Action*

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Under the no-action alternative, the NRC would not authorize CBR to construct and operate the MEA. In situ uranium recovery activities would not occur within the MEA and the associated environmental impacts also would not occur.

### **III. Finding of No Significant Impact (Draft).**

In accordance with the NEPA and 10 CFR part 51, the NRC staff has conducted an environmental review of a request for a license amendment to NRC source materials license SUA-1534 that would authorize construction and operation of the MEA. Based on its environmental review of the proposed action, as documented in the draft EA, the NRC staff has preliminarily determined that granting the requested license amendment would not significantly affect the quality of the human environment. Therefore, the NRC staff has preliminarily determined, pursuant to 10 CFR 51.31, that preparation of an environmental impact statement is not required for the proposed action and a FONSI is appropriate.

Dated at Rockville, Maryland, this 8th day of December 2017.

For the U.S. Nuclear Regulatory Commission.

**Brian W. Smith,**

*Acting Director, Division of Fuel Cycle Safety, Safeguards, and Environmental Review, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 2017-26934 Filed 12-14-17; 8:45 am]

**BILLING CODE 7590-01-P**

## **PENSION BENEFIT GUARANTY CORPORATION**

### **Proposed Submission of Information Collection for OMB Review; Comment Request; Annual Reporting (Form 5500 Series)**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of request for extension of OMB approval, with modifications.

**SUMMARY:** The Pension Benefit Guaranty Corporation (PBGC) is requesting that the Office of Management and Budget (OMB) extend approval, with modifications, under the Paperwork Reduction Act of 1995, of its collection of information for Annual Reporting (OMB control number 1212-0057, which expires on August 31, 2020). This notice informs the public of PBGC's request and solicits public comment on the collection of information.

**DATES:** Comments must be submitted by January 16, 2018 to be assured of consideration.

**ADDRESSES:** Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, via electronic mail at [OIRA\\_DOCKET@omb.eop.gov](mailto:OIRA_DOCKET@omb.eop.gov) or by fax to (202) 395-6974. A copy of the request is posted at <https://www.pbgc.gov/prac/pg/other/guidance/paperwork-notices>. It may also be obtained without charge by writing to the Disclosure Division of the Office of the General Counsel of PBGC at 1200 K Street NW, Washington, DC 20005, faxing a request to 202-326-4042, or calling 202-326-4040 during normal business hours. TTY and TDD users may call the Federal relay service toll-free at 1 800-877-8339 and ask to be connected to 202-326-4040. The Disclosure Division will email, fax, or mail the request to you, at your request.

**FOR FURTHER INFORMATION CONTACT:** Jo Amato Burns ([burns.jo.amato@pbgc.gov](mailto:burns.jo.amato@pbgc.gov)), Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005-4026, 202 326-4400, extension 3072, or Daniel S. Liebman ([Liebman.Daniel@pbgc.gov](mailto:Liebman.Daniel@pbgc.gov)), Acting Assistant General Counsel, same address and phone number, extension 6510. TTY and TDD users may call the Federal relay service toll-free at 800-877-8339 and ask to be connected to 202-326-4400.

**SUPPLEMENTARY INFORMATION:** The Employee Retirement Income Security Act of 1974 (ERISA) contains three separate sets of provisions—in Title I (Labor provisions), Title II (Internal Revenue Code provisions), and Title IV (PBGC provisions)—requiring administrators of employee pension and welfare benefit plans (collectively referred to as employee benefit plans) to file returns or reports annually with the federal government.

PBGC, the Department of Labor (DOL), and the Internal Revenue Service (IRS) work together to produce the Form 5500 Annual Return/Report of Employee Benefit Plan and Form 5500-

SF Short Form Annual Return/Report of Small Employee Benefit Plan (Form 5500 Series), through which the regulated public can satisfy the combined annual reporting/filing requirements applicable to employee benefit plans.

PBGC is requesting that OMB extend its approval of this collection of information with the following changes proposed by PBGC to the 2018 Schedule MB (Multiemployer Defined Benefit Plan Actuarial Information) and the 2018 Schedule SB (Single Employer Defined Benefit Plan Actuarial Information), and related instructions, as described below. The two schedules are part of the Form 5500 series.

PBGC is proposing three modifications to the 2018 Schedule MB instructions, one modification to the Schedule SB instructions, and one modification to the Schedule SB form. These modifications affect some, but not all, multiemployer defined benefit plans and relatively few single-employers defined benefit plans covered by Title IV of ERISA. The modifications are described in greater detail in the supporting statement submitted to OMB with this information collection, along with PBGC's rationale for each modification.

#### Changes Proposed to Schedule MB Instructions

PBGC is proposing to change the instructions to require new attachments in two situations:

1. Where contributions are reported as being made to a multiemployer plan, PBGC is proposing that for each reported contribution, the aggregate amount of withdrawal liability payments included in the contribution be reported.

2. For multiemployer plans in critical status or critical and declining status (*i.e.*, where Code C or Code D is entered on Line 4b), plans currently report the year the plan is projected to become insolvent or emerge from troubled status on Line 4f. However, they are not required to provide supporting documentation for these projections. PBGC is proposing that basic supporting documentation be included as an attachment to Line 4f unless the plan is projected to emerge from critical status within 30 years.

3. The current instructions are unclear about which year should be entered in line 4f if the plan is neither projected to emerge from critical status nor become insolvent within 30 years. PBGC proposes that such a plan should enter "9999" in line 4f in this event.

#### Changes Proposed to Schedule SB Instructions and Form

With regard to the Schedule SB instructions and form, PBGC is proposing to change the instructions related to an attachment that is currently required of plans for which the IRS has granted permission to use a substitute mortality table. The current instructions for Schedule SB, item 23, reflect IRS regulations on the use of substitute mortality tables (26 CFR 1.430(h)(3)-2) as they pertain to plan years beginning before January 1, 2018. Those rules have changed with respect to plan years beginning on or after January 1, 2018. In its 60-day notice, PBGC proposed requiring plans to report additional information, consistent with IRS' proposal to amend its regulation, as part of the item 23 attachment.

After PBGC's 60-day notice, the IRS finalized its mortality table regulation, which set forth the prescribed mortality tables for plan years beginning in or after 2018. Unlike the proposed rule, the final rule provides an option to delay use of the new mortality tables until 2019 if the plan sponsor determines that using the new tables for 2018 would be "administratively impracticable or would result in an adverse business impact that is greater than de minimis. . . ." As a result of this change, PBGC is proposing an additional change to Schedule SB, item 23 (one that was not included in the 60-day notice), as well as to the related instructions as explained below.

Currently, plans check one of three boxes on Schedule SB to indicate whether they used one of two versions of the prescribed mortality table or a substitute table. Instead of having three choices as to which mortality table is used for 2018, plans will have six choices: Three options if they delay the use of the new tables and three options if they do not delay. For this reason, PBGC is proposing that six checkboxes appear on the 2018 Schedule SB instead of three.

On September 19, 2017 (82 FR 43798), PBGC published a notice informing the public that it intended to request OMB approval of the modifications and solicited public comment. PBGC received three comments. The comments and PBGC's responses are described in the supporting statement submitted to OMB for this information collection.

This collection of information has been approved by OMB under control number 1212-0057 through August 31, 2020. PBGC is requesting that OMB extend its approval for three years with

changes. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

PBGC estimates that it will receive approximately 23,900 Form 5500 and Form 5500-SF filings per year under this collection of information. PBGC further estimates that the total annual burden of this collection of information for PBGC will be 1,300 hours and \$1,613,000.

Issued in Washington, DC.

**Daniel S. Liebman,**

*Acting Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.*

[FR Doc. 2017-27050 Filed 12-14-17; 8:45 am]

**BILLING CODE 7709-02-P**

#### OFFICE OF PERSONNEL MANAGEMENT

#### Submission for Review: Application for Refund of Retirement Deductions, SF 3106 and Current/Former Spouse(s) Notification of Application for Refund of Retirement Deductions Under FERS, SF 3106A

**AGENCY:** Office of Personnel Management.

**ACTION:** 30-Day notice and request for comments.

**SUMMARY:** The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on a revised information collection, Application for Refund of Retirement Deductions, Federal Employees Retirement System, SF 3106 and Current/Former Spouse's Notification of Application for Refund of Retirement Deductions Under the Federal Employees Retirement System, SF 3106A.

**DATES:** Comments are encouraged and will be accepted until January 16, 2018.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov) or faxed to (202) 395-6974.

**FOR FURTHER INFORMATION CONTACT:** A copy of this information collection, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team,

Office of Personnel Management, 1900 E Street NW, Room 3316-L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to [Cyrus.Benson@opm.gov](mailto:Cyrus.Benson@opm.gov), via telephone by (202) 606-4808 or faxed to (202) 606-0910.

**SUPPLEMENTARY INFORMATION:** As required by the Paperwork Reduction Act of 1995 OPM is soliciting comments for this collection. The information collection (OMB No. 3206-0170) was previously published in the **Federal Register** on April 13, 2017, at 82 FR 17893, allowing for a 60-day public comment period. No comments were received for this collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Standard Form 3106, Application for Refund of Retirement Deductions under FERS is used by former Federal employees under FERS, to apply for a refund of retirement deductions withheld during Federal employment, plus any interest provided by law. Standard Form 3106A, Current/Former Spouse(s) Notification of Application for Refund of Retirement Deductions under FERS, is used by refund applicants to notify their current/former spouse(s) that they are applying for a refund of retirement deductions, which is required by law.

#### Analysis

*Agency:* Retirement Operations, Retirement Services, Office of Personnel Management.

*Title:* Application for Refund of Retirement Deductions (FERS) and Current/Former Spouse's Notification of Application for Refund of Retirement

Deductions under the Federal Employees Retirement System.

*OMB Number:* 3206-0170.

*Frequency:* On occasion.

*Affected Public:* Individual or Households.

*Number of Respondents:* SF 3106 = 8,000; SF 3106A = 6,400.

*Estimated Time per Respondent:* SF 3106 = 30 minutes; SF 3106A = 5 minutes.

*Total Burden Hours:* 4,533.

Office of Personnel Management.

**Kathleen M. McGettigan,**

*Acting Director.*

[FR Doc. 2017-27078 Filed 12-14-17; 8:45 am]

**BILLING CODE 6325-38-P**

## OFFICE OF PERSONNEL MANAGEMENT

### Submission for Review: Application for Refund of Retirement Deductions (CSRS), SF 2802 and Current/Former Spouse's Notification of Application for Refund of Retirement Deductions Under the Civil Service Retirement System, SF 2802A

**AGENCY:** Office of Personnel Management.

**ACTION:** 30-Day notice and request for comments.

**SUMMARY:** The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on a revised information collection, Application for Refund of Retirement Deductions, Civil Service Retirement System, SF 2802 and Current/Former Spouse's Notification of Application for Refund of Retirement Deductions Under the Civil Service Retirement System, SF 2802A.

**DATES:** Comments are encouraged and will be accepted until January 16, 2018.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov) or faxed to (202) 395-6974.

**FOR FURTHER INFORMATION CONTACT:** A copy of this information collection, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316-L, Washington, DC 20415, Attention: Cyrus S. Benson,

or sent via electronic mail to [Cyrus.Benson@opm.gov](mailto:Cyrus.Benson@opm.gov), via telephone by (202) 606-4808 or faxed to (202) 606-0910.

**SUPPLEMENTARY INFORMATION:** As required by the Paperwork Reduction Act of 1995 OPM is soliciting comments for this collection. The information collection (OMB No. 3206-0128) was previously published in the **Federal Register** on April 13, 2017, at 82 FR 17897, allowing for a 60-day public comment period. No comments were received for this collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Standard Form 2802 is used to support the payment of monies from the Retirement Fund. It identifies the applicant for refund of retirement deductions. Standard Form 2802A is used to comply with the legal requirement that any spouse or former spouse of the applicant has been notified that the former employee is applying for a refund.

#### Analysis

*Agency:* Retirement Operations, Retirement Services, Office of Personnel Management.

*Title:* Application for Refund of Retirement Deductions (CSRS) and Current/Former Spouse's Notification of Application for Refund of Retirement Deductions under the Civil Service Retirement System.

*OMB Number:* 3206-0128.

*Frequency:* On occasion.

*Affected Public:* Individual or Households.

*Number of Respondents:* SF 2802 = 3,741; SF 2802A = 3,389.

*Estimated Time per Respondent:* SF 2802 = 1 hour; SF 2802A = 15 minutes.  
*Total Burden Hours:* 4,588.

Office of Personnel Management.

**Kathleen M. McGettigan,**  
*Acting Director.*

[FR Doc. 2017-27080 Filed 12-14-17; 8:45 am]

**BILLING CODE 6325-38-P**

**OFFICE OF PERSONNEL  
 MANAGEMENT**

**Submission for Review: Annuity  
 Supplement Earnings Report, RI 92-22**

**AGENCY:** Office of Personnel  
 Management.

**ACTION:** 30-Day notice and request for  
 comments.

**SUMMARY:** The Retirement Services,  
 Office of Personnel Management (OPM)  
 offers the general public and other  
 Federal agencies the opportunity to  
 comment on a revised information  
 collection, Annuity Supplement  
 Earnings Report, RI 92-22.

**DATES:** Comments are encouraged and  
 will be accepted until January 16, 2018.

**ADDRESSES:** Interested persons are  
 invited to submit written comments on  
 the proposed information collection to  
 the Office of Information and Regulatory  
 Affairs, Office of Management and  
 Budget, 725 17th Street NW,  
 Washington, DC 20503, Attention: Desk  
 Officer for the Office of Personnel  
 Management or sent via electronic mail  
 to *oira\_submission@omb.eop.gov* or  
 faxed to (202) 395-6974.

**FOR FURTHER INFORMATION CONTACT:** A  
 copy of this information collection, with  
 applicable supporting documentation,  
 may be obtained by contacting the  
 Retirement Services Publications Team,  
 Office of Personnel Management, 1900 E  
 Street NW, Room 3316-L, Washington,  
 DC 20415, Attention: Cyrus S. Benson,  
 or sent via electronic mail to  
*Cyrus.Benson@opm.gov* or faxed to  
 (202) 606-0910.

**SUPPLEMENTARY INFORMATION:** As  
 required by the Paperwork Reduction  
 Act of 1995 OPM is soliciting comments  
 for this collection. The information  
 collection (OMB No. 3206-0194) was  
 previously published in the **Federal  
 Register** on April 13, 2017, at 82 FR

17896, allowing for a 60-day public  
 comment period. No comments were  
 received for this collection. The purpose  
 of this notice is to allow an additional  
 30 days for public comments. The Office  
 of Management and Budget is  
 particularly interested in comments  
 that:

1. Evaluate whether the proposed  
 collection of information is necessary  
 for the proper performance of the  
 functions of the agency, including  
 whether the information will have  
 practical utility;

2. Evaluate the accuracy of the  
 agency's estimate of the burden of the  
 proposed collection of information,  
 including the validity of the  
 methodology and assumptions used;

3. Enhance the quality, utility, and  
 clarity of the information to be  
 collected; and

4. Minimize the burden of the  
 collection of information on those who  
 are to respond, including through the  
 use of appropriate automated,  
 electronic, mechanical, or other  
 technological collection techniques or  
 other forms of information technology,  
*e.g.*, permitting electronic submissions  
 of responses.

Form RI 92-22, Annuity Supplement  
 Earnings Report, is used each year to  
 obtain the earned income of Federal  
 Employees Retirement System (FERS)  
 annuitants receiving an annuity  
 supplement. The annuity supplement is  
 paid to eligible FERS annuitants who  
 are not retired on disability and are not  
 yet age 62. The supplement  
 approximates the portion of a full career  
 Social Security benefit earned while  
 under FERS and ends at age 62. Like  
 Social Security benefits, the annuity  
 supplement is subject to an earnings  
 limitation.

**Analysis**

*Agency:* Retirement Operations,  
 Retirement Services, Office of Personnel  
 Management.

*Title:* Annuity Supplement Earnings  
 Report.

*OMB Number:* 3206-0194.

*Frequency:* On occasion.

*Affected Public:* Individual or  
 Households.

*Number of Respondents:* 13,000.

*Estimated Time per Respondent:* 15  
 minutes.

*Total Burden Hours:* 3,250.

Office of Personnel Management.

**Kathleen M. McGettigan,**  
*Acting Director.*

[FR Doc. 2017-27075 Filed 12-14-17; 8:45 am]

**BILLING CODE 6325-38-P**

**OFFICE OF PERSONNEL  
 MANAGEMENT**

**Excepted Service**

**AGENCY:** Office of Personnel  
 Management.

**ACTION:** Notice.

**SUMMARY:** This notice identifies  
 Schedule A, B, and C appointing  
 authorities applicable to a single agency  
 that were established or revoked from  
 May 1, 2017 to May 31, 2017.

**FOR FURTHER INFORMATION CONTACT:**  
 Senior Executive Resources Services,  
 Senior Executive Service and  
 Performance Management, Employee  
 Services, 202-606-2246.

**SUPPLEMENTARY INFORMATION:** In  
 accordance with 5 CFR 213.103,  
 Schedule A, B, and C appointing  
 authorities available for use by all  
 agencies are codified in the Code of  
 Federal Regulations (CFR). Schedule A,  
 B, and C appointing authorities  
 applicable to a single agency are not  
 codified in the CFR, but the Office of  
 Personnel Management (OPM)  
 publishes a notice of agency-specific  
 authorities established or revoked each  
 month in the **Federal Register** at  
*www.gpo.gov/fdsys/*. OPM also  
 publishes an annual notice of the  
 consolidated listing of all Schedule A,  
 B, and C appointing authorities, current  
 as of June 30, in the **Federal Register**.

**Schedule A**

No schedule A authorities to report  
 during May 2017.

**Schedule B**

No schedule B authorities to report  
 during May 2017.

**Schedule C**

The following Schedule C appointing  
 authorities were approved during May  
 2017.

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF AGRICULTURE.	Natural Resources Conservation Service.	Confidential Assistant .....	DA170126 .....	05/02/2017
	Office of the Under Secretary for Research, Education, and Economics.	Confidential Assistant .....	DA170146 .....	05/03/2017
	Office of Communications .....	Press Assistant .....	DA170153 .....	05/03/2017

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF COMMERCE ..	Office of the Secretary .....	Confidential Assistant .....	DA170113 .....	05/04/2017
	Foreign Agricultural Service .....	Confidential Assistant .....	DA170133 .....	05/04/2017
	Office of the Assistant Secretary for Congressional Relations.	Deputy Director for Intergovernmental Affairs.	DA170145 .....	05/04/2017
	Office of the Under Secretary for Food Safety.	Staff Assistant .....	DA170147 .....	05/05/2017
	Office of the Assistant Secretary for Congressional Relations.	Director of Intergovernmental Affairs.	DA170151 .....	05/16/2017
	Agricultural Marketing Service .....	Confidential Assistant .....	DA170154 .....	05/17/2017
	International Trade Administration	Confidential Assistant (2) .....	DC170116 .....	05/02/2017
			DC170118 .....	05/12/2017
		Senior Advisor .....	DC170111 .....	05/04/2017
	Office of Policy and Strategic Planning.	Senior Policy Advisor .....	DC170108 .....	05/05/2017
	Office of the Secretary .....	Confidential Assistant .....	DC170126 .....	05/08/2017
	Office of the Chief of Staff .....	Special Assistant .....	DC170124 .....	05/12/2017
	Office of Director General of the United States and Foreign Commercial Service and Assistant Secretary for Global Markets.	Director of Outreach .....	DC170100 .....	05/17/2017
	Office of Assistant Secretary for Global Markets.	Special Advisor for Select United States of America.	DC170147 .....	05/22/2017
Office of the Assistant Secretary for Export Administration.	Senior Advisor .....	DC170129 .....	05/23/2017	
Office of the General Counsel .....	Deputy General Counsel for Strategic Initiatives.	DC170136 .....	05/31/2017	
DEPARTMENT OF DEFENSE .....	Office of the Assistant Secretary of Defense (International Security Affairs).	Special Assistant (Middle East Policy).	DD170134 .....	05/04/2017
	Office of the Secretary of Defense	Special Assistant for White House Liaison.	DD170117 .....	05/05/2017
		Advance Officer .....	DD170136 .....	05/17/2017
	Washington Headquarters Service	Defense Fellow (2) .....	DD170110 .....	05/12/2017
			DD170124 .....	05/12/2017
	Office of the Director (Cost Assessment and Program Evaluation).	Special Assistant, Cost Assessment and Program Evaluation.	DD170123 .....	05/12/2017
	Office of the Assistant Secretary of Defense (Strategy Plans and Capabilities).	Senior Advisor (Strategy, Plans, and Force Development).	DD170147 .....	05/17/2017
		Special Assistant (Nuclear & Missile Defense).	DD170163 .....	05/24/2017
	Office of the Under Secretary of Defense (Comptroller).	Special Assistant (Comptroller) .....	DD170151 .....	05/17/2017
	Office of the Assistant Secretary of Defense (Legislative Affairs).	Special Assistant (Chief, Policy) .....	DD170130 .....	05/24/2017
		Special Assistant for Installations, Environment, and Energy.	DD170153 .....	05/30/2017
	Office of the Assistant Secretary of Defense (Special Operations/Low Intensity Conflict).	Special Assistant for Special Operations/Low Intensity Conflict.	DD170162 .....	05/24/2017
DEPARTMENT OF EDUCATION ..	Office of Elementary and Secondary Education.	Special Assistant .....	DB170110 .....	05/12/2017
	Office of Postsecondary Education	Special Assistant .....	DB170109 .....	05/16/2017
	Office of the Secretary .....	Special Assistant .....	DB170111 .....	05/19/2017
	Office for Civil Rights .....	Confidential Assistant .....	DB170112 .....	05/19/2017
		Special Assistant .....	DB170115 .....	05/23/2017
	Office of Communications and Outreach.	Special Assistant (Supervisory) .....	DB170116 .....	05/26/2017
DEPARTMENT OF ENERGY .....	Office of Assistant Secretary for Environmental Management.	Senior Advisor .....	DE170131 .....	05/02/2017
	Office of Assistant Secretary for Electricity Delivery and Energy Reliability.	Senior Advisor .....	DE170090 .....	05/04/2017
	Office of Associate Under Secretary for Environment, Health, Safety and Security.	Senior Advisor—Veterans Relations.	DE170139 .....	05/08/2017
	Office of Secretary of Energy Advisory Board.	Deputy Director, Office of Secretarial Boards and Councils.	DE170142 .....	05/08/2017
	Office of Energy Policy and Systems Analysis.	Senior Analyst for Energy Policy ...	DE170153 .....	05/08/2017
		Special Advisor .....	DE170166 .....	05/30/2017
	Office of Management .....	Senior Advisor for Special Projects	DE170151 .....	05/11/2017

Agency name	Organization name	Position title	Authorization No.	Effective date
ENVIRONMENTAL PROTECTION AGENCY.	Office of the Secretary .....	Deputy White House Liaison .....	DE170130 .....	05/12/2017
		Policy Advisor and Special Assistant.	DE170163 .....	05/12/2017
	Office of Assistant Secretary for Congressional and Intergovernmental Affairs.	Legislative Affairs Advisor .....	DE170145 .....	05/17/2017
		Deputy Associate Administrator for Public Engagement.	EP170049 .....	05/04/2017
	Office of Public Engagement and Environmental Education. Office of the Administrator .....	Director of Scheduling and Advance.	EP170055 .....	05/10/2017
		Deputy White House Liaison .....	EP170047 .....	05/11/2017
	Office of Public Affairs .....	Deputy Associate Administrator for Public Affairs (2).	EP170048 .....	05/11/2017
		Senior Deputy Associate Administrator for Policy.	EP170051 .....	05/16/2017
	Office of the Associate Administrator for Policy.	Senior Deputy Associate Administrator for Policy.	EP170050 .....	05/11/2017
		Deputy Associate Administrator for Policy (Environmental Management).	EP170039 .....	05/12/2017
Office of the Associate Administrator for Congressional and Intergovernmental Relations.	Policy Assistant .....	EP170066 .....	05/23/2017	
	Deputy Associate Administrator for Congressional and Intergovernmental Relations (2).	EP170045 .....	05/12/2017	
	Deputy Associate Administrator for Congressional Relations.	EP170054 .....	05/23/2017	
	Deputy Associate Administrator for Congressional Relations.	EP170053 .....	05/12/2017	
FEDERAL COMMUNICATIONS COMMISSION. GENERAL SERVICES ADMINISTRATION.	Office of Media Relations .....	Special Assistant .....	FC170010 .....	05/24/2017
	Office of the Administrator .....	Senior Advisor for Administrative Services.	GS170025 .....	05/02/2017
		Press Secretary .....	GS170028 .....	05/11/2017
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of Congressional and Intergovernmental Affairs. Office of Strategic Communications.	Special Assistant .....	GS170039 .....	05/25/2017
		Special Assistant .....	GS170027 .....	05/04/2017
		Senior Communications Advisor ...	GS170026 .....	05/11/2017
	Office of Small Business Utilization Office of the Secretary .....	Senior Advisor .....	GS170038 .....	05/30/2017
		Director (Office of Documents and Regulations Management).	DH170241 .....	05/01/2017
	DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of the Secretary .....	Policy Advisor for Human Services Policy.	DH170238 .....
Advisor .....			DH170239 .....	05/12/2017
Office of the Assistant Secretary for Public Affairs.		Special Assistant for Health Policy	DH170242 .....	05/12/2017
		Chief Spokesperson .....	DH170216 .....	05/04/2017
Centers for Medicare and Medicaid Services.		Special Assistant .....	DH170252 .....	05/22/2017
		Senior Counselor .....	DH170220 .....	05/08/2017
Office for Civil Rights .....		Special Advisor .....	DH170217 .....	05/11/2017
		Principal Deputy Director for Office of Refugee Resettlement.	DH170229 .....	05/11/2017
Office of Intergovernmental and External Affairs.		Regional Director, Dallas, Texas, Region VI.	DH170233 .....	05/11/2017
		Office of the Chief of Staff .....	Special Assistant .....	DM170132 .....
Confidential Assistant (2) .....	DM170139 .....		05/04/2017	
	Briefing Book Coordinator .....	DM170169 .....	05/31/2017	
Advance Representative .....		DM170155 .....	05/10/2017	
	Director of Scheduling and Advance and Chief of Protocol.	DM170133 .....	05/11/2017	
Deputy White House Liaison .....		DM170170 .....	05/17/2017	
	Counselor .....	DM170183 .....	05/23/2017	
Director of Public Affairs .....		DM170142 .....	05/02/2017	
	Director of Intergovernmental Affairs.	DM170136 .....	05/04/2017	
Senior Business Liaison .....		DM170150 .....	05/25/2017	
	Office of Partnership and Engagement.	DM170137 .....	05/04/2017	
United States Immigration and Customs Enforcement.		Director of Communications .....	DM170144 .....	05/08/2017
	Office of the Assistant Secretary for Policy.	Confidential Assistant .....	DM170166 .....	05/10/2017
Office of the Assistant Secretary for Public Affairs.		Coordinator for Strategic Communications.	DM170143 .....	05/17/2017
	Office of Assistant Secretary for Legislative Affairs.	Director of Digital Media .....	DM170182 .....	05/23/2017
Director .....		DM170159 .....	05/17/2017	

Agency name	Organization name	Position title	Authorization No.	Effective date	
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of Housing .....	Advisor for Single Family Asset Management.	DU170123 .....	05/01/2017	
	Office of Policy Development and Research.	Senior Advisor .....	DU170122 .....	05/04/2017	
	Office of the General Counsel .....	Senior Counsel (2) .....	DU170117 .....	05/05/2017	
			DU170135 .....	05/30/2017	
	Office of Field Policy and Management.	Advisor .....	DU170124 .....	05/05/2017	
		Special Assistant .....	DU170125 .....	05/12/2017	
	Office of Public and Indian Housing.	Special Policy Advisor .....	DU170113 .....	05/22/2017	
	Office of Community Planning and Development.	Senior Advisor .....	DU170128 .....	05/30/2017	
	Office of Congressional and Intergovernmental Relations.	Senior Advisor .....	DU170118 .....	05/31/2017	
	Office of the Secretary .....	Executive Assistant .....	DU170127 .....	05/31/2017	
DEPARTMENT OF THE INTERIOR.	Secretary's Immediate Office .....	Special Assistant (2) .....	DI170074 .....	05/02/2017	
			DI170076 .....	05/30/2017	
		Advance Representative .....	DI170066 .....	05/04/2017	
		Deputy Director, Office of External Affairs.	DI170041 .....	05/09/2017	
		Advisor, Intergovernmental Affairs	DI170082 .....	05/11/2017	
		Deputy Press Secretary .....	DI170075 .....	05/12/2017	
		Advisor .....	DI170080 .....	05/12/2017	
		Senior Advisor for Alaskan Affairs	DI170083 .....	05/16/2017	
	Office of Assistant Secretary—Fish, Wildlife and Parks.	Advisor .....	DI170062 .....	05/03/2017	
		Special Assistant .....	DI170077 .....	05/04/2017	
	Office of the Solicitor .....	Advisor .....	DI170064 .....	05/04/2017	
	Office of Assistant Secretary—Land and Minerals Management.	Special Assistant (2) .....	DI170067 .....	05/04/2017	
		Advisor .....	DI170081 .....	05/17/2017	
			DI170065 .....	05/30/2017	
		Special Assistant .....	DI170073 .....	05/12/2017	
	DEPARTMENT OF JUSTICE .....	Office of Congressional and Legislative Affairs.			
		Office of the Deputy Attorney General.	Counsel (6) .....	DJ170062 .....	05/02/2017
			DJ170072 .....	05/02/2017	
			DJ170073 .....	05/02/2017	
			DJ170089 .....	05/04/2017	
			DJ170056 .....	05/22/2017	
			DJ170092 .....	05/22/2017	
Environment and Natural Resources Division.		Counsel .....	DJ170069 .....	05/02/2017	
		Special Assistant and Counsel .....	DJ170106 .....	05/22/2017	
Office of Legislative Affairs .....		Confidential Assistant .....	DJ170074 .....	05/02/2017	
		Attorney Advisor .....	DJ170055 .....	05/22/2017	
Office of the Attorney General .....		White House Liaison .....	DJ170084 .....	05/02/2017	
		Director of Scheduling .....	DJ170024 .....	05/22/2017	
		Confidential Assistant .....	DJ170083 .....	05/22/2017	
		Counselor (2) .....	DJ170088 .....	05/26/2017	
			DJ170094 .....	05/31/2017	
		Director of Advance .....	DJ170103 .....	05/31/2017	
Office of Public Affairs .....		Press Assistant (2) .....	DJ170051 .....	05/08/2017	
			DJ170107 .....	05/31/2017	
		Media Affairs Coordinator .....	DJ170093 .....	05/08/2017	
		Chief Speechwriter .....	DJ170109 .....	05/31/2017	
		Deputy Speechwriter .....	DJ170111 .....	05/31/2017	
Office of the Legal Counsel .....		Counsel .....	DJ170086 .....	05/08/2017	
Office of Legal Policy .....		Counsel (2) .....	DJ170090 .....	05/22/2017	
			DJ170087 .....	05/24/2017	
		Chief of Staff and Counsel .....	DJ170091 .....	05/22/2017	
DEPARTMENT OF LABOR .....		Office of the Associate Attorney General.			
		Antitrust Division .....	Counsel .....	DJ170081 .....	05/31/2017
		Office of the Secretary .....	Counsel .....	DL170059 .....	05/25/2017
			Deputy Chief of Staff .....	DL170062 .....	05/30/2017
			Deputy Director of Advance .....	DL170061 .....	05/31/2017
		Employment and Training Administration.	Senior Advisor .....	DL170058 .....	05/30/2017
OFFICE OF MANAGEMENT AND BUDGET.		Office of Public Affairs .....	Speech Writer .....	DL170063 .....	05/31/2017
	Office of Legislative Affairs .....	Special Assistant for Legislative Affairs.	BO170072 .....	05/04/2017	
		Deputy for Legislative Affairs .....	BO170070 .....	05/12/2017	
	Office of the Director .....	Confidential Assistant .....	BO170067 .....	05/05/2017	
	Office of Education, Income Maintenance and Labor Programs.	Confidential Assistant .....	BO170073 .....	05/16/2017	
	Office of Communications .....	Deputy Associate Director for Communications.	BO170074 .....	05/19/2017	



Agency name	Organization name	Position title	Authorization No.	Effective date
OFFICE OF PERSONNEL MANAGEMENT. SMALL BUSINESS ADMINISTRATION.	Office of National Security Programs.	Confidential Assistant .....	BO170068 .....	05/22/2017
	Office of the General Counsel .....	Confidential Assistant .....	BO170076 .....	05/25/2017
	Office of Communications .....	Speech Writer .....	PM170028 .....	05/04/2017
	Office of the Director .....	Special Assistant .....	PM170032 .....	05/12/2017
	Office of Administration .....	Senior Advisor .....	SB170036 .....	05/05/2017
	Office of Communications and Public Liaison.	Deputy Press Secretary .....	SB170038 .....	05/10/2017
	Office of Field Operations .....	Senior Advisor .....	SB170033 .....	05/12/2017
	Office of Faith-Based and Community Initiatives.	Director of Faith Based and Community Initiatives.	SB170034 .....	05/16/2017
	Office of Entrepreneurial Development.	Special Advisor .....	SB170041 .....	05/22/2017
	Office of Investment and Innovation.	Special Assistant .....	SB170043 .....	05/31/2017
DEPARTMENT OF STATE .....	Office of the Chief of Protocol .....	Senior Protocol Officer (2) .....	DS170141 .....	05/11/2017
			DS170152 .....	05/25/2017
	Office of the Under Secretary for Civilian Security, Democracy, and Human Rights.	Senior Advisor .....	DS170148 .....	05/11/2017
		Staff Assistant .....	DS170146 .....	05/12/2017
	Office of the Under Secretary for Arms Control and International Security Affairs.	Special Assistant .....	DS170133 .....	05/12/2017
	Office of Policy Planning .....	Senior Advisor .....	DS170144 .....	05/16/2017
		Speechwriter (2) .....	DS170145 .....	05/16/2017
		Special Assistant .....	DS170143 .....	05/19/2017
			DS170151 .....	05/23/2017
	Office of the Secretary .....	Senior Advisor .....	DS170138 .....	05/17/2017
	Special Advisor .....	DS170147 .....	05/23/2017	
	Special Assistant .....	DS170140 .....	05/22/2017	
TRADE AND DEVELOPMENT AGENCY.	Office of the Under Secretary for Management.			
	Bureau of Energy Resources .....	Senior Advisor .....	DS170154 .....	05/31/2017
	Office of the Director .....	Public Affairs Specialist .....	TD170006 .....	05/26/2017
DEPARTMENT OF TRANSPORTATION.	Office of Assistant Secretary for Transportation Policy.	Senior Advisor .....	DT170096 .....	05/09/2017
	Office of Public Affairs .....	Deputy Press Secretary .....	DT170105 .....	05/12/2017
	Office of the Secretary .....	Special Assistant for Scheduling and Advance.	DT170106 .....	05/12/2017
DEPARTMENT OF THE TREASURY.	Office of the Administrator .....	Director of Communications .....	DT170101 .....	05/16/2017
	Office of Assistant Secretary for Governmental Affairs.	Senior Governmental Affairs Officer.	DT170110 .....	05/30/2017
	Office of Assistant Secretary (Public Affairs).	Press Assistant .....	DY170115 .....	05/12/2017
	Office of the Deputy Secretary .....	Special Assistant .....	DY170119 .....	05/12/2017
DEPARTMENT OF VETERANS AFFAIRS.	Office of the Under Secretary (Terrorism and Financial Intelligence).	Senior Advisor/s for Terrorism and Financial Intelligence.	DY170125 .....	05/23/2017
	Office of Tax Policy .....	Senior Advisor .....	DY170126 .....	05/23/2017
	Office of the Assistant Secretary for Public and Intergovernmental Affairs.	Special Assistant .....	DV170051 .....	05/01/2017

The following Schedule C appointing authorities were revoked during May 2017.

Agency	Organization name	Position title	Request No.	Date vacated
EXPORT-IMPORT BANK .....	Office of Communications .....	Director of Media Relations .....	EB150005 .....	05/26/2017
		Vice President of External Relations and Outreach.	EB140005 .....	05/26/2017
SMALL BUSINESS ADMINISTRATION.	Office of the Chairman .....	Deputy Chief of Staff .....	EB170002 .....	05/26/2017
	Office of the Administrator .....	Director of Scheduling .....	EB150001 .....	05/26/2017
		Senior Advisor .....	SB170022 .....	05/13/2017

**Authority:** 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

**Kathleen M. McGettigan,**  
*Acting Director.*

[FR Doc. 2017–27073 Filed 12–14–17; 8:45 am]

**BILLING CODE 6325–39–P**

**OFFICE OF PERSONNEL  
MANAGEMENT**

**Excepted Service**

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** This notice identifies Schedule A, B, and C appointing

authorities applicable to a single agency that were established or revoked from June 1, 2017 to June 30, 2017.

**FOR FURTHER INFORMATION CONTACT:** Senior Executive Resources Services, Senior Executive Service and Performance Management, Employee Services, 202–606–2246.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific

authorities established or revoked each month in the **Federal Register** at [www.gpo.gov/fdsys/](http://www.gpo.gov/fdsys/). OPM also publishes an annual notice of the consolidated listing of all Schedule A, B, and C appointing authorities, current as of June 30, in the **Federal Register**.

**Schedule A**

No schedule A authorities to report during June 2017.

**Schedule B**

No schedule B authorities to report during June 2017.

**Schedule C**

The following Schedule C appointing authorities were approved during June 2017.

Agency name	Organization name	Position title	Authorization No.	Effective date	
DEPARTMENT OF AGRICULTURE.	Office of the Secretary .....	Advance Lead .....	DA170159	06/07/2017	
		Staff Assistant .....	DA170162	06/15/2017	
	Office of the General Counsel .....	Senior Advisor .....	DA170158	06/09/2017	
	Office of the Assistant Secretary for Congressional Relations.	Policy Advisor .....	DA170167	06/27/2017	
DEPARTMENT OF COMMERCE ..	Office of Assistant Secretary Legislative and Intergovernmental Affairs.	Legislative Affairs Specialist .....	DC170133	06/06/2017	
	Office of Director General of the United States and Foreign Commercial Service and Assistant Secretary for Global Markets.	Senior Advisor .....	DC170134	06/06/2017	
	Office of Assistant Secretary for Industry and Analysis.	Director, Office of Advisory Committees and Industry Outreach.	DC170128	06/15/2017	
	Office of Executive Secretariat .....	Confidential Assistant .....	DC170137	06/15/2017	
	Office of the Chief of Staff .....	Director of Advance and Protocol ..	DC170115	06/16/2017	
		Scheduling Assistant .....	DC170139	06/21/2017	
	Office of Public Affairs .....	Director of Digital Strategy .....	DC170145	06/20/2017	
	Office of Minority Business Development Agency.	Special Assistant .....	DC170054	06/21/2017	
	DEPARTMENT OF DEFENSE .....	Office of the Secretary of Defense	Confidential Assistant .....	DD170093	06/02/2017
			Deputy White House Liaison .....	DD170094	06/02/2017
		Advance Officer .....	DD170164	06/02/2017	
Washington Headquarters Services.		Defense Fellow (2) .....	DD170122	06/02/2017	
			DD170179	06/15/2017	
Office of Assistant Secretary of Defense (Public Affairs).		Speechwriter .....	DD170170	06/13/2017	
Office of the Assistant Secretary of Defense (Strategy Plans and Capabilities).		Special Assistant (Strategy Plans and Capabilities).	DD170171	06/15/2017	
		Special Assistant for Strategy and Force Development.	DD170173	06/15/2017	
Office of the Assistant Secretary of Defense (Legislative Affairs).		Special Assistant (Legislative Affairs) Chief, Research.	DD170165	06/15/2017	
		Special Assistant (Legislative Affairs) for Europe/National Atlantic Treaty Organization.	DD170148	06/02/2017	
		Special Assistant (Legislative Affairs) for General Services Administration/Cyber.	DD170138	06/20/2017	
		Special Assistant (Legislative Affairs) Chief, Acquisition, Technology and Logistics.	DD170169	06/20/2017	
DEPARTMENT OF EDUCATION ..		Office of Communications and Outreach.	Communications Director .....	DB170122	06/08/2017
			Confidential Assistant .....	DB170123	06/20/2017
	Office of Legislation and Congressional Affairs.	Confidential Assistant .....	DB170117	06/13/2017	
DEPARTMENT OF ENERGY .....	Office of Energy Policy and Systems Analysis.	Senior Advisor .....	DE170171	06/09/2017	

Agency name	Organization name	Position title	Authorization No.	Effective date
ENVIRONMENTAL PROTECTION AGENCY.	Office of Assistant Secretary for Energy Efficiency and Renewable Energy.	Special Advisor .....	DE170169	06/15/2017
		Senior Advisor .....	DE170168	06/20/2017
	Office of the Associate Administrator for Congressional and Intergovernmental Relations.	Special Assistant for Intergovernmental Relations.	EP170060	06/02/2017
FEDERAL COMMUNICATIONS COMMISSION. GENERAL SERVICES ADMINISTRATION. DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of the Assistant Administrator for Land and Emergency Management.	Senior Advisor for Land and Emergency Management.	EP170067	06/06/2017
	Office of Media Relations .....	Public Affairs Specialist .....	FC170009	06/22/2017
	Office of Strategic Communications.	Associate Administrator for Strategic Communications.	GS170023	06/02/2017
	Office for Civil Rights .....	Senior Advisor for Operations .....	DH170254	06/02/2017
	Office of the Assistant Secretary for Health.	Chief of Staff .....	DH170256	06/02/2017
	Office of the Secretary .....	Special Assistant .....	DH170272	06/13/2017
		Policy Advisor for Health Policy .....	DH170262	06/06/2017
		Director of Digital Media .....	DH170267	06/06/2017
	Office of the Assistant Secretary for Public Affairs.	Special Assistant .....	DH170255	06/16/2017
	Centers for Medicare and Medicaid Services.	Special Assistant .....	DH170278	06/20/2017
DEPARTMENT OF HOMELAND SECURITY.	Office of Health Resources and Services Administration Office of the Administrator.	Senior Advisor .....	DH170285	06/27/2017
	Office of the Assistant Secretary for Preparedness and Response.	Director of Legislative Affairs .....	DM170168	06/01/2017
	Office of Federal Emergency Management Agency.	Press Assistant/Rapid Response Coordinator.	DM170186	06/15/2017
	Office of the Assistant Secretary for Public Affairs.	Senior Director of Content .....	DM170149	06/30/2017
		Assistant Press Secretary .....	DM170207	06/21/2017
		Communications Director .....	DM170148	06/02/2017
	Office of Assistant Secretary for Legislative Affairs.	Associate Director, Office of Legislative Affairs.	DM170167	06/05/2017
		Confidential Assistant .....	DM170174	06/07/2017
	Office of United States Immigration and Customs Enforcement.	Deputy Chief of Staff, Immigration and Customs Enforcement.	DM170177	06/06/2017
	Office of the Chief of Staff .....	Special Assistant .....	DM170211	06/29/2017
DEPARTMENT OF THE INTERIOR.		Scheduler .....	DM170209	06/30/2017
	Office of United States Customs and Border Protection.	Advance Coordinator .....	DM170138	06/16/2017
	Office of the Assistant Secretary for Policy.	Senior Policy Advisor .....	DM170216	06/30/2017
		Confidential Assistant .....	DM170198	06/16/2017
		Policy Analyst (2) .....	DM170205	06/16/2017
	Secretary's Immediate Office .....	Special Assistant .....	DM170206	06/30/2017
		Advance Representative .....	DI170085	06/06/2017
		Writer .....	DI170095	06/15/2017
		Deputy Director, Office of Scheduling and Advance.	DI170089	06/27/2017
		Advisor .....	DI170088	06/07/2017
DEPARTMENT OF JUSTICE .....	Office of the Solicitor .....	Advisor .....	DI170093	06/14/2017
		Counselor .....	DI170096	06/15/2017
	Office of Civil Rights Division .....	Counsel .....	DJ170121	06/02/2017
DEPARTMENT OF LABOR .....		Senior Counsel .....	DJ170127	06/23/2017
	Office of Legislative Affairs .....	Attorney Advisor .....	DJ170077	06/26/2017
	Office of the Secretary .....	Deputy Director of Scheduling .....	DL170060	06/12/2017
	Office of Employment and Training Administration.	Senior Policy Advisor .....	DL170065	06/15/2017
NATIONAL LABOR RELATIONS BOARD.	Office of Congressional and Intergovernmental Affairs.	Legislative Assistant .....	DL170066	06/27/2017
	Office of the Board Members .....	Director Congressional and Public Affairs Officer.	NL170012	06/16/2017
OFFICE OF MANAGEMENT AND BUDGET.	Office of Information and Regulatory Affairs.	Confidential Assistant .....	BO170077	06/08/2017
	Office of Communications .....	Deputy Press Secretary .....	BO170075	06/22/2017
OFFICE OF NATIONAL DRUG CONTROL POLICY.	Office of the Director .....	Chief Strategist .....	QQ170005	06/06/2017
OFFICE OF PERSONNEL MANAGEMENT.	Office of the Director .....	Deputy Chief of Staff .....	PM170037	06/08/2017
PRESIDENTS COMMISSION ON WHITE HOUSE FELLOWSHIPS. SELECTIVE SERVICE SYSTEM ...	Presidents Commission on White House Fellowships.	Confidential Assistant .....	WH170007	06/02/2017
		Special Assistant .....	WH170011	06/02/2017
	Office of the Director .....	Special Advisor .....	SS170001	06/08/2017

Agency name	Organization name	Position title	Authorization No.	Effective date
SMALL BUSINESS ADMINISTRATION.	Office of Investment and Innovation.	Senior Advisor .....	SB170044	06/06/2017
SOCIAL SECURITY ADMINISTRATION.	Office of the Commissioner .....	Confidential Assistant .....	SZ170007	06/06/2017
DEPARTMENT OF STATE .....	Office of the Under Secretary for Management.	Special Assistant .....	DS170134	06/02/2017
	Office of the Under Secretary for Economic Growth, Energy, and the Environment.	Senior Advisor .....	DS170157	06/02/2017
	Office of the Secretary .....	Special Assistant .....	DS170167	06/09/2017
		Special Assistant (Scheduler) .....	DS170164	06/02/2017
		Staff Assistant (Deputy Scheduler)	DS170175	06/20/2017
		Special Advisor .....	DS170165	06/02/2017
		Deputy Coordinator .....	DS170155	06/09/2017
	Bureau of International Information Programs.			
	Bureau of Western Hemisphere Affairs.	Special Assistant .....	DS170156	06/09/2017
	Bureau of Public Affairs .....	Senior Advisor .....	DS170160	06/09/2017
	Bureau of Legislative Affairs .....	Deputy Assistant Secretary .....	DS170168	06/09/2017
	Office of the Under Secretary for Civilian Security, Democracy, and Human Rights.	Advisor .....	DS170170	06/09/2017
	Office of the Chief of Protocol .....	Staff Assistant .....	DS170173	06/15/2017
		Senior Protocol Officer .....	DS170177	06/23/2017
		Staff Assistant .....	DS170174	06/27/2017
TRADE AND DEVELOPMENT AGENCY.	Office of Policy Planning .....	Public Affairs Specialist .....	TD170008	06/09/2017
DEPARTMENT OF TRANSPORTATION.	Office of the Director .....			
	Office of the Secretary .....	Counselor .....	DT170108	06/07/2017
	Office of Assistant Secretary for Governmental Affairs.	Governmental Affairs Officer .....	DT170115	06/21/2017
DEPARTMENT OF THE TREASURY.	Office of Under Secretary for Domestic Finance.	Senior Advisor .....	DY170135	06/02/2017
	Department of the Treasury .....	Special Assistant .....	DY170138	06/16/2017
		Deputy Chief of Staff .....	DY170145	06/28/2017
		Press Secretary .....	DV170054	06/06/2017
DEPARTMENT OF VETERANS AFFAIRS.	Office of the Assistant Secretary for Public and Intergovernmental Affairs.			
	Office of the Secretary and Deputy	Special Assistant/Whitehouse Liaison.	DV170052	06/14/2017
	Office of the Assistant Secretary for Congressional and Legislative Affairs.	Special Assistant .....	DV170062	06/27/2017

The following Schedule C appointing authorities were revoked during June 2017.

Agency name	Organization name	Position title	Request No.	Date vacated
COMMODITY FUTURES TRADING COMMISSION.	Office of the Chairperson .....	Senior Advisor .....	CT170003	06/02/2017
DEPARTMENT OF DEFENSE .....	Office of the Assistant Secretary of Defense (Special Operations/ Low Intensity Conflict).	Special Assistant to Assistant Secretary of Defense for Special Operations/Low Intensity Conflict.	DD170162	06/24/2017
FEDERAL TRADE COMMISSION	Office of the Chairperson .....	Confidential Assistant .....	FT130004	06/30/2017
DEPARTMENT OF THE INTERIOR.	Office of the Assistant Secretary—Indian Affairs.	Advisor .....	DI170046	06/09/2017
	Office of Secretary's Immediate Office.	Special Assistant (Scheduling and Advance).	DI170044	06/10/2017
	Office of the Solicitor .....	Advisor .....	DI170064	06/24/2017
NATIONAL ENDOWMENT FOR THE HUMANITIES.	National Endowment for the Humanities.	White House Liaison and Chairman's Strategic Scheduler.	NH170001	06/09/2017
DEPARTMENT OF TRANSPORTATION.	Office of the Secretary .....	Special Assistant .....	DT170078	06/24/2017
UNITED STATES INTERNATIONAL TRADE COMMISSION.	Office of Commissioner Kieff .....	Staff Assistant (Legal) .....	TC140004	06/30/2017
	Office of Commissioner Schmidlein.	Confidential Assistant .....	TC140001	06/30/2017

Agency name	Organization name	Position title	Request No.	Date vacated
		Staff Assistant (Legal) (2) .....	TC140002 TC140003	06/30/2017 06/30/2017

**Authority:** 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

**Kathleen M. McGettigan,**

*Acting Director.*

[FR Doc. 2017–27070 Filed 12–14–17; 8:45 am]

**BILLING CODE 6325–39–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Submission for Review: Reinstatement of Disability Annuity Previously Terminated Because of Restoration to Earning Capacity, RI 30–9

**AGENCY:** Office of Personnel Management.

**ACTION:** 30-Day notice and request for comments.

**SUMMARY:** The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on a revised information collection, Reinstatement of Disability Annuity Previously Terminated Because of Restoration to Earning Capacity, RI 30–9.

**DATES:** Comments are encouraged and will be accepted until January 16, 2018.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov) or faxed to (202) 395–6974.

**FOR FURTHER INFORMATION CONTACT:** A copy of this information collection, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to [Cyrus.Benson@opm.gov](mailto:Cyrus.Benson@opm.gov) or faxed to (202) 606–0910.

**SUPPLEMENTARY INFORMATION:** As required by the Paperwork Reduction Act of 1995 OPM is soliciting comments for this collection. The information collection (OMB No. 3206–0138) was previously published in the **Federal Register** on April 13, 2017, at 82 FR

17892, allowing for a 60-day public comment period. No comments were received for this collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Form RI 30–9, Reinstatement of Disability Annuity Previously Terminated Because of Restoration to Earning Capacity, informs disability annuitants of their right to request restoration under title 5, U.S.C. 8337 and 8455. It also specifies the conditions to be met and the documentation required for a person to request reinstatement.

#### Analysis

*Agency:* Retirement Operations, Retirement Services, Office of Personnel Management.

*Title:* Reinstatement of Disability Annuity Previously Terminated Because of Restoration to Earning Capacity.

*OMB Number:* 3206–0138.

*Frequency:* On occasion.

*Affected Public:* Individual or Households.

*Number of Respondents:* 200.

*Estimated Time per Respondent:* 60 minutes.

*Total Burden Hours:* 200.

Office of Personnel Management.

**Kathleen M. McGettigan,**

*Acting Director.*

[FR Doc. 2017–27077 Filed 12–14–17; 8:45 am]

**BILLING CODE 6325–38–P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82289; File No. SR–NYSEARCA–2017–137]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Period for the Exchange's Retail Liquidity Program Until June 30, 2018

December 11, 2017.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b–4 thereunder,<sup>3</sup> notice is hereby given that, on November 30, 2017, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to extend the pilot period for the Exchange's Retail Liquidity Program (the “Retail Liquidity Program” or the “Program”), which is currently scheduled to expire on December 31, 2017, until June 30, 2018. The proposed rule change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b–4.

of the most significant parts of such statements.

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

1. Purpose

The purpose of this filing is to extend the pilot period of the Retail Liquidity Program, currently scheduled to expire on December 31, 2017,<sup>4</sup> until June 30, 2018.

Background

In December 2013, the Commission approved the Retail Liquidity Program on a pilot basis.<sup>5</sup> The Program is designed to attract retail order flow to the Exchange, and allows such order flow to receive potential price improvement. The Program is currently limited to trades occurring at prices equal to or greater than \$1.00 per share. Under the Program, Retail Liquidity Providers ("RLPs") are able to provide potential price improvement in the form of a non-displayed order that is priced better than the Exchange's best protected bid or offer ("PBBO"), called a Retail Price Improvement Order ("RPI"). When there is an RPI in a particular security, the Exchange disseminates an indicator, known as the Retail Liquidity Identifier, indicating that such interest exists. Retail Member Organizations ("RMOs") can submit a Retail Order to the Exchange, which would interact, to the extent possible, with available contra-side RPIs.

The Retail Liquidity Program was approved by the Commission on a pilot basis. Pursuant to NYSE Arca Rule 7.44-E(m), the pilot period for the Program is scheduled to end on December 31, 2017.

Proposal To Extend the Operation of the Program

The Exchange established the Retail Liquidity Program in an attempt to attract retail order flow to the Exchange by potentially providing price improvement to such order flow. The Exchange believes that the Program promotes competition for retail order flow by allowing Exchange members to submit RPIs to interact with Retail Orders. Such competition has the ability to promote efficiency by facilitating the price discovery process and generating additional investor interest in trading

<sup>4</sup> See Securities Exchange Act Release No. 80851 (June 2, 2017), 82 FR 26722 (June 8, 2017) (SR-NYSEArca-2017-63).

<sup>5</sup> See Securities Exchange Act Release No. 71176 (December 23, 2013), 78 FR 79524 (December 30, 2013) (SR-NYSEArca-2013-107) ("RLP Approval Order").

securities, thereby promoting capital formation. The Exchange believes that extending the pilot is appropriate because it will allow the Exchange and the Commission additional time to analyze data regarding the Program that the Exchange has committed to provide.<sup>6</sup> As such, the Exchange believes that it is appropriate to extend the current operation of the Program.<sup>7</sup> Through this filing, the Exchange seeks to amend NYSE Arca Rule 7.44-E(m) and extend the current pilot period of the Program until December 31, 2017 [sic].

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>9</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that extending the pilot period for the Retail Liquidity Program is consistent with these principles because the Program is reasonably designed to attract retail order flow to the exchange environment, while helping to ensure that retail investors benefit from the better price that liquidity providers are willing to give their orders. Additionally, as previously stated, the competition promoted by the Program may facilitate the price discovery process and potentially generate additional investor interest in trading securities. The extension of the pilot period will allow the Commission and the Exchange to continue to monitor the Program for its potential effects on public price discovery, and on the broader market structure.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change simply extends an

<sup>6</sup> See RLP Approval Order, *supra* n. 5, 78 FR at 79529.

<sup>7</sup> Concurrently with this filing, the Exchange has submitted a request for an extension of the exemption under Regulation NMS Rule 612 previously granted by the Commission that permits it to accept and rank the undisplayed RPIs. See Letter from Martha Redding, Asst. Corporate Secretary, NYSE Group, Inc. to Brent J. Fields, Secretary, Securities and Exchange Commission, dated November 30, 2017.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

established pilot program for an additional six months, thus allowing the Retail Liquidity Program to enhance competition for retail order flow and contribute to the public price discovery process.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>12</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>13</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>14</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>14</sup> 15 U.S.C. 78s(b)(2)(B).

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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEARCA-2017-137 on the subject line.

#### Paper Comments

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

All submissions should refer to File Number SR-NYSEARCA-2017-137. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-NYSEARCA-2017-137 and should be submitted on or before January 5, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

[FR Doc. 2017-27010 Filed 12-14-17; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82281; File No. SR-NYSEArca-2013-107]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting an Extension to Limited Exemption From Rule 612(c) of Regulation NMS in Connection With the Exchange's Retail Liquidity Program Until June 30, 2018

December 11, 2017.

On December 23, 2013, the Securities and Exchange Commission ("Commission") issued an order pursuant to its authority under Rule 612(c) of Regulation NMS ("Sub-Penny Rule")<sup>1</sup> that granted NYSE Arca, Inc. ("Exchange") a limited exemption from the Sub-Penny Rule in connection with the operation of the Exchange's Retail Liquidity Program ("Program").<sup>2</sup> The limited exemption was granted concurrently with the Commission's approval of the Exchange's proposal to adopt the Program for a one-year pilot term.<sup>3</sup> The exemption was granted coterminous with the effectiveness of the pilot Program; both the pilot Program and exemption, as previously extended, are scheduled to expire on December 31, 2017.<sup>4</sup>

<sup>15</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 17 CFR 242.612(c).

<sup>2</sup> See Securities Exchange Act Release No. 71176 (December 23, 2013), 78 FR 79524 (December 30, 2013) (SR-NYSEArca-2013-107) ("RLP Approval Order").

<sup>3</sup> See *id.*

<sup>4</sup> The Sub-Penny Exemption was originally granted by the Commission concurrently with the approval of the Program. See *id.* On March 19, 2015, the Exchange requested an extension of the exemption for the Program. See letter from Martha Redding, Senior Counsel and Assistant Secretary, to Brent J. Fields, Secretary, Commission, dated March 19, 2015. The pilot period for the Program was extended until September 30, 2015. See Securities Exchange Act Release No. 74572 (Mar. 24, 2015), 80 FR 16705 (Mar. 30, 2015) (SR-NYSEArca-2015-22). On September 17, 2015, the Exchange requested an extension of the exemption for the Program. See letter from Martha Redding, Senior Counsel and Assistant Secretary, to Brent J. Fields, Secretary, Commission, dated September 17, 2015. The pilot period for the Program was extended until March 31, 2016. See Securities Exchange Act Release Nos. 75994 (Sept. 28, 2015), 80 FR 59834 (Oct. 2, 2015) (SR-NYSEArca-2015-84) and 77236 (Feb. 25, 2016), 81 FR 10943 (Mar. 2, 2016) (SR-NYSEArca-2016-30). On March 17, 2016, the Exchange requested another extension of the exemption for the Program. See letter from Martha Redding,

The Exchange now seeks to further extend the exemption until June 30, 2018.<sup>5</sup> The Exchange's request was made in conjunction with an immediately effective filing that extends the operation of the Program through the same date.<sup>6</sup> In its request to extend the exemption, the Exchange notes that participation in the program has increased recently.<sup>7</sup> Accordingly, the Exchange has asked for additional time to allow the Exchange and the Commission to analyze more data concerning the Program, which the Exchange committed to provide to the Commission.<sup>8</sup> For this reason and the reasons stated in the RLP Approval Order originally granting the limited exemption, the Commission finds, pursuant to its authority under Rule 612(c) of Regulation NMS, that extending the exemption is appropriate in the public interest and consistent with the protection of investors.

Therefore, it is hereby ordered that, pursuant to Rule 612(c) of Regulation NMS, the Exchange is granted a limited exemption from Rule 612 of Regulation NMS that allows it to accept and rank orders priced equal to or greater than \$1.00 per share in increments of \$0.001, in connection with the operation of its Retail Liquidity Program, until June 30, 2018.

Senior Counsel and Assistant Secretary, to Brent J. Fields, Secretary, Commission, dated March 17, 2016. The pilot period for the Program was extended until August 31, 2016. See Securities Exchange Act Release No. 77425 (Mar. 23, 2016), 81 FR 17523 (Mar. 29, 2016) (SR-NYSEArca-2016-47). On August 8, 2016, the Exchange requested another extension of the exemption for the Program. See Letter from Martha Redding, Associate General Counsel and Assistant Secretary, to Brent J. Fields, Secretary, Commission, dated August 8, 2016. The pilot period for the Program was extended until December 31, 2016. See Securities Exchange Act Release No. 78601 (Aug. 17, 2016), 81 FR 57632 (Aug. 23, 2016) (SR-NYSEArca-2016-113). On November 28, 2016, the Exchange requested another extension of the exemption for the program. See Letter from Martha Redding, Associate General Counsel and Assistant Secretary, to Brent J. Fields, Secretary, Commission, dated November 28, 2016. The pilot period for the Program was extended until June 30, 2017. See Securities Exchange Act Release No. 79495 (Dec. 7, 2016), 81 FR 90033 (Dec. 13, 2016) (SR-NYSEArca-2016-157). On May 23, 2017, the Exchange requested another extension of the exemption for the program. See Letter from Martha Redding, Associate General Counsel and Assistant Secretary, to Brent J. Fields, Secretary, Commission, dated May 23, 2017. The pilot period for the Program was extended until December 31, 2017. See Securities Exchange Act Release No. 80851 (June 2, 2017), 82 FR 26722 (June 8, 2017) (SR-NYSEArca-2017-63).

<sup>5</sup> See Letter from Martha Redding, Assistant Secretary, NYSE, to Brent J. Fields, Secretary, Commission, dated November 30, 2017 ("NYSE Arca Letter").

<sup>6</sup> See SR-NYSEArca-2017-137.

<sup>7</sup> See NYSE Arca Letter, *supra* note 5, at 3.

<sup>8</sup> See RLP Approval Order, *supra* note 2, 78 FR at 79529.

The limited and temporary exemption extended by this Order is subject to modification or revocation if at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Securities Exchange Act of 1934.

Responsibility for compliance with any applicable provisions of the Federal securities laws must rest with the persons relying on the exemptions that are the subject of this Order.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Robert W. Errett,**  
Deputy Secretary.

[FR Doc. 2017-26984 Filed 12-14-17; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82267; File No. SR-BOX-2017-16]

### Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing of Amendment No. 2 to a Proposed Rule Change Amending Consolidated Audit Trail Funding Fees

December 11, 2017.

On May 15, 2017, BOX Options Exchange LLC (“Exchange” or “SRO”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt a fee schedule to establish the fees for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail (“CAT NMS Plan”). The proposed rule change was published in the *Federal Register* for comment on May 24, 2017.<sup>3</sup> The Commission received seven comment letters on the proposed rule change,<sup>4</sup> and a response to

comments from the Participants.<sup>5</sup> On June 30, 2017, the Commission temporarily suspended and initiated proceedings to determine whether to approve or disapprove the proposed rule change.<sup>6</sup> The Commission thereafter received seven comment letters,<sup>7</sup> and a response to comments

Patricia L. Cerny and Steven O’Malley, Compliance Consultants, to Brent J. Fields, Secretary, Commission (dated June 12, 2017), available at: <https://www.sec.gov/comments/sr-cboe-2017-040/cboe2017040-1799253-153675.pdf>; Letter from Daniel Zinn, General Counsel, OTC Markets Group Inc., to Eduardo A. Aleman, Assistant Secretary, Commission (dated June 13, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-1801717-153703.pdf>; Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission (dated June 22, 2017), available at: <https://www.sec.gov/comments/sr-cboe-2017-040/cboe2017040-1819670-154195.pdf>; Letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, Commission (dated June 23, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-1822454-154283.pdf>; and Letter from Suzanne H. Shatto, Investor, to Commission (dated June 27, 2017), available at: <https://www.sec.gov/comments/sr-batsedgx-2017-22/batsedgx201722-154443.pdf>. The Commission also received a comment letter which is not pertinent to these proposed rule changes. See Letter from Christina Crouch, Smart Ltd., to Brent J. Fields, Secretary, Commission (dated June 5, 2017), available at: <https://www.sec.gov/comments/sr-batsbzx-2017-38/batsbzx201738-1785545-153152.htm>.

<sup>5</sup> See Letter from CAT NMS Plan Participants to Brent J. Fields, Secretary, Commission (dated June 29, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-1832632-154584.pdf>.

<sup>6</sup> See Securities Exchange Act Release No. 81067 (June 30, 2017), 82 FR 31656 (July 7, 2017).

<sup>7</sup> See Letter from W. Hardy Callcott, Partner, Sidley Austin LLP, to Brent J. Fields, Secretary, Commission (dated July 27, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2148338-157737.pdf>; Letter from Kevin Coleman, General Counsel and Chief Compliance Officer, Belvedere Trading LLC, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2148360-157740.pdf>; Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2151228-157745.pdf>; Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2150977-157744.pdf>; Letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2150818-157743.pdf>; Letter from John Kinahan, Chief Executive Officer, Group One Trading, L.P., to Brent J. Fields, Secretary, Commission (dated August 10, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-2214568-160619.pdf>; Letter from Joseph Molluso, Executive Vice President and CFO, Virtu Financial, to Brent J. Fields, Secretary, Commission (dated August 18, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-2238648-160830.pdf>.

from the Participants.<sup>8</sup> On November 7, 2017, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>9</sup> On November 9, 2017, the Commission extended the time period within which to approve the proposed rule change or disapprove the proposed rule change to January 14, 2018.<sup>10</sup> On December 7, 2017, the Exchange filed Amendment No. 2 to the proposed rule change, as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments from interested persons on Amendment No. 2.

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

The Exchange is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend the Fee Schedule to amend the fees for Industry Members related to the CAT NMS Plan. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission’s Public Reference Room and also on the Exchange’s internet website at <http://boxexchange.com>.

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

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

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

###### 1. Purpose

BOX Options Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX

<sup>8</sup> See Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Brent J. Fields, Secretary, Commission (dated November 2, 2017), available at <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2674608-161412.pdf>.

<sup>9</sup> Amendment No. 1 to the proposed rule change replaced and superseded the Original Proposal in its entirety. See Securities Exchange Act Release No. 82266 (December 11, 2017).

<sup>10</sup> See Securities Exchange Act Release No. 82049 (November 9, 2017), 82 FR 53549 (November 16, 2017).

<sup>9</sup> 17 CFR 200.30-3(a)(83).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 80721 (May 18, 2017), 82 FR 23864 (May 24, 2017) (“Original Proposal”).

<sup>4</sup> Since the CAT NMS Plan Participants’ proposed rule changes to adopt fees to be charged to Industry Members to fund the consolidated audit trail are substantively identical, the Commission is considering all comments received on the proposed rule changes regardless of the comment file to which they were submitted. See text accompanying note 11 *infra*, for a list of the CAT NMS Plan Participants. See Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Brent J. Fields, Secretary, Commission (dated June 6, 2017), available at: <https://www.sec.gov/comments/sr-batsbzx-2017-38/batsbzx201738-1788188-153228.pdf>; Letter from



Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc. (“FINRA”), Investors’ Exchange LLC, Miami International Securities Exchange, LLC, MIAx PEARL, LLC, NASDAQ BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc. and NYSE National, Inc.<sup>11</sup> (collectively, the “Participants”) filed with the Commission, pursuant to Section 11A of the Exchange Act<sup>12</sup> and Rule 608 of Regulation NMS thereunder,<sup>13</sup> the CAT NMS Plan.<sup>14</sup> The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act. The Plan was published for comment in the **Federal Register** on May 17, 2016,<sup>15</sup> and approved by the Commission, as modified, on November 15, 2016.<sup>16</sup> The Plan is designed to create, implement and maintain a consolidated audit trail (“CAT”) that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. The Plan accomplishes this by creating CAT NMS, LLC (the “Company”), of which each Participant is a member, to operate the CAT.<sup>17</sup> Under the CAT NMS Plan, the Operating Committee of the Company (“Operating Committee”) has discretion to establish funding for the Company to operate the CAT, including establishing fees that the Participants will pay, and establishing fees for Industry Members that will be

implemented by the Participants (“CAT Fees”).<sup>18</sup> The Participants are required to file with the SEC under Section 19(b) of the Exchange Act any such CAT Fees applicable to Industry Members that the Operating Committee approves.<sup>19</sup> Accordingly, SRO submitted the Original Proposal to propose the Consolidated Audit Trail Funding Fees, which would require Industry Members that are SRO members to pay the CAT Fees determined by the Operating Committee.

The Commission published the Original Proposal for public comment in the **Federal Register** on May 24, 2017,<sup>20</sup> and received comments in response to the Original Proposal or similar fee filings by other Participants.<sup>21</sup> On June 30, 2017, the Commission suspended, and instituted proceedings to determine whether to approve or disapprove, the Original Proposal.<sup>22</sup> The Commission received seven comment letters in response to those proceedings.<sup>23</sup>

In response to the comments on the Original Proposal, the Operating Committee determined to make the following changes to the funding model: (1) Adds two additional CAT Fee tiers for Equity Execution Venues; (2) discounts the market share of Execution Venue ATSs exclusively trading OTC Equity Securities as well as the market share of the FINRA over-the-counter reporting facility (“ORF”) by the average shares per trade ratio between NMS Stocks and OTC Equity Securities (calculated as 0.17% based on available data from the second quarter of 2017) when calculating the market share of Execution Venue ATS exclusively trading OTC Equity Securities and FINRA; (3) discounts the Options Market Maker quotes by the trade to

quote ratio for options (calculated as 0.01% based on available data for June 2016 through June 2017) when calculating message traffic for Options Market Makers; (4) discounts equity market maker quotes by the trade to quote ratio for equities (calculated as 5.43% based on available data for June 2016 through June 2017) when calculating message traffic for equity market makers; (5) decreases the number of tiers for Industry Members (other than the Execution Venue ATSs) from nine to seven; (6) changes the allocation of CAT costs between Equity Execution Venues and Options Execution Venues from 75%/25% to 67%/33%; (7) adjusts tier percentages and recovery allocations for Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATSs); (8) focuses the comparability of CAT Fees on the individual entity level, rather than primarily on the comparability of affiliated entities; (9) commences invoicing of CAT Reporters as promptly as possible following the latest of the operative date of the Consolidated Audit Trail Funding Fees for each of the Participants and the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants; and (10) requires the proposed fees to automatically expire two years from the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. On November 7, 2017, SRO filed the First Amendment and proposed to amend the Original Proposal to reflect these changes.

SRO submits this Second Amendment to the revise the proposal as set forth in the First Amendment to discount the OTC Equity Securities market share of all Execution Venue ATSs trading OTC Equity Securities, rather than applying the discount solely to those Execution Venue ATSs that exclusively trade OTC Equity Securities, when calculating the market share of Execution Venue ATS trading OTC Equity Securities. As discussed in the First Amendment:

The Operating Committee determined to discount the market share of Execution Venue ATSs exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF in recognition of the different trading characteristics of the OTC Equity Securities market as compared to the market in NMS Stocks. Many OTC Equity Securities are priced at less than one dollar—and a significant number at less than one penny—per share and low-priced shares tend to trade in larger quantities. Accordingly, a disproportionately large number of shares are involved in transactions involving OTC Equity Securities versus NMS Stocks. Because the proposed fee tiers are based on market share calculated by share volume,

<sup>18</sup> Section 11.1(b) of the CAT NMS Plan.

<sup>19</sup> *Id.*

<sup>20</sup> See Securities Exchange Act Rel. No. 80721 (May 18, 2017), 82 FR 23864 (May 24, 2017).

<sup>21</sup> For a summary of comments, see generally Securities Exchange Act Rel. No. 81067 (June 30, 2017), 82 FR 31656 (July 7, 2017) (“Suspension Order”).

<sup>22</sup> Suspension Order.

<sup>23</sup> See Letter from Stuart J. Kaswell, Executive Vice President, Managing Director and General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, SEC (July 28, 2017); Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Brent J. Fields, Secretary, SEC (July 28, 2017); Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, SEC (July 28, 2017); Letter from Kevin Coleman, General Counsel & Chief Compliance Officer, Belvedere Trading LLC, to Brent J. Fields, Secretary, SEC (July 28, 2017); Letter from W. Hardy Callcott, Sidley Austin LLP, to Brent J. Fields, Secretary, SEC (July 27, 2017); Letter from John Kinahan, Chief Executive Officer, Group One Trading, L.P., to Brent J. Fields, Secretary, SEC (Aug. 10, 2017); and Letter from Joseph Molluso, Executive Vice President, Virtu Financial, to Brent J. Fields, Secretary, SEC (Aug. 18, 2017).

<sup>11</sup> Note that Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., LLC, C2 Options Exchange, Incorporated, and Chicago Board Options Exchange, Incorporated, have been renamed Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., respectively.

<sup>12</sup> 15 U.S.C. 78k-1.

<sup>13</sup> 17 CFR 242.608.

<sup>14</sup> See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. See Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.

<sup>15</sup> Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

<sup>16</sup> Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (“Approval Order”).

<sup>17</sup> The Plan also serves as the limited liability company agreement for the Company.

Execution Venue ATSS exclusively trading OTC Equity Securities and FINRA would likely be subject to higher tiers than their operations may warrant.<sup>24</sup>

The Operating Committee believes that this argument applies equally to both Execution Venue ATSS exclusively trading OTC Equity Securities and to Execution Venue ATSS that trade OTC Equity Securities as well as other securities. Accordingly, SRO proposes to amend paragraph (b)(2) of the Consolidated Audit Trail Funding Fees to apply the discount to all Execution Venue ATSS trading OTC Equity Securities. Specifically, SRO proposes to change the parenthetical regarding the OTC Equity Securities discount in paragraph (b)(2) of the proposed fee schedule from “with a discount for Equity ATSS exclusively trading OTC Equity Securities based on the average shares per trade ratio between NMS Stocks and OTC Equity Securities” to “with a discount for OTC Equity Securities market share of Equity ATSS trading OTC Equity Securities based on the average shares per trade ratio between NMS Stocks and OTC Equity Securities.” Additionally, the Exchange proposes to delete footnote 43 in Section 3(a) on page 29 of the First Amendment as the footnote is erroneous and was included inadvertently.

## 2. Statutory Basis

SRO believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,<sup>25</sup> which require, among other things, that the SRO 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 dealer, and Section 6(b)(4) of the Act,<sup>26</sup> which requires that SRO rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using its facilities. SRO believes that the proposed change is consistent with the Act, and that the proposed fees are reasonable, equitably allocated and not unfairly discriminatory. In particular, SRO believes that the proposed change would treat all Equity ATSS trading OTC Equity Securities in a comparable manner when calculating applicable fees. In addition, the fee structure takes into consideration distinctions in

securities trading operations of CAT Reporters, including all ATSS trading OTC Equity Securities.

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

Section 6(b)(8) of the Act<sup>27</sup> require that SRO rules not impose any burden on competition that is not necessary or appropriate. SRO 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. As previously described, SRO believes that the proposed rule change fairly and equitably allocates costs among CAT Reporters. In particular, the proposed fee schedule is structured to impose comparable fees on similarly situated CAT Reporters. SRO believes that the proposed change would treat all Equity ATSS trading OTC Equity Securities in a comparable manner when calculating applicable fees. In addition, the fee structure takes into consideration distinctions in securities trading operations of CAT Reporters, including all ATSS trading OTC Equity Securities. Moreover, the Operating Committee believes that the proposed changes address certain competitive concerns raised by commenters related to ATSS trading OTC Equity Securities.

### *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. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal, as amended by Amendment No. 1 and Amendment No. 2, is consistent with the Act. Comments may be submitted by any of the following methods:

### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BOX-2017-16 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-BOX-2017-16. This file

number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BOX-2017-16, and should be submitted on or before January 5, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>28</sup>

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2017-26990 Filed 12-14-17; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>24</sup> See SR-BOX-2017-16, Amendment 1, Section 3(a), at page 29.

<sup>25</sup> 15 U.S.C. 78f(b)(5).

<sup>26</sup> 15 U.S.C. 78f(b)(4).

<sup>27</sup> 15 U.S.C. 78f(b)(8).

<sup>28</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82273; File No. SR–CBOE–2017–040]

### Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of Amendment No. 2 to the Proposed Rule Change To Amend the Schedule of Fees and Assessments To Adopt a Fee Schedule To Establish Fees for Industry Members Related to the National Market System Plan Governing the Consolidated Audit Trail

December 11, 2017.

#### I. Introduction

On May 16, 2017, Chicago Board Options Exchange, Incorporated, n/k/a Cboe Exchange Inc. (“Exchange” or “SRO”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> a proposed rule change to adopt a fee schedule to establish the fees for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail (“CAT NMS Plan”). The proposed rule change was published in the **Federal Register** for comment on June 1, 2017.<sup>3</sup> The Commission received seven comment letters on the proposed rule change,<sup>4</sup>

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> See Securities Exchange Act Release No. 80785 (May 26, 2017), 82 FR 25404 (June 1, 2017) (“Original Proposal”).

<sup>4</sup> Since the CAT NMS Plan Participants’ proposed rule changes to adopt fees to be charged to Industry Members to fund the consolidated audit trail are substantively identical, the Commission is considering all comments received on the proposed rule changes regardless of the comment file to which they were submitted. See text accompanying note 12 *infra*, for a list of the CAT NMS Plan Participants. See Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Brent J. Fields, Secretary, Commission (dated June 6, 2017), available at: <https://www.sec.gov/comments/sr-batsbx-2017-38/batsbx201738-1788188-153228.pdf>; Letter from Patricia L. Cerny and Steven O’Malley, Compliance Consultants, to Brent J. Fields, Secretary, Commission (dated June 12, 2017), available at: <https://www.sec.gov/comments/sr-cboe-2017-040/cboe2017040-1799253-153675.pdf>; Letter from Daniel Zinn, General Counsel, OTC Markets Group Inc., to Eduardo A. Aleman, Assistant Secretary, Commission (dated June 13, 2017), available at: <https://www.sec.gov/comments/sr-firra-2017-011/firra2017011-1801717-153703.pdf>; Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission (dated June 22, 2017), available at: <https://www.sec.gov/comments/sr-cboe-2017-040/cboe2017040-1819670-154195.pdf>; Letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, Commission (dated June 23, 2017), available at:

and a response to comments from the CAT NMS Plan Participants.<sup>5</sup> On June 30, 2017, the Commission temporarily suspended and initiated proceedings to determine whether to approve or disapprove the proposed rule change.<sup>6</sup> The Commission thereafter received seven comment letters,<sup>7</sup> and a response to comments from the Participants.<sup>8</sup> On November 3, 2017, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>9</sup> On November 9, 2017, the Commission extended the time period within which to approve the proposed

<https://www.sec.gov/comments/sr-firra-2017-011/firra2017011-1822454-154283.pdf>; and Letter from Suzanne H. Shatto, Investor, to Commission (dated June 27, 2017), available at: <https://www.sec.gov/comments/sr-batsedgx-2017-22/batsedgx201722-154443.pdf>. The Commission also received a comment letter which is not pertinent to these proposed rule changes. See Letter from Christina Crouch, Smart Ltd., to Brent J. Fields, Secretary, Commission (dated June 5, 2017), available at: <https://www.sec.gov/comments/sr-batsbx-2017-38/batsbx201738-1785545-153152.htm>.

<sup>5</sup> See Letter from CAT NMS Plan Participants to Brent J. Fields, Secretary, Commission (dated June 29, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-1832632-154584.pdf>.

<sup>6</sup> See Securities Exchange Act Release No. 81067 (June 30, 2017), 82 FR 31656 (July 7, 2017).

<sup>7</sup> See Letter from W. Hardy Callcott, Partner, Sidley Austin LLP, to Brent J. Fields, Secretary, Commission (dated July 27, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2148338-157737.pdf>; Letter from Kevin Coleman, General Counsel and Chief Compliance Officer, Belvedere Trading LLC, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2148360-157740.pdf>; Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2151228-157745.pdf>; Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2150977-157744.pdf>; Letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2150818-157743.pdf>; Letter from John Kinahan, Chief Executive Officer, Group One Trading, L.P., to Brent J. Fields, Secretary, Commission (dated August 10, 2017), available at: <https://www.sec.gov/comments/sr-firra-2017-011/firra2017011-2214568-160619.pdf>; Letter from Joseph Molluso, Executive Vice President and CFO, Virtu Financial, to Brent J. Fields, Commission (dated August 18, 2017), available at: <https://www.sec.gov/comments/sr-firra-2017-011/firra2017011-2238648-160830.pdf>.

<sup>8</sup> See Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Brent J. Fields, Commission, Secretary (dated November 2, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2674608-161412.pdf>.

<sup>9</sup> Amendment No. 1 to the proposed rule change replaced and superseded the Original Proposal in its entirety. See Securities Exchange Act Release No. 34–82272 (December 11, 2017).

rule change or disapprove the proposed rule change to January 14, 2018.<sup>10</sup> On December 7, 2017, the Exchange filed Amendment No. 2 to the proposed rule change, as described in Item II, which Item has been prepared by the Exchange. The Commission is publishing this notice to solicit comments from interested persons on Amendment No. 2.

#### II. Self-Regulatory Organization’s Statement of Substance of the Proposed Amendment

On May 16, 2017, Cboe Exchange, Inc. (“SRO”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) proposed rule change SR–CBOE–2017–040 (the “Original Proposal”), pursuant to which SRO proposed to adopt a fee schedule to establish the fees for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”).<sup>11</sup> On November 3, 2017, SRO filed an amendment to the Original Proposal (“First Amendment”). SRO files this proposed rule change (the “Second Amendment”) to amend the Original Proposal as amended by the First Amendment.

With this Second Amendment, SRO is including Exhibit 4, which reflects the changes to the text of the proposed rule change as set forth in the First Amendment, and Exhibit 5, which reflects all proposed changes to SRO’s current rule text.

BOX Options Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc. (“FINRA”), Investors’ Exchange LLC, Miami International Securities Exchange, LLC, MIAX PEARL, LLC, NASDAQ BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc. and NYSE National, Inc.<sup>12</sup> (collectively, the “Participants”)

<sup>10</sup> See Securities Exchange Act Release No. 82049 (November 9, 2017), 82 FR 53549 (November 16, 2017).

<sup>11</sup> Unless otherwise specified, capitalized terms used in this fee filing are defined as set forth herein, the CAT Compliance Rule Series, in the CAT NMS Plan, or the Original Proposal.

<sup>12</sup> Note that Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., LLC, C2 Options Exchange, Incorporated, and Chicago Board Options Exchange, Incorporated, have been renamed Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe

Continued

filed with the Commission, pursuant to Section 11A of the Exchange Act<sup>13</sup> and Rule 608 of Regulation NMS thereunder,<sup>14</sup> the CAT NMS Plan.<sup>15</sup> The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act. The Plan was published for comment in the **Federal Register** on May 17, 2016,<sup>16</sup> and approved by the Commission, as modified, on November 15, 2016.<sup>17</sup> The Plan is designed to create, implement and maintain a consolidated audit trail (“CAT”) that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. The Plan accomplishes this by creating CAT NMS, LLC (the “Company”), of which each Participant is a member, to operate the CAT.<sup>18</sup> Under the CAT NMS Plan, the Operating Committee of the Company (“Operating Committee”) has discretion to establish funding for the Company to operate the CAT, including establishing fees that the Participants will pay, and establishing fees for Industry Members that will be implemented by the Participants (“CAT Fees”).<sup>19</sup> The Participants are required to file with the SEC under Section 19(b) of the Exchange Act any such CAT Fees applicable to Industry Members that the Operating Committee approves.<sup>20</sup> Accordingly, SRO submitted the Original Proposal to propose the Consolidated Audit Trail Funding Fees, which would require Industry Members that are SRO members to pay the CAT Fees determined by the Operating Committee.

The Commission published the Original Proposal for public comment in the **Federal Register** on June 1, 2017,<sup>21</sup>

and received comments in response to the Original Proposal or similar fee filings by other Participants.<sup>22</sup> On June 30, 2017, the Commission suspended, and instituted proceedings to determine whether to approve or disapprove, the Original Proposal.<sup>23</sup> The Commission received seven comment letters in response to those proceedings.<sup>24</sup>

In response to the comments on the Original Proposal, the Operating Committee determined to make the following changes to the funding model: (1) Adds two additional CAT Fee tiers for Equity Execution Venues; (2) discounts the market share of Execution Venue ATSS exclusively trading OTC Equity Securities as well as the market share of the FINRA over-the-counter reporting facility (“ORF”) by the average shares per trade ratio between NMS Stocks and OTC Equity Securities (calculated as 0.17% based on available data from the second quarter of 2017) when calculating the market share of Execution Venue ATS exclusively trading OTC Equity Securities and FINRA; (3) discounts the Options Market Maker quotes by the trade to quote ratio for options (calculated as 0.01% based on available data for June 2016 through June 2017) when calculating message traffic for Options Market Makers; (4) discounts equity market maker quotes by the trade to quote ratio for equities (calculated as 5.43% based on available data for June 2016 through June 2017) when calculating message traffic for equity market makers; (5) decreases the number of tiers for Industry Members (other than the Execution Venue ATSS) from nine to seven; (6) changes the allocation of CAT costs between Equity Execution Venues and Options Execution Venues from 75%/25% to 67%/33%; (7) adjusts tier percentages and recovery allocations for Equity

Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATSS); (8) focuses the comparability of CAT Fees on the individual entity level, rather than primarily on the comparability of affiliated entities; (9) commences invoicing of CAT Reporters as promptly as possible following the latest of the operative date of the Consolidated Audit Trail Funding Fees for each of the Participants and the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants; and (10) requires the proposed fees to automatically expire two years from the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. On November 3, 2017, SRO filed the First Amendment and proposed to amend the Original Proposal to reflect these changes.

SRO submits this Second Amendment to the revise the proposal as set forth in the First Amendment to discount the OTC Equity Securities market share of all Execution Venue ATSS trading OTC Equity Securities, rather than applying the discount solely to those Execution Venue ATSS that exclusively trade OTC Equity Securities, when calculating the market share of Execution Venue ATS trading OTC Equity Securities. As discussed in the First Amendment:

The Operating Committee determined to discount the market share of Execution Venue ATSS exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF in recognition of the different trading characteristics of the OTC Equity Securities market as compared to the market in NMS Stocks. Many OTC Equity Securities are priced at less than one dollar—and a significant number at less than one penny—per share and low-priced shares tend to trade in larger quantities. Accordingly, a disproportionately large number of shares are involved in transactions involving OTC Equity Securities versus NMS Stocks. Because the proposed fee tiers are based on market share calculated by share volume, Execution Venue ATSS exclusively trading OTC Equity Securities and FINRA would likely be subject to higher tiers than their operations may warrant.<sup>25</sup>

The Operating Committee believes that this argument applies equally to both Execution Venue ATSS exclusively trading OTC Equity Securities and to Execution Venue ATSS that trade OTC Equity Securities as well as other securities. Accordingly, SRO proposes to amend paragraph (b)(2) of the Consolidated Audit Trail Funding Fees to apply the discount to all Execution Venue ATSS trading OTC Equity Securities. Specifically, SRO proposes

EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., respectively.

<sup>13</sup> 15 U.S.C. 78k-1.

<sup>14</sup> 17 CFR 242.608.

<sup>15</sup> See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. See Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.

<sup>16</sup> Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

<sup>17</sup> Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (“Approval Order”).

<sup>18</sup> The Plan also serves as the limited liability company agreement for the Company.

<sup>19</sup> Section 11.1(b) of the CAT NMS Plan.

<sup>20</sup> *Id.*

<sup>21</sup> Securities Exchange Act Rel. No. 80785 (May 26, 2017), 82 FR 25404 (June 1, 2017) (SR-CBOE-2017-040).

<sup>22</sup> For a summary of comments, see generally Securities Exchange Act Rel. No. 81067 (June 30, 2017), 82 FR 31656 (July 7, 2017) (“Suspension Order”).

<sup>23</sup> Suspension Order.

<sup>24</sup> See Letter from Stuart J. Kaswell, Executive Vice President, Managing Director and General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, SEC (July 28, 2017); Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Brent J. Fields, Secretary, SEC (July 28, 2017); Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, SEC (July 28, 2017); Letter from Kevin Coleman, General Counsel & Chief Compliance Officer, Belvedere Trading LLC, to Brent J. Fields, Secretary, SEC (July 28, 2017); Letter from W. Hardy Callcott, Sidley Austin LLP, to Brent J. Fields, Secretary, SEC (July 27, 2017); Letter from John Kinahan, Chief Executive Officer, Group One Trading, L.P., to Brent J. Fields, Secretary, SEC (Aug. 10, 2017); and Letter from Joseph Molluso, Executive Vice President, Virtu Financial, to Brent J. Fields, Secretary, SEC (Aug. 18, 2017).

<sup>25</sup> SR-CBOE-2017-040, Amendment No. 1 at page 30.

to change the parenthetical regarding the OTC Equity Securities discount in paragraph (b)(2) of the proposed fee schedule from “with a discount for Equity ATSS exclusively trading OTC Equity Securities based on the average shares per trade ratio between NMS Stocks and OTC Equity Securities” to “with a discount for OTC Equity Securities market share of Equity ATSS trading OTC Equity Securities based on the average shares per trade ratio between NMS Stocks and OTC Equity Securities.”

### III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal, as amended by Amendment No. 1 and Amendment No. 2, is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission’s internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2017-040 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-CBOE-2017-040. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2017-040, and should be submitted on or before January 5, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2017-26995 Filed 12-14-17; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82296; File No. SR-OCC-2017-806]

### Self-Regulatory Organizations; the Options Clearing Corporation; Notice of No Objection to Advance Notice Concerning Liquidity for Same-Day Settlement

December 12, 2017.

The Options Clearing Corporation (“OCC”) filed on October 13, 2017 with the Securities and Exchange Commission (“Commission”) advance notice SR-OCC-2017-806 (“Advance Notice”) pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled the Payment, Clearing and Settlement Supervision Act of 2010 (“Clearing Supervision Act”)<sup>1</sup> and Rule 19b-4(n)(1)(i) under the Securities Exchange Act of 1934 (“Exchange Act”)<sup>2</sup> to modify the tools it has available to address the risks of liquidity shortfalls when OCC faces a liquidity need to meet its same-day settlement obligations resulting from the failure of a bank or securities or commodities clearing organization (“Settlement Entity”) to achieve daily settlement. The Advance Notice was published for comment in the **Federal Register** on November 13, 2017.<sup>3</sup> The Commission has not received any comments on the Advance Notice to date. This

<sup>26</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 12 U.S.C. 5465(e)(1).

<sup>2</sup> 17 CFR 240.19b-4(n)(1)(i).

<sup>3</sup> SR-OCC-2017-806. Securities Exchange Act Release No. 82056 (Nov. 13, 2017) 82 FR 54430 (Nov. 17, 2017). OCC also filed a proposed rule change with the Commission in connection with the proposed change. See Securities Exchange Act Release No. 81956 (Oct. 26, 2017), 82 FR 50705 (Nov. 1, 2017) (SR-OCC-2017-017).

publication serves as notice of no objection to the Advance Notice.

### I. Background

OCC filed this Advance Notice in connection with its proposed change to modify the tools available to OCC to provide a mechanism for addressing the risks of liquidity shortfalls, specifically, in the extraordinary situation where OCC faces a liquidity need to meet its same-day settlement obligations resulting from a Settlement Entity’s failure to achieve daily settlement.

OCC’s By-Laws currently grant OCC the authority to borrow against its Clearing Fund where a Settlement Entity fails to make timely settlement with OCC due to the bankruptcy, insolvency, resolution, suspension of operations or similar event of such Settlement Entity.<sup>4</sup> The Advance Notice seeks to expand this borrowing authority to circumstances relatively less severe than bankruptcy, insolvency, or a similar event to include a temporary failure of a Settlement Entity to achieve daily settlement.

Specifically, Article VIII, Section 5(e) of OCC’s By-Laws provides OCC with the authority to borrow against the Clearing Fund in two circumstances. First, the By-Laws provide OCC the authority to borrow where OCC “deems it necessary or advisable to borrow or otherwise obtain funds from third parties in order to meet obligations arising out of the default or suspension of a Clearing Member or any action taken by the Corporation in connection therewith pursuant to Chapter XI of the Rules or otherwise.” Second, the By-Laws provide OCC the authority to borrow against the Clearing Fund where OCC “sustains a loss reimbursable out of the Clearing Fund pursuant to [Article VIII, Section 5(b) of OCC’s By-Laws] but [OCC] elects to borrow or otherwise obtain funds from third parties in lieu of immediately charging such loss to the Clearing Fund.” In order for a loss to be reimbursable out of the Clearing Fund under Article VIII, Section 5(b) of OCC’s By-Laws, the loss must arise from a situation in which any Settlement Entity has failed “to perform any obligation to [OCC] when due because of its bankruptcy, insolvency, receivership, suspension of operations, or because of any similar event.”<sup>5</sup>

Under either of the circumstances above, OCC is authorized to borrow

<sup>4</sup> OCC By-Laws, Article VIII, Section 5.

<sup>5</sup> To the extent that a loss resulting from any of the events referred to in Article VIII, Section 5(b) is recoverable out of the Clearing Fund pursuant to Article VIII, Section 5(a), the provisions of Article VIII, Section 5(a) control and render the provisions of Article VIII, Section 5(b) inapplicable.

against the Clearing Fund for a period not to exceed 30 days, and during this time, the borrowing would not affect the amount or timing of any charges otherwise required to be made against the Clearing Fund pursuant to Article VIII, Section 5 of the By-Laws. However, if any part of the borrowing remains outstanding after 30 days, then at the close of business on the 30th day (or the first Business Day thereafter) the amount must be considered an actual loss to the Clearing Fund, and OCC must immediately allocate such loss among its Clearing Members in accordance with Article VIII, Section 5.

## II. Description of the Advance Notice

### A. Proposed Change To Expand Borrowing Authority

The Advance Notice seeks to expand OCC's authority to borrow against its Clearing Fund to instances where a Settlement Entity suffers an event relatively less extreme than a bankruptcy, insolvency, or similar event, but is still temporarily unable to timely make daily settlement with OCC. Such an event might include a scenario where the ordinary operations of a settlement bank are disrupted in a manner that temporarily prohibits the bank from timely effecting settlement payments in accordance with OCC's daily settlement cycle. OCC believes that such authority would only be used in extraordinary circumstances, and any funds obtained from any such transaction could only be used for the stated purpose of satisfying a need for liquidity for same-day settlement.

Pursuant to the proposed change, any ability to borrow under this expanded authority would not exceed thirty (30) days. During this period, the funds obtained would not be deemed to be charges against the Clearing Fund and would not affect the amount or timing of any charges otherwise required to be made against the clearing fund under Article VIII of OCC's By-Laws.<sup>6</sup> Should the borrowing unexpectedly remain outstanding after thirty (30) days, at the close of business on the 30th day (or the first Business Day thereafter), the amount outstanding would be considered an actual loss to the Clearing Fund. However, OCC would also have discretionary authority to declare a borrowing outstanding for less than thirty (30) days as an actual loss chargeable against the Clearing Fund to

<sup>6</sup> Assets contained in the Clearing Fund, including those assets pledged by OCC pursuant to its authority under this proposed expansion of borrowing authority, would remain in OCC's possession.

be collected from Clearing Members.<sup>7</sup> If the amount outstanding becomes an actual loss to the Clearing Fund, OCC, in accordance with its By-Laws, would then charge all of its Clearing Members to make pro rata contributions to the Clearing Fund to cover the deficit arising from the loss.

### B. Proposed Change to OCC's By-Laws

To implement the proposed change, OCC proposed to amend Sections 1(a), 5(b) and 5(e) of Article VIII of its By-Laws to give effect to the expanded borrowing authority. First, Article VIII, Section 5(e) of the By-Laws would be amended to permit OCC to borrow against the Clearing Fund if it reasonably believes such borrowing is necessary to meet its liquidity needs for same-day settlement as a result of the failure of any Settlement Entity to achieve daily settlement. Second, Article VIII, Section 1(a) of the By-Laws would be amended to include conforming changes stating that the purpose of the Clearing Fund includes borrowing against the Clearing Fund as permitted under Article VIII Section 5(e).

Next, Article VIII, Section 5(b) of the By-Laws would be amended to include conforming changes that would declare that any borrowing remaining outstanding for less than 30 days may be considered, in OCC's discretion, an actual loss to the Clearing Fund to be charged proportionately against all Clearing Members' computed contributions. Any borrowing remaining outstanding on the 30th day shall be considered an actual loss to the Clearing Fund and the amount of any such loss shall be charged proportionately against all Clearing Members' computed contributions to the Clearing Fund as fixed at the time.

<sup>7</sup> OCC states that such discretionary authority could be exercised in a circumstance where, depending on the size of the borrowing, OCC must ensure that it maintains financial resources necessary to meet a "Cover 1" liquidity resource standard. OCC must establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence, and, to the extent not already maintained pursuant to the foregoing, maintaining additional financial resources at the minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the "default of the participant family that would potentially cause the largest aggregate credit exposure for the [CCA] in extreme but plausible market conditions." 17 CFR 240.17Ad-22(e)(4)(iii).

## III. Discussion and Commission Findings

Although the Clearing Supervision Act does not specify a standard of review for an advance notice, its stated purpose is instructive.<sup>8</sup> The stated purpose of the Clearing Supervision Act is to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically important financial market utilities ("SIFMUs") and strengthening the liquidity of SIFMUs.<sup>9</sup>

Section 805(a)(2) of the Clearing Supervision Act<sup>10</sup> authorizes the Commission to prescribe regulations containing risk-management standards for the payment, clearing, and settlement activities of designated clearing entities engaged in designated activities for which the Commission is the supervisory agency. Section 805(b) of the Clearing Supervision Act<sup>11</sup> provides the following objectives and principles for the Commission's risk-management standards prescribed under Section 805(a):

- To promote robust risk management;
- To promote safety and soundness;
- To reduce systemic risks; and
- To support the stability of the broader financial system.

Section 805(c) provides, in addition, that the Commission's risk-management standards may address such areas as risk-management and default policies and procedures, among others areas.<sup>12</sup>

The Commission has adopted risk-management standards under Section 805(a)(2) of the Clearing Supervision Act and the Exchange Act (the "Clearing Agency Rules").<sup>13</sup> The Clearing Agency Rules require each covered clearing agency, among other things, to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain

<sup>8</sup> See 12 U.S.C. 5461(b).

<sup>9</sup> *Id.*

<sup>10</sup> 12 U.S.C. 5464(a)(2).

<sup>11</sup> 12 U.S.C. 5464(b).

<sup>12</sup> 12 U.S.C. 5464(c).

<sup>13</sup> 17 CFR 240.17Ad-22. See Securities Exchange Act Release No. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7-08-11). See also Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7-03-14) ("Covered Clearing Agency Standards"). The Commission established an effective date of December 12, 2016, and a compliance date of April 11, 2017, for the Covered Clearing Agency Standards. On March 4, 2017, the Commission granted covered clearing agencies a temporary exemption from compliance with Rule 17Ad-22(e)(3)(ii) and certain requirements in Rules 17Ad-22(e)(15)(i) and (ii) until December 31, 2017, subject to certain conditions. OCC is a "covered clearing agency" as defined in Rule 17Ad-22(a)(5).



minimum requirements for operations and risk-management practices on an ongoing basis. As such, it is appropriate for the Commission to review advance notices for consistency with the objectives and principles for risk-management standards described in Section 805(b) of the Clearing Supervision Act and the Clearing Agency Rules.

#### A. Consistency With Section 805(b) of the Clearing Supervision Act

The Commission believes the Advance Notice proposal is consistent with the stated objectives and principles of Section 805(b) of the Clearing Supervision Act.<sup>14</sup> Specifically, the Commission believes that the changes proposed in the Advance Notice are consistent with promoting robust risk management in the area of liquidity risk, as well as enhancing safety and soundness across the broader financial system.

The Commission believes that the expanded authority proposed by OCC under the Advance Notice would enhance OCC's ability to access liquid resources that, in turn, would allow OCC to continue to meet its settlement obligations to its Clearing Members in a timely fashion, thereby promoting robust liquidity risk management at OCC. The Commission notes that OCC's By-Laws already grant OCC the authority to borrow against the Clearing Fund to manage the bankruptcy, insolvency, receivership, suspension of operations or similar event of a Settlement Entity.<sup>15</sup> The proposed change would therefore constitute a limited expansion of that authority to relatively less extreme scenarios that nevertheless temporarily prevent a Settlement Entity from achieving daily settlement. While the Commission notes that this expansion of OCC's authority to use the Clearing Fund potentially expands that range of scenarios where OCC might have to use Clearing Fund resources, the Commission believes that the ability of OCC management to exercise its discretion to either borrow against the Clearing Fund or utilize some other tool would permit OCC to

consider and effectively manage such scenarios based on the facts and circumstances present.<sup>16</sup>

Further, the Commission believes that the Advance Notice is consistent with reducing systemic risks and promoting the stability of the broader financial system. The Commission believes that expanding OCC's authority to use the Clearing Fund in the manner proposed by the Advance Notice increases the probability of OCC being able to meet its settlement obligations to its Clearing Members. The ability to use the Clearing Fund to obtain liquid resources to cover a liquidity gap that arises where a Settlement Entity is unable to perform enhances OCC's ability to contain losses and liquidity pressures that otherwise might cause financial distress to OCC or its Clearing Members, thereby enhancing safety and soundness across the broader financial system. The Commission believes that the Advance Notice is designed to bolster OCC's ability to meet its settlement obligations even if a Settlement Entity temporarily fails to achieve daily settlement with OCC, thereby reducing the risk of loss contagion and enhancing the ability of OCC and its Clearing Members to provide reliability, stability, and safety to the financial markets that they serve. Accordingly, the Commission believes that the proposal could help to reduce systemic risk and support the stability of the broader financial system, consistent with Section 805(b) of the Clearing Supervision Act.

#### B. Consistency With Rule 17Ad-22(e)(7)(viii) Under the Exchange Act

The Commission further believes that the proposed change is consistent with Rule 17 Ad-22(e)(7)(viii), which requires that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, effectively measure, monitor, and manage liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity by, at a minimum, addressing foreseeable liquidity shortfalls that would not be covered by its liquid resources and seek to avoid unwinding, revoking, or delaying the same-day settlement of payment obligations.<sup>17</sup>

<sup>16</sup> For example, OCC could use existing authority to expand the settlement window under OCC Rule 505, rather than borrowing against the Clearing Fund, should it determine that this tool would be more appropriate in light of other demands on Clearing Fund resources.

<sup>17</sup> 17 CFR 240.17Ad-22(e)(7)(viii).

The Commission believes that the Advance Notice is designed to improve OCC's ability to address a temporary liquidity need resulting from the failure of a Settlement Entity to achieve timely settlement. The Commission believes that the proposed change is designed to provide OCC with additional tools to address a foreseeable, temporary liquidity shortfall to prevent the unwinding, revoking, or delaying of same-day settlement should that scenario materialize, and is therefore consistent with Rule 17Ad-22(e)(7)(viii) under the Exchange Act.

#### IV. Conclusion

*It is therefore noticed*, pursuant to Section 806(e)(1)(G) of the Payment, Clearing and Settlement Supervision Act,<sup>18</sup> that the Commission *does not object* to Advance Notice (SR-OCC-2017-806) and that OCC is *authorized* to implement the proposed change.<sup>19</sup>

By the Commission.

**Brent J. Fields,**  
Secretary.

[FR Doc. 2017-27112 Filed 12-14-17; 8:45 am]

BILLING CODE 8011-01-P

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82290; File No. SR-NASDAQ-2017-123]

#### Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To List and Trade the Shares of the Causeway International Value NextShares™ and the Causeway Global Value NextShares™

December 11, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 28, 2017, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>18</sup> 12 U.S.C. 5465(e)(1)(G).

<sup>19</sup> OCC is authorized to implement the proposed change as of the date of this Notice of No Objection or the date of an Order by the Commission approving the proposed rule change filed in connection with this Advance Notice, SR-OCC-2017-017, whichever is later.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>14</sup> 12 U.S.C. 5464(b).

<sup>15</sup> The Commission previously issued a Notice of No Objection to OCC's Advance Notice Proposal to Enter Into a New Credit Facility Agreement, which involved a replacement of a revolving credit facility. See Securities Exchange Act Release No. 81058 (June 30, 2017), 82 FR 31371 (July 6, 2017) (SR-OCC-2017-803). The Commission believes that the present Advance Notice is consistent with the new credit facility agreement, which provides OCC with the ability to borrow to address reasonably anticipated same-day settlement obligations, including but not limited to, the failure of any Settlement Entity to achieve daily settlement.

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

The Exchange proposes to list and trade under Nasdaq Rule 5745 (Exchange-Traded Managed Fund Shares ("NextShares")) the common shares ("Shares") of the exchange-traded managed funds described herein (each a "Fund" and together, the "Funds").<sup>3</sup>

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

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

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

#### 1. Purpose

The Exchange proposes to list and trade the Shares of the Funds under Nasdaq Rule 5745, which governs the listing and trading of exchange-traded managed fund shares, as defined in Nasdaq Rule 5745(c)(1), on the Exchange.<sup>4</sup> Causeway ETMF Trust, which is discussed below, is registered with the Commission as an open-end investment company and has filed a registration statement on Form N-1A ("Registration Statement") with the Commission. The Funds are each a series of Causeway ETMF Trust and will be advised by an investment adviser registered under the Investment Advisers Act of 1940 ("Advisers Act"), as described below. The Funds will be actively managed and will pursue the principal investment strategies noted below.<sup>5</sup>

<sup>3</sup> Except for the specific Fund information set forth below, this rule filing conforms to the rule filing, as modified by amendments 1 and 2 thereto, relating to the listing and trading on Nasdaq of the shares of 18 series of the Eaton Vance ETMF Trust and the Eaton Vance ETMF Trust II, as approved by the Commission in Securities Exchange Act Release No. 75499 (July 21, 2015) (SR-NASDAQ-2015-036).

<sup>4</sup> The Commission approved Nasdaq Rule 5745 in Securities Exchange Act Release No. 34-73562 (Nov. 7, 2014), 79 FR 68309 (Nov. 14, 2014) (SR-NASDAQ-2014-020).

<sup>5</sup> Additional information regarding the Funds will be available on the free public website for the

#### I. Causeway ETMF Trust

Causeway ETMF Trust is registered with the Commission as an open-end investment company and has filed a Registration Statement with the Commission.<sup>6</sup> The following Funds are each a series of Causeway ETMF Trust.<sup>7</sup>

Causeway Capital Management LLC (the "Adviser") will be the adviser to the Funds. The Adviser is not a registered broker-dealer, and is not affiliated with a broker-dealer. Personnel who make decisions on a Fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the open-end fund's portfolio.<sup>8</sup>

In the event that (a) the Adviser registers as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser to a Fund is a registered broker-dealer or is affiliated with a broker-dealer, such adviser or sub-adviser will implement and will maintain a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to a Fund's portfolio and will be subject to procedures designed

Funds at [www.causewayfunds.com](http://www.causewayfunds.com) and in the Registration Statement for the Funds.

<sup>6</sup> See initial Registration Statement on Form N-1A for Causeway ETMF Trust dated September 20, 2017 (File Nos. 333-220536 and 811-23294). The descriptions of the Funds and the Shares contained herein conform to the initial Registration Statement.

<sup>7</sup> The Commission has issued an order granting Causeway ETMF Trust and certain affiliates exemptive relief under the Investment Company Act of 1940, as amended (the "Investment Company Act"). See Investment Company Act Release No. 32485 (February 22, 2017) (File No. 812-14729).

<sup>8</sup> An investment adviser to an open-end fund is required to be registered under the Advisers Act. As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

to prevent the use and dissemination of material non-public information regarding such portfolio.

SEI Investments Distribution Co. ("SIDCO") will be the principal underwriter and distributor of each Fund's Shares. SEI Investments Global Funds Services, Inc. will act as the administrator and accounting agent to each Fund; The Bank of New York Mellon will act as transfer agent and custodian to the Funds; ICE Data Indices, LLC will calculate intraday indicative values ("IIVs") for each Fund.

The Funds will be actively managed and will pursue the principal investment strategies described below.<sup>9</sup>

Causeway International Value NextShares ("International Value NextShares")

The investment objective of the International Value NextShares is to seek long-term growth of capital and income. Under normal market conditions, the International Value NextShares will invest primarily in equity securities of companies in developed countries outside the U.S. Normally, the International Value NextShares will invest at least 80% of its total assets in equity securities of companies in a number of foreign countries and normally will invest the majority of its total assets in equity securities of companies that pay dividends or repurchase their shares. The International Value NextShares may invest in emerging (less developed) markets. The International Value NextShares considers a country to be an emerging market if the country is included in the MSCI Emerging Markets Index. The International Value NextShares may invest in equity securities of companies of any market capitalization, and will not be required to invest a minimum amount and will not be limited to investing a maximum amount in any particular country.

Causeway Global Value NextShares ("Global Value NextShares")

The investment objective of the Global Value NextShares is to seek long-term growth of capital and income. Under normal market conditions, the Global Value NextShares will invest primarily in equity securities of companies in developed and emerging countries outside the U.S. and of companies in the U.S. Normally, the Global Value NextShares will invest the

<sup>9</sup> Additional information regarding the Funds will be available on a free public website for the Funds ([www.causewayfunds.com](http://www.causewayfunds.com), which may contain links for certain information to [www.nextshares.com](http://www.nextshares.com)) and in the Registration Statement for the Funds.



majority of its total assets in equity securities of companies that pay dividends or repurchase their shares.

Under normal circumstances, the Global Value NextShares will invest at least 40% of its total assets in a number of countries outside the U.S. The Global Value NextShares may invest in emerging (less developed) markets. The Global Value NextShares considers a country to be an emerging market if the country is included in the MSCI Emerging Markets Index. The Global Value NextShares may also invest in frontier markets. The Global Value NextShares considers a country to be a frontier market if the country is classified by MSCI, based on a country's economic development, size, liquidity and market accessibility, as a frontier market.

The Global Value NextShares may invest in equity securities of companies of any market capitalization, and will not be required to invest a minimum amount and will not be limited to investing a maximum amount in any particular country.

#### Creations and Redemptions of Shares

Shares will be issued and redeemed on a daily basis at a Fund's next-determined net asset value ("NAV")<sup>10</sup> in specified blocks of Shares called "Creation Units." A Creation Unit will consist of at least 25,000 Shares. Creation Units may be purchased and redeemed by or through "Authorized Participants."<sup>11</sup> Purchases and sales of Shares in amounts less than a Creation Unit may be effected only in the secondary market, as described below, and not directly with a Fund.

The creation and redemption process for a Fund may be effected "in kind," in cash, or in a combination of securities and cash. Creation "in kind" means that an Authorized Participant—usually a

brokerage house or large institutional investor—purchases the Creation Unit with a basket of securities equal in value to the aggregate NAV of the Shares in the Creation Unit. When an Authorized Participant redeems a Creation Unit in kind, it receives a basket of securities equal in value to the aggregate NAV of the Shares in the Creation Unit.<sup>12</sup>

#### Composition File

As defined in Nasdaq Rule 5745(c)(3), the Composition File is the specified portfolio of securities and/or cash that a Fund will accept as a deposit in issuing a Creation Unit of Shares, and the specified portfolio of securities and/or cash that a Fund will deliver in a redemption of a Creation Unit of Shares. The Composition File will be disseminated through the NSCC once each business day before the open of trading in Shares on such day and also will be made available to the public each day on a free public website.<sup>13</sup> Because each Fund seeks to preserve the confidentiality of its current portfolio trading program, a Fund's Composition File generally will not be a pro rata reflection of the Fund's investment positions. Each security included in the Composition File will be a current holding of the relevant Fund, but the Composition File generally will not include all of the securities in that Fund's portfolio or match the weightings of the included securities in the portfolio. Securities that the Adviser is in the process of acquiring for a Fund generally will not be represented in the Fund's Composition File until their purchase has been completed. Similarly, securities that are held in a Fund's portfolio but in the process of being sold may not be removed from its Composition File until the sale program is substantially completed. To the extent that a Fund creates or redeems Shares in kind, it will use cash amounts to supplement the in-kind transactions to the extent necessary to ensure that Creation Units are purchased and redeemed at NAV. The Composition File also may consist entirely of cash, in

which case it will not include any of the securities in a Fund's portfolio.<sup>14</sup>

#### Transaction Fees

All persons purchasing or redeeming Creation Units are expected to incur a transaction fee to cover the estimated cost to the relevant Fund of processing the transaction, including the costs of clearance and settlement charged to it by NSCC or DTC, and the estimated trading costs (*i.e.*, brokerage commissions, bid-ask spread and market impact) to be incurred in converting the Composition File to or from the desired portfolio holdings. The transaction fee is determined daily and will be limited to amounts approved by the board of trustees of the Funds and determined by the Adviser to be appropriate to defray the expenses that a Fund incurs in connection with the purchase or redemption of Creation Units.

The purpose of transaction fees is to protect a Fund's existing shareholders from the dilutive costs associated with the purchase and redemption of Creation Units. Transaction fees may vary over time for a Fund depending on the estimated trading costs for its portfolio positions and Composition File, processing costs and other considerations. To the extent that a Fund specifies greater amounts of cash in its Composition File, it may impose higher transaction fees. In addition, to the extent that a Fund includes in its Composition File instruments that clear through DTC, the Fund may impose higher transaction fees than when the Composition File consists solely of instruments that clear through NSCC, because DTC may charge more than NSCC in connection with Creation Unit transactions.<sup>15</sup> The transaction fees applicable to a Fund's purchases and redemptions on a given business day will be disseminated through the NSCC prior to the open of market trading on that day and also will be made available

<sup>10</sup> As with other registered open-end investment companies, NAV generally will be calculated daily (on each day the New York Stock Exchange is open for trading), as of 4:00 p.m. Eastern Time. NAV will be calculated by dividing a Fund's net asset value by the number of Shares outstanding. Information regarding the valuation of investments in calculating a Fund's NAV will be contained in the Registration Statement for its Shares.

<sup>11</sup> "Authorized Participants" will be either: (1) "participating parties," *i.e.*, brokers or other participants in the Continuous Net Settlement System ("CNS System") of the National Securities Clearing Corporation ("NSCC"), a clearing agency registered with the Commission and affiliated with the Depository Trust Company ("DTC"), or (2) DTC participants, which in either case have executed participant agreements with a Fund's distributor, and which have been acknowledged by the transfer agent, regarding the creation and redemption of Creation Units. Investors will not have to be Authorized Participants in order to transact in Creation Units, but must place an order through and make appropriate arrangements with an Authorized Participant for such transactions.

<sup>12</sup> In compliance with Nasdaq Rule 5745(b)(5), which applies to Shares based on an international or global portfolio, Causeway ETMF Trust's application for exemptive relief under the Investment Company Act states that Causeway ETMF Trust will comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933, as amended (15 U.S.C. 77a).

<sup>13</sup> The free public website containing the Composition File will be [www.nextshares.com](http://www.nextshares.com).

<sup>14</sup> In determining whether a Fund will issue or redeem Creation Units entirely on a cash basis, the key consideration will be the benefit that would accrue to the Fund and its investors. For instance, in bond transactions, the Adviser may be able to obtain better execution for a Fund than Authorized Participants because of the Adviser's size, experience and potentially stronger relationships in the fixed-income markets.

<sup>15</sup> Authorized Participants that participate in the CNS System of the NSCC are expected to be able to use the enhanced NSCC/CNS process for effecting in-kind purchases and redemptions of Shares (the "NSCC Process") to purchase and redeem Creation Units of a Fund that limits the composition of its basket to include only NSCC Process-eligible instruments (generally domestic equity securities and cash). Because the NSCC Process is generally more efficient than the DTC clearing process, NSCC is likely to charge a Fund less than DTC to settle purchases and redemptions of Creation Units.

to the public each day on a free public website.<sup>16</sup> In all cases, the transaction fees will be limited in accordance with the requirements of the Commission applicable to open-end management investment companies offering redeemable securities.

#### NAV-Based Trading

Because Shares will be listed and traded on the Exchange, Shares will be available for purchase and sale on an intraday basis. Shares will be purchased and sold in the secondary market at prices directly linked to the relevant Fund's next-determined NAV using a new trading protocol called "NAV-Based Trading."<sup>17</sup> All bids, offers and execution prices of Shares will be expressed as a premium/discount (which may be zero) to a Fund's next-determined NAV (e.g., NAV-\$0.01, NAV+\$0.01). A Fund's NAV will be determined daily (on each day the New York Stock Exchange is open for trading), as of 4:00 p.m. Eastern Time. Trade executions will be binding at the time orders are matched on Nasdaq's facilities, with the transaction prices contingent upon the determination of NAV.

#### Trading Premiums and Discounts

Bid and offer prices for Shares will be quoted throughout the day relative to NAV. The premium or discount to NAV at which Share prices are quoted and transactions are executed will vary depending on market factors, including the balance of supply and demand for Shares among investors, transaction fees and other costs in connection with creating and redeeming Creation Units of Shares, the cost and availability of borrowing Shares, competition among market makers, the Share inventory positions and inventory strategies of market makers, the profitability requirements and business objectives of market makers, and the volume of Share trading. Reflecting such market factors, prices for Shares in the secondary market may be above, at or below NAV. A Fund with higher transaction fees may trade at wider premiums or discounts to NAV than other funds with lower transaction fees, reflecting the added costs to market makers of

managing their Share inventory positions through purchases and redemptions of Creation Units.

Because making markets in Shares will be simple to manage and low risk, competition among market makers seeking to earn reliable, low-risk profits should enable the Shares to routinely trade at tight bid-ask spreads and narrow premiums/discounts to NAV. As noted below, each Fund will make available on a free public website that will be updated on a daily basis current and historical trading spreads and premiums/discounts of Shares trading in the secondary market.<sup>18</sup>

*Transmitting and Processing Orders.* Member firms will utilize certain existing order types and interfaces to transmit Share bids and offers to Nasdaq, which will process Share trades like trades in shares of other listed securities.<sup>19</sup> In the systems used to transmit and process transactions in Shares, a Fund's next-determined NAV will be represented by a proxy price (e.g., 100.00) and a premium/discount of a stated amount to the next-determined NAV to be represented by the same increment/decrement from the proxy price used to denote NAV (e.g., NAV-\$0.01 would be represented as 99.99; NAV+\$0.01 as 100.01).

To avoid potential investor confusion, Nasdaq will work with member firms and providers of market data services to seek to ensure that representations of intraday bids, offers and execution prices of Shares that are made available to the investing public follow the "NAV-\$0.01/NAV+\$0.01" (or similar) display format. All Shares listed on the Exchange will have a unique identifier associated with their ticker symbols, which would indicate that the Shares are traded using NAV-Based Trading. Nasdaq makes available to member firms and market data services certain proprietary data feeds that are designed to supplement the market information disseminated through the consolidated tape ("Consolidated Tape"). Specifically, the Exchange will use the Nasdaq Basic and Nasdaq Last Sale data feeds to disseminate intraday price and quote data for Shares in real time in the "NAV-\$0.01/NAV+\$0.01" (or similar) display format. Member firms could use

the Nasdaq Basic and Nasdaq Last Sale data feeds to source intraday Share prices for presentation to the investing public in the "NAV-\$0.01/NAV+\$0.01" (or similar) display format. Alternatively, member firms could source intraday Share prices in proxy price format from the Consolidated Tape and other Nasdaq data feeds (e.g., Nasdaq TotalView and Nasdaq Level 2) and use a simple algorithm to convert prices into the "NAV-\$0.01/NAV+\$0.01" (or similar) display format. As noted below, prior to the commencement of trading in a Fund, the Exchange will inform its members in an Information Circular of the identities of the specific Nasdaq data feeds from which intraday Share prices in proxy price format may be obtained.

*Intraday Reporting of Quotes and Trades.* All bids and offers for Shares and all Share trade executions will be reported intraday in real time by the Exchange to the Consolidated Tape<sup>20</sup> and separately disseminated to member firms and market data services through the Exchange data feeds listed above. The Exchange will also provide the member firms participating in each Share trade with a contemporaneous notice of trade execution, indicating the number of Shares bought or sold and the executed premium/discount to NAV.<sup>21</sup>

*Final Trade Pricing, Reporting and Settlement.* All executed Share trades will be recorded and stored intraday by Nasdaq to await the calculation of a Fund's end-of-day NAV and the determination of final trade pricing. After a Fund's NAV is calculated and provided to the Exchange, Nasdaq will price each Share trade entered into during the day at that Fund's NAV plus/minus the trade's executed premium/discount. Using the final trade price, each executed Share trade will then be disseminated to member firms and market data services via an FTP file to be created for exchange-traded managed funds and confirmed to the member firms participating in the trade to supplement the previously provided

<sup>16</sup> The free public website will be [www.nextshares.com](http://www.nextshares.com).

<sup>17</sup> Aspects of NAV-Based Trading are protected intellectual property subject to issued and pending U.S. patents held by NextShares Solutions LLC ("NextShares Solutions"), a wholly owned subsidiary of Eaton Vance Corp. Nasdaq has entered into a license agreement with NextShares Solutions to allow for NAV-Based Trading on the Exchange of exchange-traded managed funds that have themselves entered into license agreements with NextShares Solutions.

<sup>18</sup> The free public website containing this information will be [www.nextshares.com](http://www.nextshares.com), which will be available directly and through a link from [www.causewayfunds.com](http://www.causewayfunds.com).

<sup>19</sup> As noted below, all orders to buy or sell Shares that are not executed on the day the order is submitted will be automatically cancelled as of the close of trading on such day. Prior to the commencement of trading in a Fund, the Exchange will inform its members in an Information Circular of the effect of this characteristic on existing order types.

<sup>20</sup> Due to systems limitations, the Consolidated Tape will report intraday execution prices and quotes for Shares using a proxy price format. As noted, Nasdaq will separately report real-time execution prices and quotes to member firms and providers of market data services in the "NAV-\$0.01/NAV+\$0.01" (or similar) display format, and otherwise seek to ensure that representations of intraday bids, offers and execution prices for Shares that are made available to the investing public follow the same display format.

<sup>21</sup> All orders to buy or sell Shares that are not executed on the day the order is submitted will be automatically cancelled as of the close of trading on such day.

information to include final pricing.<sup>22</sup> After the pricing is finalized, Nasdaq will deliver the Share trading data to NSCC for clearance and settlement, following the same processes used for the clearance and settlement of trades in other exchange-traded securities.

#### Availability of Information

Prior to the commencement of market trading in Shares, a Fund will be required to establish and maintain a free public website through which its current prospectus may be downloaded.<sup>23</sup> The free public website will include directly or through a link additional Fund information updated on a daily basis, including the prior business day's NAV, and the following trading information for such business day expressed as premiums/discounts to NAV: (a) Intraday high, low, average and closing prices of Shares in Exchange trading; (b) the midpoint of the highest bid and lowest offer prices as of the close of Exchange trading, expressed as a premium/discount to NAV (the "Closing Bid/Ask Midpoint"); and (c) the spread between highest bid and lowest offer prices as of the close of Exchange trading (the "Closing Bid/Ask Spread").<sup>24</sup> The free public website will also contain charts showing the frequency distribution and range of values of trading prices, Closing Bid/Ask Midpoints and Closing Bid/Ask Spreads over time.

The Composition File will be disseminated through the NSCC before the open of trading in Shares on each business day and also will be made available to the public each day on a free public website as noted above.<sup>25</sup> Consistent with the disclosure requirements that apply to traditional open-end investment companies, a complete list of current Fund portfolio positions will be made available at least once each calendar quarter, with a reporting lag of not more than 60 days. A Fund may provide more frequent disclosures of portfolio positions at its discretion.

Reports of Share transactions will be disseminated to the market and delivered to the member firms

<sup>22</sup> File Transfer Protocol ("FTP") is a standard network protocol used to transfer computer files on the internet. Nasdaq will arrange for the daily dissemination of an FTP file with executed Share trades to member firms and market data services.

<sup>23</sup> The free public website containing this information will be [www.causewayfunds.com](http://www.causewayfunds.com).

<sup>24</sup> The free public website containing a Fund's NAV will be [www.causewayfunds.com](http://www.causewayfunds.com). All other information listed will be made available on [www.nextshares.com](http://www.nextshares.com), which can be accessed directly and via a link on [www.causewayfunds.com](http://www.causewayfunds.com).

<sup>25</sup> The free public website containing this information will be [www.nextshares.com](http://www.nextshares.com).

participating in the trade contemporaneous with execution. Once a Fund's daily NAV has been calculated and disseminated, Nasdaq will price each Share trade entered into during the day at the relevant Fund's NAV plus/minus the trade's executed premium/discount. Using the final trade price, each executed Share trade will then be disseminated to member firms and market data services via an FTP file to be created for exchange-traded managed funds and confirmed to the member firms participating in the trade to supplement the previously provided information to include final pricing.

Information regarding NAV-based trading prices, best bids and offers for Shares, and volume of Shares traded will be continuously available on a real-time basis throughout each trading day on brokers' computer screens and other electronic services.

#### Initial and Continued Listing

Shares will conform to the initial and continued listing criteria as set forth under Nasdaq Rule 5745. A minimum of 50,000 Shares and no less than two Creation Units of each Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily (on each day the New York Stock Exchange is open for trading) and provided to Nasdaq via the Mutual Fund Quotation Service ("MFQS") by the fund accounting agent. As soon as the NAV is entered into MFQS, Nasdaq will disseminate the NAV to market participants and market data vendors via the Mutual Fund Dissemination Service ("MFDS") so all firms will receive the NAV per Share at the same time. The Reporting Authority<sup>26</sup> also will implement and maintain, or will ensure that the Composition File will be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding a Fund's portfolio positions and changes in the positions.

An estimated value of an individual Share, defined in Nasdaq Rule 5745(c)(2) as the "Intraday Indicative Value," will be calculated and disseminated at intervals of not more than 15 minutes throughout the Regular Market Session<sup>27</sup> when Shares trade on

<sup>26</sup> See Nasdaq Rule 5745(c)(4).

<sup>27</sup> See Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 4 a.m. to 9:30 a.m. Eastern Time; (2) Regular Market Session from 9:30 a.m. to 4 p.m. or 4:15 p.m. Eastern Time; and (3) Post-Market Session from 4 p.m. or 4:15 p.m. to 8 p.m. Eastern Time).

the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the IIV for each Fund will be calculated on an intraday basis and provided to Nasdaq for dissemination via the Nasdaq Global Index Service ("GIDS").

The IIV for each Fund will be based on current information regarding the value of the securities and other assets held by a Fund.<sup>28</sup> The purpose of the IIV for each Fund is to enable investors to estimate the next-determined NAV so they can determine the number of Shares to buy or sell if they want to transact in an approximate dollar amount (e.g., if an investor wants to acquire approximately \$5,000 of a Fund, how many Shares should the investor buy?).<sup>29</sup>

The Adviser is not a registered broker-dealer, or affiliated with a broker-dealer. Personnel who make decisions on a Fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the open-end fund's portfolio.

In the event that (a) the Adviser registers as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser to a Fund is a registered broker-dealer or becomes affiliated with a broker-dealer, such adviser or sub-adviser will implement and will maintain a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to a Fund's portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

#### Trading Halts

The Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in Shares. Nasdaq will halt trading in Shares under the conditions specified in

<sup>28</sup> IIVs for each Fund disseminated throughout each trading day would be based on the same portfolio as used to calculate that day's NAV. A Fund will reflect purchases and sales of portfolio positions in its NAV the next business day after trades are executed.

<sup>29</sup> Because, in NAV-Based Trading, prices of executed trades are not determined until the reference NAV is calculated, buyers and sellers of Shares during the trading day will not know the final value of their purchases and sales until the end of the trading day. A Fund's Registration Statement, free public website and any advertising or marketing materials will include prominent disclosure of this fact. Although the IIV for a Fund may provide useful estimates of the value of intraday trades, they cannot be used to calculate with precision the dollar value of the Shares to be bought or sold.

Nasdaq Rules 4120 and in Nasdaq Rule 5745(d)(2)(C). Additionally, Nasdaq may cease trading Shares if other unusual conditions or circumstances exist which, in the opinion of Nasdaq, make further dealings on Nasdaq detrimental to the maintenance of a fair and orderly market. To manage the risk of a non-regulatory Share trading halt, Nasdaq has in place back-up processes and procedures to ensure orderly trading.

Because, in NAV-Based Trading, all trade execution prices are linked to end-of-day NAV, buyers and sellers of Shares should be less exposed to risk of loss due to intraday trading halts than buyers and sellers of conventional exchange-traded funds (“ETFs”) and other exchange-traded securities.

Every order to trade Shares of a Fund is subject to the proxy price protection threshold of plus/minus \$1.00, which determines the lower and upper threshold for the life of the order and whereby the order will be cancelled at any point if it exceeds \$101.00 or falls below \$99.00, the established thresholds.<sup>30</sup> With certain exceptions, each order also must contain the applicable order attributes, including routing instructions and time-in-force information, as described in Nasdaq Rule 4703.<sup>31</sup>

#### Trading Rules

Nasdaq deems Shares to be equity securities, thus rendering trading in Shares subject to Nasdaq’s existing rules governing the trading of equity securities. Nasdaq will allow trading in Shares from 9:30 a.m. until 4:00 p.m. Eastern Time.

#### Surveillance

The Exchange represents that trading in Shares will be subject to the existing trading surveillances, administered by both Nasdaq and the Financial Industry Regulatory Authority, Inc. (“FINRA”) on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>32</sup> The Exchange represents that these procedures are adequate to properly monitor trading of Shares on the Exchange and to deter and detect violations of Exchange rules and applicable federal securities laws.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of

manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

FINRA, on behalf of the Exchange, will communicate as needed with other markets and other entities that are members of the Intermarket Surveillance Group (“ISG”) <sup>33</sup> regarding trading in Shares, and in exchange-traded securities and instruments held by a Fund (to the extent such exchange-traded securities and instruments are known through the publication of the Composition File and periodic public disclosures of a Fund’s portfolio holdings), and FINRA may obtain trading information regarding such trading from other markets and other entities. In addition, the Exchange may obtain information regarding trading in Shares, and in exchange-traded securities and instruments held by a Fund (to the extent such exchange-traded securities and instruments are known through the publication of the Composition File and periodic public disclosures of a Fund’s portfolio holdings), from markets and other entities that are members of ISG, which includes securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement.

In addition, the Exchange also has a general policy prohibiting the distribution of material non-public information by its employees.

#### Information Circular

Prior to the commencement of trading in a Fund, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares of each Fund. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and noting that Shares are not individually redeemable); (2) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in Shares to customers; (3) how information regarding the IIV and Composition File is disseminated; (4) the requirement that members deliver a prospectus to investors purchasing Shares prior to or concurrently with the

confirmation of a transaction; and (5) information regarding NAV-Based Trading protocols.

As noted above, all orders to buy or sell Shares that are not executed on the day the order is submitted will be automatically cancelled as of the close of trading on such day. The Information Circular will discuss the effect of this characteristic on existing order types. The Information Circular also will identify the specific Nasdaq data feeds from which intraday Share prices in proxy price format may be obtained.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to a Fund. Members purchasing Shares from a Fund for resale to investors will deliver a summary prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

The Information Circular also will reference that a Fund is subject to various fees and expenses described in the Registration Statement. The Information Circular will also disclose the trading hours of the Shares and the applicable NAV calculation time for the Shares. The Information Circular will disclose that information about the Shares will be publicly available on a Fund’s free public website.<sup>34</sup>

Information regarding Fund trading protocols will be disseminated to Nasdaq members in accordance with current processes for newly listed products. Nasdaq intends to provide its members with a detailed explanation of NAV-Based Trading through a Trader Alert issued prior to the commencement of trading in Shares on the Exchange.

#### Continued Listing Representations

All statements and representations made in this filing regarding (a) the description of the portfolios or reference assets, (b) limitations on portfolio holdings or reference assets, (c) dissemination and availability of the reference asset or intraday indicative values, or (d) the applicability of Exchange listing rules shall constitute continued listing requirements for listing the Shares on the Exchange. In addition, the issuer has represented to the Exchange that it will advise the Exchange of any failure by a Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for

<sup>30</sup> See Nasdaq Rule 5745(h).

<sup>31</sup> See Nasdaq Rule 5745(b)(6).

<sup>32</sup> FINRA provides surveillance of trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA’s performance under this regulatory services agreement.

<sup>33</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org). The Exchange notes that not all components of a Fund’s portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

<sup>34</sup> See *supra* footnote 24.

compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>35</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>36</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares would be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Nasdaq Rule 5745. The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of Shares on Nasdaq and to deter and detect violations of Exchange rules and the applicable federal securities laws. The Adviser is not a registered broker-dealer, and is not affiliated with a broker-dealer. Personnel who make decisions on a Fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the open-end fund's portfolio.

In the event that (a) the Adviser registers as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser to a Fund is a registered broker-dealer or becomes affiliated with a broker-dealer, such adviser or sub-adviser will implement and will maintain a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to a Fund's portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest. The Exchange will obtain a representation from the issuer of Shares that the NAV per Share will be calculated daily (on each day the New York Stock Exchange is open for trading) and provided to Nasdaq via the MFQS by the fund accounting agent. As soon as the NAV is entered into MFQS, Nasdaq will disseminate the NAV to market participants and market data vendors via MFDS so all firms will receive the NAV per share at the same time. In addition, a large amount of information would be publicly available regarding a Fund and the Shares, thereby promoting market transparency.

Prior to the commencement of market trading in Shares, a Fund will be required to establish and maintain a free public website through which its current prospectus may be downloaded.<sup>37</sup> The free public website will include directly or through a link additional Fund information updated on a daily basis, including the prior business day's NAV, and the following trading information for such business day expressed as premiums/discounts to NAV: (a) Intraday high, low, average and closing prices of Shares in Exchange trading; (b) the Closing Bid/Ask Midpoint; and (c) the Closing Bid/Ask Spread.<sup>38</sup> The free public website will also contain charts showing the frequency distribution and range of values of trading prices, Closing Bid/Ask Midpoints and Closing Bid/Ask Spreads over time.

The Composition File will be disseminated through the NSCC before the open of trading in Shares on each business day and also will be made available to the public each day on a free public website.<sup>39</sup> An estimated value of an individual Share, defined in Nasdaq Rule 5745(c)(2) as the "Intraday Indicative Value," will be calculated and disseminated at intervals of not more than 15 minutes throughout the Regular Market Session<sup>40</sup> when Shares trade on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the IIV for each Fund will be calculated on an intraday basis and provided to Nasdaq for dissemination via GIDS. A complete list of current portfolio positions for a Fund will be made available at least once each calendar quarter, with a reporting lag of not more than 60 days. A Fund may

provide more frequent disclosures of portfolio positions at its discretion.

Transactions in Shares will be reported to the Consolidated Tape at the time of execution in proxy price format and will be disseminated to member firms and market data services through Nasdaq's trading service and market data interfaces, as defined above. Once a Fund's daily NAV has been calculated and the final price of its intraday Share trades has been determined, Nasdaq will deliver a confirmation with final pricing to the transacting parties. At the end of the day, Nasdaq will also post a newly created FTP file with the final transaction data for the trading and market data services. Information regarding NAV-based trading prices, best bids and offers for Shares, and volume of Shares traded will be continuously available on a real-time basis throughout each trading day on brokers' computer screens and other electronic services. Because Shares will trade at prices based on the next-determined NAV, investors will be able to buy and sell individual Shares at a known premium or discount to NAV that they can limit by transacting using limit orders at the time of order entry. Trading in Shares will be subject to Nasdaq Rules 5745(d)(2)(B) and (C), which provide for the suspension of trading or trading halts under certain circumstances, including if, in the view of the Exchange, trading in Shares becomes inadvisable.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of the Funds, which seek to provide investors with access to actively managed investment strategies in a structure that offers the cost and tax efficiencies and shareholder protections of ETFs, while removing the requirement for daily portfolio holdings disclosure, and is designed to ensure a tight relationship between market trading prices and NAV.

For the above reasons, Nasdaq believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

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

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. In fact, the Exchange believes that the introduction of the Funds would promote competition by making available to investors actively managed investment

<sup>37</sup> See *supra* footnote 23.

<sup>38</sup> See *supra* footnote 24.

<sup>39</sup> See *supra* footnote 13.

<sup>40</sup> See *supra* footnote 27.

<sup>35</sup> 15 U.S.C. 78f(b).

<sup>36</sup> 15 U.S.C. 78f(b)(5).

strategies in structures that offer the cost and tax efficiencies and shareholder protections of ETFs, while removing the requirement for daily portfolio holdings disclosure, and is designed to ensure a tight relationship between market trading prices and NAV. Moreover, the Exchange believes that the proposed method of Share trading would provide investors with transparency of trading costs, and the ability to control trading costs using limit orders, that is not available for conventionally traded ETFs.

These developments could significantly enhance competition to the benefit of the markets and investors.

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

No written comments were either solicited or received.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

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

#### Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-NASDAQ-2017-123 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 No. SR-NASDAQ-2017-123. This file number should be included on the subject line if email is used. To help the

Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-NASDAQ-2017-123 and should be submitted on or before January 5, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>41</sup>

**Robert Errett,**  
Deputy Secretary.

[FR Doc. 2017-27012 Filed 12-14-17; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82283; File No. SR-ISE-2017-045]

### Self-Regulatory Organizations; Nasdaq ISE, LLC Notice of Filing of Amendment No. 2 to a Proposed Rule Change To Adopt Rule 7004 and Chapter XV, Section 11

December 11, 2017.

On May 12, 2017, Nasdaq ISE, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt a fee schedule to establish the fees

for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail ("CAT NMS Plan"). The proposed rule change was published in the **Federal Register** for comment on May 24, 2017.<sup>3</sup> The Commission received seven comment letters on the proposed rule change,<sup>4</sup> and a response to comments from the Participants.<sup>5</sup> On June 30, 2017, the Commission temporarily suspended and initiated proceedings to determine whether to approve or disapprove the proposed rule change.<sup>6</sup> The Commission thereafter received seven comment letters,<sup>7</sup> and a response to comments

<sup>3</sup> See Securities Exchange Act Release No. 80715 (May 18, 2017), 82 FR 23895 (May 24, 2017) ("Original Proposal").

<sup>4</sup> Since the CAT NMS Plan Participants' proposed rule changes to adopt fees to be charged to Industry Members to fund the consolidated audit trail are substantively identical, the Commission is considering all comments received on the proposed rule changes regardless of the comment file to which they were submitted. See text accompanying notes 13-16 *infra*, for a list of the CAT NMS Plan Participants. See Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Brent J. Fields, Secretary, Commission (dated June 6, 2017), available at: <https://www.sec.gov/comments/sr-batsbzx-2017-38/batsbzx201738-1788188-153228.pdf>; Letter from Patricia L. Cerny and Steven O'Malley, Compliance Consultants, to Brent J. Fields, Secretary, Commission (dated June 12, 2017), available at: <https://www.sec.gov/comments/sr-cboe-2017-040/cboe2017040-1799253-153675.pdf>; Letter from Daniel Zinn, General Counsel, OTC Markets Group Inc., to Eduardo A. Aleman, Assistant Secretary, Commission (dated June 13, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-1801717-153703.pdf>; Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission (dated June 22, 2017), available at: <https://www.sec.gov/comments/sr-cboe-2017-040/cboe2017040-1819670-154195.pdf>; Letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, Commission (dated June 23, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-1822454-154283.pdf>; and Letter from Suzanne H. Shatto, Investor, to Commission (dated June 27, 2017), available at: <https://www.sec.gov/comments/sr-batsedgx-2017-22/batsedgx201722-154443.pdf>. The Commission also received a comment letter which is not pertinent to these proposed rule changes. See Letter from Christina Crouch, Smart Ltd., to Brent J. Fields, Secretary, Commission (dated June 5, 2017), available at: <https://www.sec.gov/comments/sr-batsbzx-2017-38/batsbzx201738-1785545-153152.htm>.

<sup>5</sup> See Letter from CAT NMS Plan Participants to Brent J. Fields, Secretary, Commission (dated June 29, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-1832632-154584.pdf>.

<sup>6</sup> See Securities Exchange Act Release No. 81067 (June 30, 2017), 82 FR 31656 (July 7, 2017).

<sup>7</sup> See Letter from W. Hardy Callcott, Partner, Sidley Austin LLP, to Brent J. Fields, Secretary, Commission (dated July 27, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2148338-157737.pdf>; Letter from Kevin Coleman, General Counsel and Chief Compliance Officer, Belvedere Trading LLC, to Brent J. Fields, Secretary, Commission (dated July

<sup>41</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

from the Participants.<sup>8</sup> On November 6, 2017, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>9</sup> On November 9, 2017, the Commission extended the time period within which to approve the proposed rule change or disapprove the proposed rule change to January 14, 2018.<sup>10</sup> On December 5, 2017, the Exchange filed Amendment No. 2 to the proposed rule change, as described in Items I and II below, which Items have been prepared by the Exchange.<sup>11</sup> The Commission is publishing this notice to solicit comments from interested persons on Amendment No. 2.

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

On May 12, 2017, Nasdaq ISE, LLC ("ISE" or "Exchange"), filed with the Securities and Exchange Commission ("Commission" or "SEC") proposed rule change SR-ISE-2017-45 (the "Original Proposal"), pursuant to which the Exchange proposed to adopt a fee schedule to establish the fees for Industry Members related to the National Market System Plan Governing

28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2148360-157740.pdf>; Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2151228-157745.pdf>; Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2150977-157744.pdf>; Letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2150818-157743.pdf>; Letter from John Kinahan, Chief Executive Officer, Group One Trading, L.P., to Brent J. Fields, Secretary, Commission (dated August 10, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-2214568-160619.pdf>; Letter from Joseph Molluso, Executive Vice President and CFO, Virtu Financial, to Brent J. Fields, Commission (dated August 18, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-2238648-160830.pdf>.

<sup>8</sup> See Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Brent J. Fields, Commission, Secretary (dated November 2, 2017), available at <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2674608-161412.pdf>.

<sup>9</sup> Amendment No. 1 to the proposed rule change replaced and superseded the Original Proposal in its entirety. Amendment No. 1 is available on the Commission's website for ISE at: <https://www.sec.gov/comments/sr-ise-2017-45/ise201745-2669797-161444.pdf>.

<sup>10</sup> See Securities Exchange Act Release No. 82049 (November 9, 2017), 82 FR 53549 (November 16, 2017).

<sup>11</sup> Amendment No. 2 replaces and supersedes Amendment No. 1 in its entirety.

the Consolidated Audit Trail (the "CAT NMS Plan" or "Plan").<sup>12</sup> On November 6, 2017, the Exchange filed an amendment to the Original Proposal ("Amendment No. 1"), which replaced the Original Proposal in its entirety. The Exchange is now filing this Amendment No. 2 to replace Amendment No. 1 in its entirety. This Amendment No. 2 describes the changes from the Original Proposal.

With this Amendment, the Exchange is including *Exhibit 4*, which reflects the changes to the text of the proposed rule change as set forth in the Original Proposal, and *Exhibit 5*, which reflects all proposed changes to the Exchange's current rule text.

The text of the proposed rule change is available on the Exchange's website at <http://ise.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

##### 1. Purpose

BOX Options Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc.,<sup>13</sup> Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc. ("FINRA"), Investors' Exchange LLC, Miami International Securities Exchange, LLC, MIAX

<sup>12</sup> Unless otherwise specified, capitalized terms used in this fee filing are defined as set forth herein, the CAT Compliance Rule Series, in the CAT NMS Plan, or the Original Proposal.

<sup>13</sup> Note that Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., LLC, C2 Options Exchange, Incorporated, and Chicago Board Options Exchange, Incorporated, have been renamed Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., respectively.

PEARL, LLC, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC,<sup>14</sup> Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC,<sup>15</sup> NYSE Arca, Inc. and NYSE National, Inc.<sup>16</sup> (collectively, the "Participants") filed with the Commission, pursuant to Section 11A of the Exchange Act<sup>17</sup> and Rule 608 of Regulation NMS thereunder,<sup>18</sup> the CAT NMS Plan.<sup>19</sup> The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act. The Plan was published for comment in the **Federal Register** on May 17, 2016,<sup>20</sup> and approved by the Commission, as modified, on November 15, 2016.<sup>21</sup> The Plan is designed to create, implement and maintain a consolidated audit trail ("CAT") that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. The Plan accomplishes this by creating CAT NMS, LLC (the "Company"), of which each Participant is a member, to operate the CAT.<sup>22</sup> Under the CAT NMS Plan, the Operating Committee of the Company ("Operating Committee") has discretion to establish funding for the Company to operate the CAT, including establishing fees that the Participants will pay, and establishing fees for Industry Members that will be

<sup>14</sup> ISE Gemini, LLC, ISE Mercury, LLC and International Securities Exchange, LLC have been renamed Nasdaq GEMX, LLC, Nasdaq MRX, LLC, and Nasdaq ISE, LLC, respectively. See Securities Exchange Act Release No. 80248 (March 15, 2017), 82 FR 14547 (March 21, 2017); Securities Exchange Act Release No. 80326 (March 29, 2017), 82 FR 16460 (April 4, 2017); and Securities Exchange Act Release No. 80325 (March 29, 2017), 82 FR 16445 (April 4, 2017).

<sup>15</sup> NYSE MKT LLC has been renamed NYSE American LLC. See Securities Exchange Act Release No. 80283 (March 21, 2017), 82 FR 15244 (March 27, 2017).

<sup>16</sup> National Stock Exchange, Inc. has been renamed NYSE National, Inc. See Securities Exchange Act Release No. 79902 (January 30, 2017), 82 FR 9258 (February 3, 2017).

<sup>17</sup> 15 U.S.C. 78k-1.

<sup>18</sup> 17 CFR 242.608.

<sup>19</sup> See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. See Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.

<sup>20</sup> Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30614 (May 17, 2016).

<sup>21</sup> Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) ("Approval Order").

<sup>22</sup> The Plan also serves as the limited liability company agreement for the Company.



implemented by the Participants (“CAT Fees”).<sup>23</sup> The Participants are required to file with the SEC under Section 19(b) of the Exchange Act any such CAT Fees applicable to Industry Members that the Operating Committee approves.<sup>24</sup> Accordingly, the Exchange submitted the Original Proposal to propose the Consolidated Audit Trail Funding Fees, which would require Industry Members that are SRO members to pay the CAT Fees determined by the Operating Committee.

The Commission published the Original Proposal for public comment in the **Federal Register** on May 24, 2017,<sup>25</sup> and received comments in response to the Original Proposal or similar fee filings by other Participants.<sup>26</sup> On June 30, 2017, the Commission suspended, and instituted proceedings to determine whether to approve or disapprove, the Original Proposal.<sup>27</sup> The Commission received seven comment letters in response to those proceedings.<sup>28</sup>

In response to the comments on the Original Proposal, the Operating Committee determined to make the following changes to the funding model: (1) Adds two additional CAT Fee tiers for Equity Execution Venues; (2) discounts the OTC Equity Securities market share of Execution Venue ATSs trading OTC Equity Securities as well as the market share of the FINRA over-the-counter reporting facility (“ORF”) by the average shares per trade ratio between NMS Stocks and OTC Equity Securities (calculated as 0.17% based on available data from the second quarter of 2017) when calculating the market

share of Execution Venue ATS trading OTC Equity Securities and FINRA; (3) discounts the Options Market Maker quotes by the trade to quote ratio for options (calculated as 0.01% based on available data for June 2016 through June 2017) when calculating message traffic for Options Market Makers; (4) discounts equity market maker quotes by the trade to quote ratio for equities (calculated as 5.43% based on available data for June 2016 through June 2017) when calculating message traffic for equity market makers; (5) decreases the number of tiers for Industry Members (other than the Execution Venue ATSs) from nine to seven; (6) changes the allocation of CAT costs between Equity Execution Venues and Options Execution Venues from 75%/25% to 67%/33%; (7) adjusts tier percentages and recovery allocations for Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATSs); (8) focuses the comparability of CAT Fees on the individual entity level, rather than primarily on the comparability of affiliated entities; (9) commences invoicing of CAT Reporters as promptly as possible following the latest of the operative date of the Consolidated Audit Trail Funding Fees for each of the Participants and the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants; and (10) requires the proposed fees to automatically expire two years from the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. As discussed in detail below, the Exchange proposes to amend the Original Proposal to reflect these changes.

#### (1) Executive Summary

The following provides an executive summary of the CAT funding model approved by the Operating Committee, as well as Industry Members’ rights and obligations related to the payment of CAT Fees calculated pursuant to the CAT funding model, as amended by this Amendment. A detailed description of the CAT funding model and the CAT Fees, as amended by this Amendment, as well as the changes made to the Original Proposal follows this executive summary.

#### (A) CAT Funding Model

- *CAT Costs.* The CAT funding model is designed to establish CAT-specific fees to collectively recover the costs of building and operating the CAT from all CAT Reporters, including Industry Members and Participants. The overall CAT costs used in calculating the CAT Fees in this fee filing are comprised of

Plan Processor CAT costs and non-Plan Processor CAT costs incurred, and estimated to be incurred, from November 21, 2016 through November 21, 2017. Although the CAT costs from November 21, 2016 through November 21, 2017 were used in calculating the CAT Fees, the CAT Fees set forth in this fee filing would be in effect until the automatic sunset date, as discussed below. (See Section 3(a)(2)(E) below)

- *Bifurcated Funding Model.* The CAT NMS Plan requires a bifurcated funding model, where costs associated with building and operating the CAT would be borne by (1) Participants and Industry Members that are Execution Venues for Eligible Securities through fixed tier fees based on market share, and (2) Industry Members (other than alternative trading systems (“ATSs”) that execute transactions in Eligible Securities (“Execution Venue ATSs”)) through fixed tier fees based on message traffic for Eligible Securities. (See Section 3(a)(2) below)

- *Industry Member Fees.* Each Industry Member (other than Execution Venue ATSs) will be placed into one of seven tiers of fixed fees, based on “message traffic” in Eligible Securities for a defined period (as discussed below). Prior to the start of CAT reporting, “message traffic” will be comprised of historical equity and equity options orders, cancels, quotes and executions provided by each exchange and FINRA over the previous three months. After an Industry Member begins reporting to the CAT, “message traffic” will be calculated based on the Industry Member’s Reportable Events reported to the CAT. Industry Members with lower levels of message traffic will pay a lower fee and Industry Members with higher levels of message traffic will pay a higher fee. To avoid disincentives to quoting behavior, Options Market Maker and equity market maker quotes will be discounted when calculating message traffic. (See Section 3(a)(2)(B) below)

- *Execution Venue Fees.* Each Equity Execution Venue will be placed in one of four tiers of fixed fees based on market share, and each Options Execution Venue will be placed in one of two tiers of fixed fees based on market share. Equity Execution Venue market share will be determined by calculating each Equity Execution Venue’s proportion of the total volume of NMS Stock and OTC Equity shares reported by all Equity Execution Venues during the relevant time period. For purposes of calculating market share, the OTC Equity Securities market share of Execution Venue ATSs trading OTC Equity Securities as well as the market

<sup>23</sup> Section 11.1(b) of the CAT NMS Plan.

<sup>24</sup> *Id.*

<sup>25</sup> See Securities Exchange Act Release No. 80715 (May 18, 2017), 82 FR 23895 (May 24, 2017) (SR-ISE-2017-45).

<sup>26</sup> For a summary of comments, see generally Securities Exchange Act Release No. 81067 (June 30, 2017), 82 FR 31656 (July 7, 2017) (“Suspension Order”).

<sup>27</sup> Suspension Order.

<sup>28</sup> See Letter from Stuart J. Kaswell, Executive Vice President, Managing Director and General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, SEC (July 28, 2017) (“MFA Letter”); Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Brent J. Fields, Secretary, SEC (July 28, 2017) (“SIFMA Letter”); Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, SEC (July 28, 2017) (“FIA Principal Traders Group Letter”); Letter from Kevin Coleman, General Counsel & Chief Compliance Officer, Belvedere Trading LLC, to Brent J. Fields, Secretary, SEC (July 28, 2017) (“Belvedere Letter”); Letter from W. Hardy Callcott, Sidley Austin LLP, to Brent J. Fields, Secretary, SEC (July 27, 2017) (“Sidley Letter”); Letter from John Kinahan, Chief Executive Officer, Group One Trading, L.P., to Brent J. Fields, Secretary, SEC (Aug. 10, 2017) (“Group One Letter”); and Letter from Joseph Molluso, Executive Vice President, Virtu Financial, to Brent J. Fields, Secretary, SEC (Aug. 18, 2017) (“Virtu Financial Letter”).



share of the FINRA ORF will be discounted. Similarly, market share for Options Execution Venues will be determined by calculating each Options Execution Venue's proportion of the total volume of Listed Options contracts reported by all Options Execution Venues during the relevant time period. Equity Execution Venues with a larger market share will pay a larger CAT Fee than Equity Execution Venues with a smaller market share. Similarly, Options Execution Venues with a larger market share will pay a larger CAT Fee than Options Execution Venues with a smaller market share. (See Section 3(a)(2)(C) below)

- *Cost Allocation.* For the reasons discussed below, in designing the model, the Operating Committee determined that 75 percent of total costs recovered would be allocated to Industry Members (other than Execution Venue ATs) and 25 percent would be allocated to Execution Venues. In addition, the Operating Committee determined to allocate 67 percent of Execution Venue costs recovered to Equity Execution Venues and 33 percent to Options Execution Venues. (See Section 3(a)(2)(D) below)

- *Comparability of Fees.* The CAT funding model charges CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) comparable CAT Fees. (See Section 3(a)(2)(F) below)

#### (B) CAT Fees for Industry Members

- *Fee Schedule.* The quarterly CAT Fees for each tier for Industry Members are set forth in the two fee schedules in the Consolidated Audit Trail Funding Fees, one for Equity ATs and one for Industry Members other than Equity ATs. (See Section 3(a)(3)(B) below)

- *Quarterly Invoices.* Industry Members will be billed quarterly for CAT Fees, with the invoices payable within 30 days. The quarterly invoices will identify within which tier the Industry Member falls. (See Section 3(a)(3)(C) below)

- *Centralized Payment.* Each Industry Member will receive from the Company one invoice for its applicable CAT Fees, not separate invoices from each Participant of which it is a member. Each Industry Member will pay its CAT Fees to the Company via the centralized system for the collection of CAT Fees established by the Operating Committee. (See Section 3(a)(3)(C) below)

- *Billing Commencement.* Industry Members will begin to receive invoices for CAT Fees as promptly as possible following the latest of the operative date of the Consolidated Audit Trail Funding

Fees for each of the Participants and the operative date of the Plan amendment adopting CAT Fees for Participants. (See Section 3(a)(2)(G) below)

- *Sunset Provision.* The Consolidated Audit Trail Funding Fees will sunset automatically two years from the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. (See Section 3(a)(2)(J) below)

#### (2) Description of the CAT Funding Model

Article XI of the CAT NMS Plan requires the Operating Committee to approve the operating budget, including projected costs of developing and operating the CAT for the upcoming year. In addition to a budget, Article XI of the CAT NMS Plan provides that the Operating Committee has discretion to establish funding for the Company, consistent with a bifurcated funding model, where costs associated with building and operating the Central Repository would be borne by (1) Participants and Industry Members that are Execution Venues through fixed tier fees based on market share, and (2) Industry Members (other than Execution Venue ATs) through fixed tier fees based on message traffic. In its order approving the CAT NMS Plan, the Commission determined that the proposed funding model was "reasonable"<sup>29</sup> and "reflects a reasonable exercise of the Participants' funding authority to recover the Participants' costs related to the CAT."<sup>30</sup>

More specifically, the Commission stated in approving the CAT NMS Plan that "[t]he Commission believes that the proposed funding model is reasonably designed to allocate the costs of the CAT between the Participants and Industry Members."<sup>31</sup> The Commission further noted the following:

The Commission believes that the proposed funding model reflects a reasonable exercise of the Participants' funding authority to recover the Participants' costs related to the CAT. The CAT is a regulatory facility jointly owned by the Participants and . . . the Exchange Act specifically permits the Participants to charge their members fees to fund their self-regulatory obligations. The Commission further believes that the proposed funding model is designed to impose fees reasonably related to the Participants' self-regulatory obligations because the fees would be directly associated with the costs of establishing and maintaining the CAT, and not unrelated SRO services.<sup>32</sup>

Accordingly, the funding model approved by the Operating Committee imposes fees on both Participants and Industry Members.

As discussed in Appendix C of the CAT NMS Plan, in developing and approving the approved funding model, the Operating Committee considered the advantages and disadvantages of a variety of alternative funding and cost allocation models before selecting the proposed model.<sup>33</sup> After analyzing the various alternatives, the Operating Committee determined that the proposed tiered, fixed fee funding model provides a variety of advantages in comparison to the alternatives.

In particular, the fixed fee model, as opposed to a variable fee model, provides transparency, ease of calculation, ease of billing and other administrative functions, and predictability of a fixed fee. Such factors are crucial to estimating a reliable revenue stream for the Company and for permitting CAT Reporters to reasonably predict their payment obligations for budgeting purposes. Additionally, a strictly variable or metered funding model based on message volume would be far more likely to affect market behavior and place an inappropriate burden on competition.

In addition, reviews from varying time periods of current broker-dealer order and trading data submitted under existing reporting requirements showed a wide range in activity among broker-dealers, with a number of broker-dealers submitting fewer than 1,000 orders per month and other broker-dealers submitting millions and even billions of orders in the same period. Accordingly, the CAT NMS Plan includes a tiered approach to fees. The tiered approach helps ensure that fees are equitably allocated among similarly situated CAT Reporters and furthers the goal of lessening the impact on smaller firms.<sup>34</sup> In addition, in choosing a tiered fee structure, the Operating Committee concluded that the variety of benefits offered by a tiered fee structure, discussed above, outweighed the fact that CAT Reporters in any particular tier would pay different rates per message traffic order event or per market share (e.g., an Industry Member with the largest amount of message traffic in one tier would pay a smaller amount per order event than an Industry Member in the same tier with the least amount of message traffic). Such variation is the

<sup>29</sup> Approval Order at 84796.

<sup>30</sup> *Id.* at 84794.

<sup>31</sup> *Id.* at 84795.

<sup>32</sup> *Id.* at 84794.

<sup>33</sup> Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85006.

<sup>34</sup> Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85006.

natural result of a tiered fee structure.<sup>35</sup> The Operating Committee considered several approaches to developing a tiered model, including defining fee tiers based on such factors as size of firm, message traffic or trading dollar volume. After analyzing the alternatives, it was concluded that the tiering should be based on message traffic which will reflect the relative impact of CAT Reporters on the CAT System.

Accordingly, the CAT NMS Plan contemplates that costs will be allocated across the CAT Reporters on a tiered basis in order to allocate higher costs to those CAT Reporters that contribute more to the costs of creating, implementing and maintaining the CAT and lower costs to those that contribute less.<sup>36</sup> The fees to be assessed at each tier are calculated so as to recoup a proportion of costs appropriate to the message traffic or market share (as applicable) from CAT Reporters in each tier. Therefore, Industry Members generating the most message traffic will be in the higher tiers, and will be charged a higher fee. Industry Members with lower levels of message traffic will be in lower tiers and will be assessed a smaller fee for the CAT.<sup>37</sup>

Correspondingly, Execution Venues with the highest market shares will be in the top tier, and will be charged higher fees. Execution Venues with the lowest market shares will be in the lowest tier and will be assessed smaller fees for the CAT.<sup>38</sup>

The CAT NMS Plan states that Industry Members (other than Execution Venue ATSS) will be charged based on message traffic, and that Execution Venues will be charged based on market share.<sup>39</sup> While there are multiple factors that contribute to the cost of building, maintaining and using the CAT, processing and storage of incoming message traffic is one of the most significant cost drivers for the CAT.<sup>40</sup> Thus, the CAT NMS Plan provides that the fees payable by Industry Members (other than Execution Venue ATSS) will be based on the message traffic generated by such Industry Member.<sup>41</sup>

In contrast to Industry Members, which determine the degree to which they produce message traffic that

constitute CAT Reportable Events, the CAT Reportable Events of the Execution Venues are largely derivative of quotations and orders received from Industry Members that they are required to display. The business model for Execution Venues (other than FINRA), however, is focused on executions in their markets. As a result, the Operating Committee believes that it is more equitable to charge Execution Venues based on their market share rather than their message traffic.

Focusing on message traffic would make it more difficult to draw distinctions between large and small Execution Venues and, in particular, between large and small options exchanges. For instance, the Operating Committee analyzed the message traffic of Execution Venues and Industry Members for the period of April 2017 to June 2017 and placed all CAT Reporters into a nine-tier framework (*i.e.*, a single tier may include both Execution Venues and Industry Members). The Operating Committee's analysis found that the majority of exchanges (15 total) were grouped in Tiers 1 and 2. Moreover, virtually all of the options exchanges were in Tiers 1 and 2.<sup>42</sup> Given the resulting concentration of options exchanges in Tiers 1 and 2 under this approach, the analysis shows that a funding model for Execution Venues based on message traffic would make it more difficult to distinguish between large and small options exchanges, as compared to the proposed fee approach that bases fees for Execution Venues on market share.

The CAT NMS Plan's funding model also is structured to avoid a "reduction in market quality."<sup>43</sup> The tiered, fixed fee funding model is designed to limit the disincentives to providing liquidity to the market. For example, the Operating Committee expects that a firm that has a large volume of quotes would likely be categorized in one of the upper tiers, and would not be assessed a fee for this traffic directly as they would under a more directly metered model. In contrast, strictly variable or metered funding models based on message volume are far more likely to affect market behavior. In approving the CAT NMS Plan, the SEC stated that "[t]he Participants also offered a reasonable basis for establishing a funding model based on broad tiers, in that it may be . . . less likely to have an incremental

deterrent effect on liquidity provision."<sup>44</sup>

The funding model also is structured to avoid a reduction market quality because it discounts Options Market Maker and equity market maker quotes when calculating message traffic for Options Market Makers and equity market makers, respectively. As discussed in more detail below, the Operating Committee determined to discount the Options Market Maker quotes by the trade to quote ratio for options when calculating message traffic for Options Market Makers. Similarly, to avoid disincentives to quoting behavior on the equities side as well, the Operating Committee determined to discount equity market maker quotes by the trade to quote ratio for equities when calculating message traffic for equity market makers. The proposed discounts recognize the value of the market makers' quoting activity to the market as a whole.

The CAT NMS Plan is further structured to avoid potential conflicts raised by the Operating Committee determining fees applicable to its own members—the Participants. First, the Company will operate on a "break-even" basis, with fees imposed to cover costs and an appropriate reserve. Any surpluses will be treated as an operational reserve to offset future fees and will not be distributed to the Participants as profits.<sup>45</sup> To ensure that the Participants' operation of the CAT will not contribute to the funding of their other operations, Section 11.1(c) of the CAT NMS Plan specifically states that "[a]ny surplus of the Company's revenues over its expenses shall be treated as an operational reserve to offset future fees." In addition, as set forth in Article VIII of the CAT NMS Plan, the Company "intends to operate in a manner such that it qualifies as a 'business league' within the meaning of Section 501(c)(6) of the [Internal Revenue] Code." To qualify as a business league, an organization must "not [be] organized for profit and no part of the net earnings of [the organization can] inure[ ] to the benefit of any private shareholder or individual."<sup>46</sup> As the SEC stated when approving the CAT NMS Plan, "the Commission believes that the Company's application for Section 501(c)(6) business league status addresses issues raised by commenters about the Plan's proposed allocation of profit and loss by mitigating concerns that the Company's earnings could be

<sup>35</sup> Moreover, as the SEC noted in approving the CAT NMS Plan, "[t]he Participants also have offered a reasonable basis for establishing a funding model based on broad tiers, in that it may be easier to implement." Approval Order at 84796.

<sup>36</sup> Approval Order at 85005.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> Section 11.3(a) and (b) of the CAT NMS Plan.

<sup>40</sup> Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85005.

<sup>41</sup> Section 11.3(b) of the CAT NMS Plan.

<sup>42</sup> The Operating Committee notes that this analysis did not place MIAX PEARL in Tier 1 or Tier 2 since the exchange commenced trading on February 6, 2017.

<sup>43</sup> Section 11.2(e) of the CAT NMS Plan.

<sup>44</sup> Approval Order at 84796.

<sup>45</sup> *Id.* at 84792.

<sup>46</sup> 26 U.S.C. 501(c)(6).

used to benefit individual Participants.”<sup>47</sup> The Internal Revenue Service recently has determined that the Company is exempt from federal income tax under Section 501(c)(6) of the Internal Revenue Code.

The funding model also is structured to take into account distinctions in the securities trading operations of Participants and Industry Members. For example, the Operating Committee designed the model to address the different trading characteristics in the OTC Equity Securities market. Specifically, the Operating Committee proposes to discount the OTC Equity Securities market share of Execution Venue ATSs trading OTC Equity Securities as well as the market share of the FINRA ORF by the average shares per trade ratio between NMS Stocks and OTC Equity Securities to adjust for the greater number of shares being traded in the OTC Equity Securities market, which is generally a function of a lower per share price for OTC Equity Securities when compared to NMS Stocks. In addition, the Operating Committee also proposes to discount Options Market Maker and equity market maker message traffic in recognition of their role in the securities markets. Furthermore, the funding model creates separate tiers for Equity and Options Execution Venues due to the different trading characteristics of those markets.

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

A full description of the funding model is set forth below. This description includes the framework for the funding model as set forth in the CAT NMS Plan, as well as the details as to how the funding model will be applied in practice, including the number of fee tiers and the applicable fees for each tier. The complete funding model is described below, including those fees that are to be paid by the Participants. The proposed Consolidated Audit Trail Funding Fees, however, do not apply to the Participants; the proposed Consolidated Audit Trail Funding Fees only apply to Industry Members. The CAT Fees for Participants will be imposed separately by the Operating Committee pursuant to the CAT NMS Plan.

#### (A) Funding Principles

Section 11.2 of the CAT NMS Plan sets forth the principles that the Operating Committee applied in establishing the funding for the Company. The Operating Committee has considered these funding principles as well as the other funding requirements set forth in the CAT NMS Plan and in Rule 613 in developing the proposed funding model. The following are the funding principles in Section 11.2 of the CAT NMS Plan:

- To create transparent, predictable revenue streams for the Company that are aligned with the anticipated costs to build, operate and administer the CAT and other costs of the Company;
- To establish an allocation of the Company’s related costs among Participants and Industry Members that is consistent with the Exchange Act, taking into account the timeline for implementation of the CAT and distinctions in the securities trading operations of Participants and Industry Members and their relative impact upon the Company’s resources and operations;
- To establish a tiered fee structure in which the fees charged to: (i) CAT Reporters that are Execution Venues, including ATSs, are based upon the level of market share; (ii) Industry Members’ non-ATS activities are based upon message traffic; (iii) the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venue and/or Industry Members);
- To provide for ease of billing and other administrative functions;
- To avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality; and
- To build financial stability to support the Company as a going concern.

#### (B) Industry Member Tiering

Under Section 11.3(b) of the CAT NMS Plan, the Operating Committee is required to establish fixed fees to be payable by Industry Members, based on message traffic generated by such Industry Member, with the Operating Committee establishing at least five and no more than nine tiers.

The CAT NMS Plan clarifies that the fixed fees payable by Industry Members pursuant to Section 11.3(b) shall, in addition to any other applicable

message traffic, include message traffic generated by: (i) An ATS that does not execute orders that is sponsored by such Industry Member; and (ii) routing orders to and from any ATS sponsored by such Industry Member. In addition, the Industry Member fees will apply to Industry Members that act as routing broker-dealers for exchanges. The Industry Member fees will not be applicable, however, to an ATS that qualifies as an Execution Venue, as discussed in more detail in the section on Execution Venue tiering.

In accordance with Section 11.3(b), the Operating Committee approved a tiered fee structure for Industry Members (other than Execution Venue ATSs) as described in this section. In determining the tiers, the Operating Committee considered the funding principles set forth in Section 11.2 of the CAT NMS Plan, seeking to create funding tiers that take into account the relative impact on CAT System resources of different Industry Members, and that establish comparable fees among the CAT Reporters with the most Reportable Events. The Operating Committee has determined that establishing seven tiers results in an allocation of fees that distinguishes between Industry Members with differing levels of message traffic. Thus, each such Industry Member will be placed into one of seven tiers of fixed fees, based on “message traffic” for a defined period (as discussed below).

A seven tier structure was selected to provide a wide range of levels for tiering Industry Members such that Industry Members submitting significantly less message traffic to the CAT would be adequately differentiated from Industry Members submitting substantially more message traffic. The Operating Committee considered historical message traffic from multiple time periods, generated by Industry Members across all exchanges and as submitted to FINRA’s Order Audit Trail System (“OATS”), and considered the distribution of firms with similar levels of message traffic, grouping together firms with similar levels of message traffic. Based on this, the Operating Committee determined that seven tiers would group firms with similar levels of message traffic, charging those firms with higher impact on the CAT more, while lowering the burden on Industry Members that have less CAT-related activity. Furthermore, the selection of seven tiers establishes comparable fees among the largest CAT Reporters.

Each Industry Member (other than Execution Venue ATSs) will be ranked by message traffic and tiered by predefined Industry Member

<sup>47</sup> Approval Order at 84793.

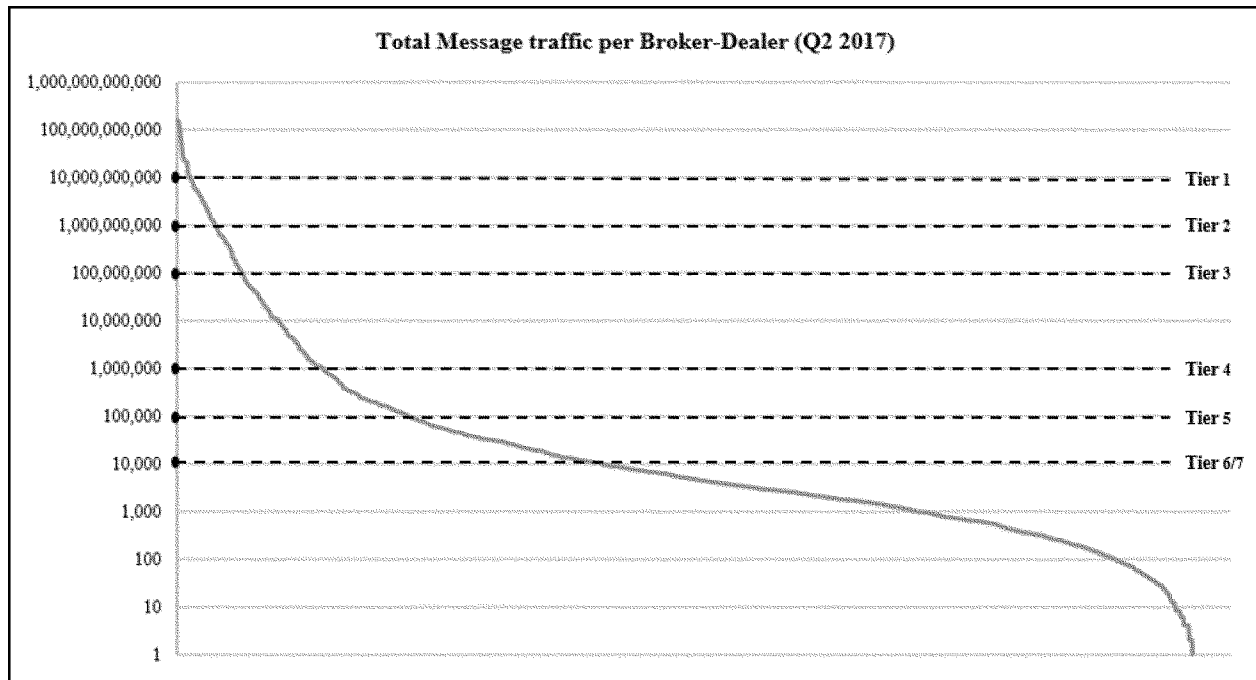
percentages (the “Industry Member Percentages”). The Operating Committee determined to use predefined percentages rather than fixed volume thresholds to ensure that the total CAT Fees collected recover the expected CAT costs regardless of changes in the total level of message traffic. To determine the fixed percentage of Industry Members in each tier, the Operating Committee analyzed historical message traffic generated by Industry Members across all exchanges and as submitted to OATS, and considered the distribution of firms with similar levels of message traffic, grouping together firms with similar levels of message traffic. Based on this, the Operating Committee identified seven tiers that would group firms with similar levels of message traffic.

The percentage of costs recovered by each Industry Member tier will be determined by predefined percentage allocations (the “Industry Member Recovery Allocation”). In determining the fixed percentage allocation of costs recovered for each tier, the Operating Committee considered the impact of CAT Reporter message traffic on the CAT System as well as the distribution of total message volume across Industry Members while seeking to maintain comparable fees among the largest CAT

Reporters. Accordingly, following the determination of the percentage of Industry Members in each tier, the Operating Committee identified the percentage of total market volume for each tier based on the historical message traffic upon which Industry Members had been initially ranked. Taking this into account along with the resulting percentage of total recovery, the percentage allocation of costs recovered for each tier were assigned, allocating higher percentages of recovery to tiers with higher levels of message traffic while avoiding any inappropriate burden on competition. Furthermore, by using percentages of Industry Members and costs recovered per tier, the Operating Committee sought to include elasticity within the funding model, allowing the funding model to respond to changes in either the total number of Industry Members or the total level of message traffic.

The following chart illustrates the breakdown of seven Industry Member tiers across the monthly average of total equity and equity options orders, cancels, quotes and executions in the second quarter of 2017 as well as message traffic thresholds between the largest of Industry Member message traffic gaps. The Operating Committee referenced similar distribution

illustrations to determine the appropriate division of Industry Member percentages in each tier by considering the grouping of firms with similar levels of message traffic and seeking to identify relative breakpoints in the message traffic between such groupings. In reviewing the chart and its corresponding table, note that while these distribution illustrations were referenced to help differentiate between Industry Member tiers, the proposed funding model is driven by fixed percentages of Industry Members across tiers to account for fluctuating levels of message traffic over time. This approach also provides financial stability for the CAT by ensuring that the funding model will recover the required amounts regardless of changes in the number of Industry Members or the amount of message traffic. Actual messages in any tier will vary based on the actual traffic in a given measurement period, as well as the number of firms included in the measurement period. The Industry Member Percentages and Industry Member Recovery Allocation for each tier will remain fixed with each Industry Member’s tier to be reassigned periodically, as described below in Section 3(a)(2)(I).



Industry Member tier	Approximate message traffic per Industry Member (Q2 2017) (orders, quotes, cancels and executions)
Tier 1 .....	>10,000,000,000
Tier 2 .....	1,000,000,000–10,000,000,000

Industry Member tier	Approximate message traffic per Industry Member (Q2 2017) (orders, quotes, cancels and executions)
Tier 3 .....	100,000,000–1,000,000,000
Tier 4 .....	1,000,000–100,000,000
Tier 5 .....	100,000–1,000,000
Tier 6 .....	10,000–100,000
Tier 7 .....	<10,000

Based on the above analysis, the Operating Committee approved the following Industry Member Percentages and Industry Member Recovery Allocations:

Industry Member tier	Percentage of Industry Members	Percentage of Industry Member Recovery	Percentage of total recovery
Tier 1 .....	0.900	12.00	9.00
Tier 2 .....	2.150	20.50	15.38
Tier 3 .....	2.800	18.50	13.88
Tier 4 .....	7.750	32.00	24.00
Tier 5 .....	8.300	10.00	7.50
Tier 6 .....	18.800	6.00	4.50
Tier 7 .....	59.300	1.00	0.75
Total .....	100	100	75

For the purposes of creating these tiers based on message traffic, the Operating Committee determined to define the term “message traffic” separately for the period before the commencement of CAT reporting and for the period after the start of CAT reporting. The different definition for message traffic is necessary as there will be no Reportable Events as defined in the Plan, prior to the commencement of CAT reporting. Accordingly, prior to the start of CAT reporting, “message traffic” will be comprised of historical equity and equity options orders, cancels, quotes and executions provided by each exchange and FINRA over the previous three months. Prior to the start of CAT reporting, orders would be comprised of the total number of equity and equity options orders received and originated by a member of an exchange or FINRA over the previous three-month period, including principal orders, cancel/replace orders, market maker orders originated by a member of an exchange, and reserve (iceberg) orders as well as executions originated by a member of FINRA, and excluding order rejects, system-modified orders, order routes and implied orders.<sup>48</sup> In addition, prior to the start of CAT reporting, cancels would be comprised of the total number

of equity and equity option cancels received and originated by a member of an exchange or FINRA over a three-month period, excluding order modifications (e.g., order updates, order splits, partial cancels) and multiple cancels of a complex order. Furthermore, prior to the start of CAT reporting, quotes would be comprised of information readily available to the exchanges and FINRA, such as the total number of historical equity and equity options quotes received and originated by a member of an exchange or FINRA over the prior three-month period. Additionally, prior to the start of CAT reporting, executions would be comprised of the total number of equity and equity option executions received or originated by a member of an exchange or FINRA over a three-month period.

After an Industry Member begins reporting to the CAT, “message traffic” will be calculated based on the Industry Member’s Reportable Events reported to the CAT as will be defined in the Technical Specifications.<sup>49</sup>

Quotes of Options Market Makers and equity market makers will be included in the calculation of total message traffic for those market makers for purposes of tiering under the CAT funding model

both prior to CAT reporting and once CAT reporting commences.<sup>50</sup> To address potential concerns regarding burdens on competition or market quality of including quotes in the calculation of message traffic, however, the Operating Committee determined to discount the Options Market Maker quotes by the trade to quote ratio for options when calculating message traffic for Options Market Makers. Based on available data for June 2016 through June 2017, the trade to quote ratio for options is 0.01%. Similarly, to avoid disincentives to quoting behavior on the equities side, the Operating Committee determined to discount equity market maker quotes by the trade to quote ratio for equities. Based on available data for June 2016 through June 2017, the trade to quote ratio for equities is 5.43%.<sup>51</sup>

<sup>50</sup>The SEC approved exemptive relief permitting Options Market Maker quotes to be reported to the Central Repository by the relevant Options Exchange in lieu of requiring that such reporting be done by both the Options Exchange and the Options Market Maker, as required by Rule 613 of Regulation NMS. See Securities Exchange Act Release No. 77265 (March 1, 2017), 81 FR 11856 (March 7, 2016). This exemption applies to Options Market Maker quotes for CAT reporting purposes only. Therefore, notwithstanding the reporting exemption provided for Options Market Maker quotes, Options Market Maker quotes will be included in the calculation of total message traffic for Options Market Makers for purposes of tiering under the CAT funding model both prior to CAT reporting and once CAT reporting commences.

<sup>51</sup>The trade to quote ratios were calculated based on the inverse of the average of the monthly equity SIP and OPRA quote to trade ratios from June 2016–

<sup>48</sup>Consequently, firms that do not have “message traffic” reported to an exchange or OATS before they are reporting to the CAT would not be subject to a fee until they begin to report information to CAT.

<sup>49</sup>If an Industry Member (other than an Execution Venue ATS) has no orders, cancels, quotes and executions prior to the commencement of CAT Reporting, or no Reportable Events after CAT reporting commences, then the Industry Member would not have a CAT Fee obligation.

The trade to quote ratio for options and the trade to quote ratio for equities will be calculated every three months when tiers are recalculated (as discussed below).

The Operating Committee has determined to calculate fee tiers every three months, on a calendar quarter basis, based on message traffic from the prior three months. Based on its analysis of historical data, the Operating Committee believes that calculating tiers based on three months of data will provide the best balance between reflecting changes in activity by Industry Members while still providing predictability in the tiering for Industry Members. Because fee tiers will be calculated based on message traffic from the prior three months, the Operating Committee will begin calculating message traffic based on an Industry Member's Reportable Events reported to the CAT once the Industry Member has been reporting to the CAT for three months. Prior to that, fee tiers will be calculated as discussed above with regard to the period prior to CAT reporting.

#### (C) Execution Venue Tiering

Under Section 11.3(a) of the CAT NMS Plan, the Operating Committee is required to establish fixed fees payable by Execution Venues. Section 1.1 of the CAT NMS Plan defines an Execution Venue as "a Participant or an alternative trading system ("ATS") (as defined in Rule 300 of Regulation ATS) that operates pursuant to Rule 301 of Regulation ATS (excluding any such ATS that does not execute orders)."<sup>52</sup>

The Operating Committee determined that ATSs should be included within the definition of Execution Venue. The Operating Committee believes that it is appropriate to treat ATSs as Execution Venues under the proposed funding model since ATSs have business models that are similar to those of exchanges, and ATSs also compete with exchanges.

Given the differences between Execution Venues that trade NMS Stocks and/or OTC Equity Securities and Execution Venues that trade Listed Options, Section 11.3(a) addresses Execution Venues that trade NMS Stocks and/or OTC Equity Securities separately from Execution Venues that trade Listed Options. Equity and Options Execution Venues are treated separately for two reasons. First, the

differing quoting behavior of Equity and Options Execution Venues makes comparison of activity between such Execution Venues difficult. Second, Execution Venue tiers are calculated based on market share of share volume, and it is therefore difficult to compare market share between asset classes (*i.e.*, equity shares versus options contracts). Discussed below is how the funding model treats the two types of Execution Venues.

#### (I) NMS Stocks and OTC Equity Securities

Section 11.3(a)(i) of the CAT NMS Plan states that each Execution Venue that (i) executes transactions or, (ii) in the case of a national securities association, has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange, in NMS Stocks or OTC Equity Securities will pay a fixed fee depending on the market share of that Execution Venue in NMS Stocks and OTC Equity Securities, with the Operating Committee establishing at least two and not more than five tiers of fixed fees, based on an Execution Venue's NMS Stocks and OTC Equity Securities market share. For these purposes, market share for Execution Venues that execute transactions will be calculated by share volume, and market share for a national securities association that has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange in NMS Stocks or OTC Equity Securities will be calculated based on share volume of trades reported, provided, however, that the share volume reported to such national securities association by an Execution Venue shall not be included in the calculation of such national security association's market share.

In accordance with Section 11.3(a)(i) of the CAT NMS Plan, the Operating Committee approved a tiered fee structure for Equity Execution Venues and Option Execution Venues. In determining the Equity Execution Venue Tiers, the Operating Committee considered the funding principles set forth in Section 11.2 of the CAT NMS Plan, seeking to create funding tiers that take into account the relative impact on system resources of different Equity Execution Venues, and that establish comparable fees among the CAT Reporters with the most Reportable Events. Each Equity Execution Venue will be placed into one of four tiers of fixed fees, based on the Execution Venue's NMS Stocks and OTC Equity Securities market share. In choosing

four tiers, the Operating Committee performed an analysis similar to that discussed above with regard to the non-Execution Venue Industry Members to determine the number of tiers for Equity Execution Venues. The Operating Committee determined to establish four tiers for Equity Execution Venues, rather than a larger number of tiers as established for non-Execution Venue Industry Members, because the four tiers were sufficient to distinguish between the smaller number of Equity Execution Venues based on market share. Furthermore, the selection of four tiers serves to help establish comparability among the largest CAT Reporters.

Each Equity Execution Venue will be ranked by market share and tiered by predefined Execution Venue percentages, (the "Equity Execution Venue Percentages"). In determining the fixed percentage of Equity Execution Venues in each tier, the Operating Committee reviewed historical market share of share volume for Execution Venues. Equity Execution Venue market shares of share volume were sourced from market statistics made publicly-available by Bats Global Markets, Inc. ("Bats"). ATS market shares of share volume was sourced from market statistics made publicly-available by FINRA. FINRA trade reporting facility ("TRF") and ORF market share of share volume was sourced from market statistics made publicly available by FINRA. Based on data from FINRA and otcmarkets.com, ATSs accounted for 39.12% of the share volume across the TRFs and ORFs during the recent tiering period. A 39.12/60.88 split was applied to the ATS and non-ATS breakdown of FINRA market share, with FINRA tiered based only on the non-ATS portion of its market share of share volume.

The Operating Committee determined to discount the OTC Equity Securities market share of Execution Venue ATSs trading OTC Equity Securities as well as the market share of the FINRA ORF in recognition of the different trading characteristics of the OTC Equity Securities market as compared to the market in NMS Stocks. Many OTC Equity Securities are priced at less than one dollar—and a significant number at less than one penny—per share and low-priced shares tend to trade in larger quantities. Accordingly, a disproportionately large number of shares are involved in transactions involving OTC Equity Securities versus NMS Stocks. Because the proposed fee tiers are based on market share calculated by share volume, Execution Venue ATSs trading OTC Equity Securities and FINRA would likely be

June 2017 that were compiled by the Financial Information Forum using data from Nasdaq and SIAC.

<sup>52</sup> Although FINRA does not operate an execution venue, because it is a Participant, it is considered an "Execution Venue" under the Plan for purposes of determining fees.

subject to higher tiers than their operations may warrant. To address this potential concern, the Operating Committee determined to discount the OTC Equity Securities market share of Execution Venue ATSS trading OTC Equity Securities and the market share of the FINRA ORF by multiplying such market share by the average shares per trade ratio between NMS Stocks and OTC Equity Securities in order to adjust for the greater number of shares being traded in the OTC Equity Securities market. Based on available data for the second quarter of 2017, the average shares per trade ratio between NMS Stocks and OTC Equity Securities is 0.17%.<sup>53</sup> The average shares per trade ratio between NMS Stocks and OTC Equity Securities will be recalculated every three months when tiers are recalculated.

Based on this, the Operating Committee considered the distribution

of Execution Venues, and grouped together Execution Venues with similar levels of market share. The percentage of costs recovered by each Equity Execution Venue tier will be determined by predefined percentage allocations (the “Equity Execution Venue Recovery Allocation”). In determining the fixed percentage allocation of costs to be recovered from each tier, the Operating Committee considered the impact of CAT Reporter market share activity on the CAT System as well as the distribution of total market volume across Equity Execution Venues while seeking to maintain comparable fees among the largest CAT Reporters. Accordingly, following the determination of the percentage of Execution Venues in each tier, the Operating Committee identified the percentage of total market volume for each tier based on the historical market

share upon which Execution Venues had been initially ranked. Taking this into account along with the resulting percentage of total recovery, the percentage allocation of cost recovery for each tier were assigned, allocating higher percentages of recovery to the tier with a higher level of market share while avoiding any inappropriate burden on competition. Furthermore, by using percentages of Equity Execution Venues and cost recovery per tier, the Operating Committee sought to include elasticity within the funding model, allowing the funding model to respond to changes in either the total number of Equity Execution Venues or changes in market share.

Based on this analysis, the Operating Committee approved the following Equity Execution Venue Percentages and Recovery Allocations:

• Equity Execution Venue tier	• Percentage of Equity Execution Venues	• Percentage of Execution Venue Recovery	• Percentage of total recovery
• Tier 1 .....	• 25.00	• 33.25	• 8.31
• Tier 2 .....	• 42.00	• 25.73	• 6.43
• Tier 3 .....	• 23.00	• 8.00	• 2.00
• Tier 4 .....	• 10.00	• 0.02	• 0.01
• Total .....	• 100	• 67	• 16.75

(II) Listed Options

Section 11.3(a)(ii) of the CAT NMS Plan states that each Execution Venue that executes transactions in Listed Options will pay a fixed fee depending on the Listed Options market share of that Execution Venue, with the Operating Committee establishing at least two and no more than five tiers of fixed fees, based on an Execution Venue’s Listed Options market share. For these purposes, market share will be calculated by contract volume.

In accordance with Section 11.3(a)(ii) of the CAT NMS Plan, the Operating Committee approved a tiered fee structure for Options Execution Venues. In determining the tiers, the Operating Committee considered the funding principles set forth in Section 11.2 of the CAT NMS Plan, seeking to create funding tiers that take into account the relative impact on system resources of different Options Execution Venues, and that establish comparable fees among the CAT Reporters with the most Reportable Events. Each Options Execution Venue will be placed into one

of two tiers of fixed fees, based on the Execution Venue’s Listed Options market share. In choosing two tiers, the Operating Committee performed an analysis similar to that discussed above with regard to Industry Members (other than Execution Venue ATSS) to determine the number of tiers for Options Execution Venues. The Operating Committee determined to establish two tiers for Options Execution Venues, rather than a larger number, because the two tiers were sufficient to distinguish between the smaller number of Options Execution Venues based on market share. Furthermore, due to the smaller number of Options Execution Venues, the incorporation of additional Options Execution Venue tiers would result in significantly higher fees for Tier 1 Options Execution Venues and reduce comparability between Execution Venues and Industry Members. Furthermore, the selection of two tiers served to establish comparable fees among the largest CAT Reporters.

Each Options Execution Venue will be ranked by market share and tiered by predefined Execution Venue percentages, (the “Options Execution Venue Percentages”). To determine the fixed percentage of Options Execution Venues in each tier, the Operating Committee analyzed the historical and publicly available market share of Options Execution Venues to group Options Execution Venues with similar market shares across the tiers. Options Execution Venue market share of share volume were sourced from market statistics made publicly-available by Bats. The process for developing the Options Execution Venue Percentages was the same as discussed above with regard to Equity Execution Venues.

The percentage of costs to be recovered from each Options Execution Venue tier will be determined by predefined percentage allocations (the “Options Execution Venue Recovery Allocation”). In determining the fixed percentage allocation of cost recovery for each tier, the Operating Committee considered the impact of CAT Reporter

<sup>53</sup> The average shares per trade ratio for both NMS Stocks and OTC Equity Securities from the second quarter of 2017 was calculated using publicly

available market volume data from Bats and OTC Markets Group, and the totals were divided to

determine the average number of shares per trade between NMS Stocks and OTC Equity Securities.



market share activity on the CAT System as well as the distribution of total market volume across Options Execution Venues while seeking to maintain comparable fees among the largest CAT Reporters. Furthermore, by using percentages of Options Execution Venues and cost recovery per tier, the

Operating Committee sought to include elasticity within the funding model, allowing the funding model to respond to changes in either the total number of Options Execution Venues or changes in market share. The process for developing the Options Execution Venue Recovery Allocation was the

same as discussed above with regard to Equity Execution Venues.

Based on this analysis, the Operating Committee approved the following Options Execution Venue Percentages and Recovery Allocations:

Options Execution Venue tier	Percentage of Options Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1 .....	75.00	28.25	7.06
Tier 2 .....	25.00	4.75	1.19
Total .....	100	33	8.25

(III) Market Share/Tier Assignments

The Operating Committee determined that, prior to the start of CAT reporting, market share for Execution Venues would be sourced from publicly-available market data. Options and equity volumes for Participants will be sourced from market data made publicly available by Bats while Execution Venue ATS volumes will be sourced from market data made publicly available by FINRA and OTC Markets. Set forth in the Appendix are two charts, one listing the current Equity Execution Venues, each with its rank and tier, and one listing the current Options Execution Venues, each with its rank and tier.

After the commencement of CAT reporting, market share for Execution Venues will be sourced from data reported to the CAT. Equity Execution Venue market share will be determined by calculating each Equity Execution Venue's proportion of the total volume of NMS Stock and OTC Equity shares reported by all Equity Execution Venues during the relevant time period (with the discounting of OTC Equity Securities market share of Execution Venue ATSs trading OTC Equity Securities as well as the market share of the FINRA ORF, as described above). Similarly, market share for Options Execution Venues will be determined by calculating each Options Execution Venue's proportion of the total volume of Listed Options contracts reported by all Options Execution Venues during the relevant time period.

The Operating Committee has determined to calculate fee tiers for Execution Venues every three months based on market share from the prior three months. Based on its analysis of historical data, the Operating Committee believes calculating tiers based on three months of data will provide the best balance between reflecting changes in

activity by Execution Venues while still providing predictability in the tiering for Execution Venues.

(D) Allocation of Costs

In addition to the funding principles discussed above, including comparability of fees, Section 11.1(c) of the CAT NMS Plan also requires expenses to be fairly and reasonably shared among the Participants and Industry Members. Accordingly, in developing the proposed fee schedules pursuant to the funding model, the Operating Committee calculated how the CAT costs would be allocated between Industry Members and Execution Venues, and how the portion of CAT costs allocated to Execution Venues would be allocated between Equity Execution Venues and Options Execution Venues. These determinations are described below.

(I) Allocation Between Industry Members and Execution Venues

In determining the cost allocation between Industry Members (other than Execution Venue ATSs) and Execution Venues, the Operating Committee analyzed a range of possible splits for revenue recovery from such Industry Members and Execution Venues, including 80%/20%, 75%/25%, 70%/30% and 65%/35% allocations. Based on this analysis, the Operating Committee determined that 75 percent of total costs recovered would be allocated to Industry Members (other than Execution Venue ATSs) and 25 percent would be allocated to Execution Venues. The Operating Committee determined that this 75%/25% division maintained the greatest level of comparability across the funding model. For example, the cost allocation establishes fees for the largest Industry Members (*i.e.*, those Industry Members in Tiers 1) that are comparable to the largest Equity Execution Venues and

Options Execution Venues (*i.e.*, those Execution Venues in Tier 1).

Furthermore, the allocation of total CAT cost recovery recognizes the difference in the number of CAT Reporters that are Industry Members versus CAT Reporters that are Execution Venues. Specifically, the cost allocation takes into consideration that there are approximately 23 times more Industry Members expected to report to the CAT than Execution Venues (*e.g.*, an estimated 1541 Industry Members versus 67 Execution Venues as of June 2017).

(II) Allocation Between Equity Execution Venues and Options Execution Venues

The Operating Committee also analyzed how the portion of CAT costs allocated to Execution Venues would be allocated between Equity Execution Venues and Options Execution Venues. In considering this allocation of costs, the Operating Committee analyzed a range of alternative splits for revenue recovered between Equity and Options Execution Venues, including a 70%/30%, 67%/33%, 65%/35%, 50%/50% and 25%/75% split. Based on this analysis, the Operating Committee determined to allocate 67 percent of Execution Venue costs recovered to Equity Execution Venues and 33 percent to Options Execution Venues. The Operating Committee determined that a 67%/33% allocation between Equity and Options Execution Venues maintained the greatest level of fee equitability and comparability based on the current number of Equity and Options Execution Venues. For example, the allocation establishes fees for the larger Equity Execution Venues that are comparable to the larger Options Execution Venues. Specifically, Tier 1 Equity Execution Venues would pay a quarterly fee of \$81,047 and Tier

1 Options Execution Venues would pay a quarterly fee of \$81,379. In addition to fee comparability between Equity Execution Venues and Options Execution Venues, the allocation also establishes equitability between larger (Tier 1) and smaller (Tier 2) Execution Venues based upon the level of market share. Furthermore, the allocation is intended to reflect the relative levels of current equity and options order events.

(E) Fee Levels

The Operating Committee determined to establish a CAT-specific fee to collectively recover the costs of building and operating the CAT. Accordingly, under the funding model, the sum of the CAT Fees is designed to recover the total cost of the CAT. The Operating Committee has determined overall CAT costs to be comprised of Plan Processor costs and non-Plan Processor costs, which are estimated to be \$50,700,000 in total for the year beginning November 21, 2016.<sup>54</sup>

The Plan Processor costs relate to costs incurred and to be incurred through November 21, 2017 by the Plan Processor and consist of the Plan Processor's current estimates of average yearly ongoing costs, including development costs, which total \$37,500,000. This amount is based upon the fees due to the Plan Processor pursuant to the Company's agreement with the Plan Processor.

The non-Plan Processor estimated costs incurred and to be incurred by the Company through November 21, 2017 consist of three categories of costs. The first category of such costs are third party support costs, which include legal fees, consulting fees and audit fees from November 21, 2016 until the date of filing as well as estimated third party support costs for the rest of the year. These amount to an estimated \$5,200,000. The second category of non-Plan Processor costs are estimated cyber-insurance costs for the year. Based on discussions with potential cyber-insurance providers, assuming \$2–5

million cyber-insurance premium on \$100 million coverage, the Company has estimated \$3,000,000 for the annual cost. The final cost figures will be determined following receipt of final underwriter quotes. The third category of non-Plan Processor costs is the CAT operational reserve, which is comprised of three months of ongoing Plan Processor costs (\$9,375,000), third party support costs (\$1,300,000) and cyber-insurance costs (\$750,000). The Operating Committee aims to accumulate the necessary funds to establish the three-month operating reserve for the Company through the CAT Fees charged to CAT Reporters for the year. On an ongoing basis, the Operating Committee will account for any potential need to replenish the operating reserve or other changes to total cost during its annual budgeting process. The following table summarizes the Plan Processor and non-Plan Processor cost components which comprise the total estimated CAT costs of \$50,700,000 for the covered period.

Cost category	Cost component	Amount
Plan Processor .....	Operational Costs .....	\$37,500,000
Non-Plan Processor .....	Third Party Support Costs .....	5,200,000
	Operational Reserve .....	<sup>55</sup> 5,000,000
	Cyber-insurance Costs .....	3,000,000
Estimated Total .....		50,700,000

Based on these estimated costs and the calculations for the funding model described above, the Operating Committee determined to impose the following fees:<sup>56</sup>

For Industry Members (other than Execution Venue ATSS):

Tier	Percentage of Industry Members	Quarterly CAT Fee
1 .....	0.900	\$81,483
2 .....	2.150	59,055
3 .....	2.800	40,899
4 .....	7.750	25,566
5 .....	8.300	7,428
6 .....	18.800	1,968
7 .....	59.300	105

For Execution Venues for NMS Stocks and OTC Equity Securities:

Tier	Percentage of Equity Execution Venues	Quarterly CAT Fee
1 .....	25.00	\$81,048
2 .....	42.00	37,062
3 .....	23.00	21,126
4 .....	10.00	129

For Execution Venues for Listed Options:

Tier	Percentage of Options Execution Venues	Quarterly CAT Fee
1 .....	75.00	\$81,381
2 .....	25.00	37,629

The Operating Committee has calculated the schedule of effective fees for Industry Members (other than Execution Venue ATSS) and Execution Venues in the following manner. Note that the calculation of CAT Fees assumes 52 Equity Execution Venues, 15 Options Execution Venues and 1,541 Industry Members (other than Execution Venue ATSS) as of June 2017.

CALCULATION OF ANNUAL TIER FEES FOR INDUSTRY MEMBERS ("IM")

Industry Member tier	Percentage of Industry Members	Percentage of Industry Member Recovery	Percentage of total recovery
Tier 1 .....	0.900	12.00	9.00
Tier 2 .....	2.150	20.50	15.38

<sup>54</sup> It is anticipated that CAT-related costs incurred prior to November 21, 2016 will be addressed via a separate filing.

<sup>55</sup> This \$5,000,000 represents the gradual accumulation of the funds for a target operating reserve of \$11,425,000.

<sup>56</sup> Note that all monthly, quarterly and annual CAT Fees have been rounded to the nearest dollar.

CALCULATION OF ANNUAL TIER FEES FOR INDUSTRY MEMBERS ("IM")—Continued

Industry Member tier	Percentage of Industry Members	Percentage of Industry Member Recovery	Percentage of total recovery
Tier 3 .....	2.800	18.50	13.88
Tier 4 .....	7.750	32.00	24.00
Tier 5 .....	8.300	10.00	7.50
Tier 6 .....	18.800	6.00	4.50
Tier 7 .....	59.300	1.00	0.75
Total .....	100	100	75

Industry Member tier	Estimated number of Industry Members
Tier 1 .....	14
Tier 2 .....	33
Tier 3 .....	43
Tier 4 .....	119
Tier 5 .....	128
Tier 6 .....	290
Tier 7 .....	914
Total .....	1,541

BILLING CODE 8011-01-P

**Calculation 1.1 (Calculation of a Tier 1 Industry Member Monthly Fee)**

$$1,541 \text{ [Estimated Tot. IMs]} \times 0.9\% \text{ [% of Tier 1 IMs]} = 14 \text{ [Estimated Tier 1 IMs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 75\% \text{ [IM \% of Tot. Ann. CAT Costs]} \times 12\% \text{ [% of Tier 1 IM Recovery]}}{14 \text{ [Estimated Tier 1 IMs]}} \right) \div 12 \text{ [Months per year]} = \mathbf{\$27,161}$$

**Calculation 1.2 (Calculation of a Tier 2 Industry Member Monthly Fee)**

$$1,541 \text{ [Estimated Tot. IMs]} \times 2.15\% \text{ [% of Tier 2 IMs]} = 33 \text{ [Estimated Tier 2 IMs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 75\% \text{ [IM \% of Tot. Ann. CAT Costs]} \times 20.5\% \text{ [% of Tier 2 IM Recovery]}}{33 \text{ [Estimated Tier 2 IMs]}} \right) \div 12 \text{ [Months per year]} = \mathbf{\$19,685}$$

**Calculation 1.3 (Calculation of a Tier 3 Industry Member Monthly Fee)**

$$1,541 \text{ [Estimated Tot. IMs]} \times 2.125\% \text{ [% of Tier 3 IMs]} = 43 \text{ [Estimated Tier 3 IMs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 75\% \text{ [IM \% of Tot. Ann. CAT Costs]} \times 18.5\% \text{ [% of Tier 3 IM Recovery]}}{43 \text{ [Estimated Tier 3 IMs]}} \right) \div 12 \text{ [Months per year]} = \mathbf{\$13,633}$$

**Calculation 1.4 (Calculation of a Tier 4 Industry Member Monthly Fee)**

$$1,541 \text{ [Estimated Tot. IMs]} \times 7.75\% \text{ [% of Tier 4 IMs]} = 119 \text{ [Estimated Tier 4 IMs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 75\% \text{ [IM \% of Tot. Ann. CAT Costs]} \times 32\% \text{ [% of Tier 4 IM Recovery]}}{119 \text{ [Estimated Tier 4 IMs]}} \right) \div 12 \text{ [Months per year]} = \mathbf{\$8522}$$

**Calculation 1.5 (Calculation of a Tier 5 Industry Member Annual Fee)**

$$1,541 \text{ [Estimated Tot. IMs]} \times 8.3\% \text{ [% of Tier 5 IMs]} = 128 \text{ [Estimated Tier 5 IMs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 75\% \text{ [IM \% of Tot. Ann. CAT Costs]} \times 7.75\% \text{ [% of Tier 5 IM Recovery]}}{128 \text{ [Estimated Tier 5 IMs]}} \right) \div 12 \text{ [Months per year]} = \mathbf{\$2476}$$

**Calculation 1.6 (Calculation of a Tier 6 Industry Member Monthly Fee)**

$$1,541 \text{ [Estimated Tot. IMs]} \times 18.8\% \text{ [% of Tier 6 IMs]} = 290 \text{ [Estimated Tier 6 IMs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 75\% \text{ [IM \% of Tot. Ann. CAT Costs]} \times 6\% \text{ [% of Tier 6 IM Recovery]}}{290 \text{ [Estimated Tier 6 IMs]}} \right) \div 12 \text{ [Months per year]} = \mathbf{\$656}$$

**Calculation 1.7 (Calculation of a Tier 7 Industry Member Monthly Fee)**

$$1,541 \text{ [Estimated Tot. IMs]} \times 59.3\% \text{ [% of Tier 7 IMs]} = 914 \text{ [Estimated Tier 7 IMs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 75\% \text{ [IM \% of Tot. Ann. CAT Costs]} \times 1\% \text{ [% of Tier 7 IM Recovery]}}{914 \text{ [Estimated Tier 7 IMs]}} \right) \div 12 \text{ [Months per year]} = \mathbf{\$35}$$

BILLING CODE 8011-01-C

**CALCULATION OF ANNUAL TIER FEES FOR EQUITY EXECUTION VENUES (“EV”)**

• Equity Execution Venue tier	• Percentage of Equity Execution Venues	• Percentage of Execution Venue Recovery	• Percentage of total recovery
• Tier 1 .....	• 25.00	• 33.25	• 8.31
• Tier 2 .....	• 42.00	• 25.73	• 6.43
• Tier 3 .....	• 23.00	• 8.00	• 2.00
• Tier 4 .....	• 10.00	• 49.00	• 0.01
• Total .....	• 100	• 67	• 16.75

Equity Execution Venue tier	Estimated number of Equity Execution Venues
Tier 1 .....	13
Tier 2 .....	22
Tier 3 .....	12
Tier 4 .....	5
<b>Total</b> .....	<b>52</b>

**Calculation 2.1 (Calculation of a Tier 1 Equity Execution Venue Monthly Fee)**

$$52 \text{ [Estimated Tot. Equity EVs]} \times 25\% \text{ [% of Tier 1 Equity EVs]} = 13 \text{ [Estimated Tier 1 Equity EVs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann.CAT Costs]} \times 33.25\% \text{ [EV \% of Tot. Ann.CAT Costs]} \times 26\% \text{ [% of Tier 1 Equity EV Recovery]}}{13 \text{ [Estimated Tier 1 Equity EVs]}} \right) \div 12 \text{ [Months per year]} = \mathbf{\$27,016}$$

**Calculation 2.2 (Calculation of a Tier 2 Equity Execution Venue Monthly Fee)**

$$52 \text{ [Estimated Tot. Equity EVs]} \times 42\% \text{ [% of Tier 2 Equity EVs]} = 22 \text{ [Estimated Tier 2 Equity EVs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann.CAT Costs]} \times 25\% \text{ [EV \% of Tot. Ann.CAT Costs]} \times 25.73\% \text{ [% of Tier 2 Equity EV Recovery]}}{22 \text{ [Estimated Tier 2 Equity EVs]}} \right) \div 12 \text{ [Months per year]} = \mathbf{\$12,353}$$

**Calculation 2.3 (Calculation of a Tier 3 Equity Execution Venue Monthly Fee)**

$$52 \text{ [Estimated Tot. Equity EVs]} \times 23\% \text{ [% of Tier 2 Equity EVs]} = 12 \text{ [Estimated Tier 2 Equity EVs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann.CAT Costs]} \times 25\% \text{ [EV \% of Tot. Ann.CAT Costs]} \times 8\% \text{ [% of Tier 2 Equity EV Recovery]}}{12 \text{ [Estimated Tier 2 Equity EVs]}} \right) \div 12 \text{ [Months per year]} = \mathbf{\$7,042}$$

**Calculation 2.4 (Calculation of a Tier 4 Equity Execution Venue Monthly Fee)**

$$52 \text{ [Estimated Tot. Equity EVs]} \times 10\% \text{ [% of Tier 2 Equity EVs]} = 5 \text{ [Estimated Tier 2 Equity EVs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann.CAT Costs]} \times 25\% \text{ [EV \% of Tot. Ann.CAT Costs]} \times 0.02\% \text{ [% of Tier 2 Equity EV Recovery]}}{5 \text{ [Estimated Tier 2 Equity EVs]}} \right) \div 12 \text{ [Months per year]} = \mathbf{\$42}$$

**CALCULATION OF ANNUAL TIER FEES FOR OPTIONS EXECUTION VENUES ("EV")**

Options Execution Venue tier	Percentage of Options Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1 .....	75.00	28.25	7.06
Tier 2 .....	25.00	4.75	1.19
<b>Total</b> .....	<b>100</b>	<b>33</b>	<b>≤8.25</b>

Options Execution Venue tier	Estimated number of Options Execution Venues
Tier 1 .....	11
Tier 2 .....	4
<b>Total</b> .....	<b>15</b>

**Calculation 3.1 (Calculation of a Tier 1 Options Execution Venue Monthly Fee)**

$$15 \text{ [Estimated Tot. Options EVs]} \times 75\% \text{ [% of Tier 1 Options EVs]} = 11 \text{ [Estimated Tier 1 Options EVs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 25\% \text{ [EV \% of Tot. Ann. CAT Costs]} \times 28.25\% \text{ [% of Tier 1 Options EV Recovery]}}{11 \text{ [Estimated Tier 1 Options EVs]}} \right) \div 12 \text{ [Months per year]} = \$27,127$$

**Calculation 3.2 (Calculation of a Tier 2 Options Execution Venue Annual Fee)**

$$15 \text{ [Estimated Tot. Options EVs]} \times 25\% \text{ [% of Tier 2 Options EVs]} = 4 \text{ [Estimated Tier 2 Options EVs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 25\% \text{ [EV \% of Tot. Ann. CAT Costs]} \times 4.75\% \text{ [% of Tier 2 Options EV Recovery]}}{4 \text{ [Estimated Tier 2 Options EVs]}} \right) \div 12 \text{ [Months per year]} = \$12,543$$

**TRACEABILITY OF TOTAL CAT FEES**

Type	Industry Member tier	Estimated number of members	CAT Fees paid annually	Total recovery
Industry Members .....	Tier 1 .....	14	\$325,932	\$4,563,048
	Tier 2 .....	33	236,220	7,795,260
	Tier 3 .....	43	163,596	7,034,628
	Tier 4 .....	119	102,264	12,169,416
	Tier 5 .....	128	29,712	3,803,136
	Tier 6 .....	290	7,872	2,282,880
	Tier 7 .....	914	420	383,880
Total .....		1,541	.....	38,032,248
Equity Execution Venues .....	Tier 1 .....	13	324,192	4,214,496
	Tier 2 .....	22	148,248	3,261,456
	Tier 3 .....	12	84,504	1,014,048
	Tier 4 .....	5	516	2,580
Total .....		52	.....	8,492,580
Options Execution Venues .....	Tier 1 .....	11	325,524	3,580,764
	Tier 2 .....	4	150,516	602,064
Total .....		15	.....	4,182,828
Total .....				50,700,000
Excess <sup>57</sup> .....				7,656

**(F) Comparability of Fees**

The funding principles require a funding model in which the fees charged to the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venue and/or Industry Members). Accordingly, in creating the model, the Operating Committee sought to establish comparable fees for the top tier of Industry Members (other than Execution Venue ATs), Equity Execution Venues and Options Execution Venues. Specifically, each Tier 1 CAT Reporter would be required

to pay a quarterly fee of approximately \$81,000.

**(G) Billing Onset**

Under Section 11.1(c) of the CAT NMS Plan, to fund the development and implementation of the CAT, the Company shall time the imposition and collection of all fees on Participants and Industry Members in a manner reasonably related to the timing when the Company expects to incur such development and implementation costs. The Company is currently incurring such development and implementation costs and will continue to do so prior to the commencement of CAT reporting and thereafter. In accordance with the CAT NMS Plan, all CAT Reporters, including both Industry Members and Execution Venues (including Participants), will be invoiced as promptly as possible following the latest of the operative date of the Consolidated Audit Trail Funding Fees for each of the

Participants and the operative date of the Plan amendment adopting CAT Fees for Participants.

**(H) Changes to Fee Levels and Tiers**

Section 11.3(d) of the CAT NMS Plan states that “[t]he Operating Committee shall review such fee schedule on at least an annual basis and shall make any changes to such fee schedule that it deems appropriate. The Operating Committee is authorized to review such fee schedule on a more regular basis, but shall not make any changes on more than a semi-annual basis unless, pursuant to a Supermajority Vote, the Operating Committee concludes that such change is necessary for the adequate funding of the Company.” With such reviews, the Operating Committee will review the distribution of Industry Members and Execution Venues across tiers, and make any updates to the percentage of CAT Reporters allocated to each tier as may

<sup>57</sup> The amount in excess of the total CAT costs will contribute to the gradual accumulation of the target operating reserve of \$11.425 million.

be necessary. In addition, the reviews will evaluate the estimated ongoing CAT costs and the level of the operating reserve. To the extent that the total CAT costs decrease, the fees would be adjusted downward, and to the extent that the total CAT costs increase, the fees would be adjusted upward.<sup>58</sup> Furthermore, any surplus of the Company's revenues over its expenses is to be included within the operational reserve to offset future fees. The limitations on more frequent changes to the fee, however, are intended to provide budgeting certainty for the CAT Reporters and the Company.<sup>59</sup> To the extent that the Operating Committee approves changes to the number of tiers in the funding model or the fees assigned to each tier, then the Operating Committee will file such changes with the SEC pursuant to Rule 608 of the Exchange Act, and the Participants will file such changes with the SEC pursuant to Section 19(b) of the Exchange Act and Rule 19b-4 thereunder, and any such changes will become effective in accordance with the requirements of those provisions.

(I) Initial and Periodic Tier Reassignments

The Operating Committee has determined to calculate fee tiers every three months based on market share or message traffic, as applicable, from the prior three months. For the initial tier assignments, the Company will calculate the relevant tier for each CAT Reporter using the three months of data prior to the commencement date. As with the initial tier assignment, for the tri-monthly reassignments, the Company will calculate the relevant tier using the three months of data prior to the relevant tri-monthly date. Any movement of CAT Reporters between tiers will not change the criteria for each tier or the fee amount corresponding to each tier.

In performing the tri-monthly reassignments, the assignment of CAT Reporters in each assigned tier is relative. Therefore, a CAT Reporter's assigned tier will depend, not only on its own message traffic or market share, but also on the message traffic/market share across all CAT Reporters. For example, the percentage of Industry Members (other than Execution Venue ATSS) in each tier is relative such that such Industry Member's assigned tier

will depend on message traffic generated across all CAT Reporters as well as the total number of CAT Reporters. The Operating Committee will inform CAT Reporters of their assigned tier every three months following the periodic tiering process, as the funding model will compare an individual CAT Reporter's activity to that of other CAT Reporters in the marketplace.

The following demonstrates a tier reassignment. In accordance with the funding model, the top 75% of Options Execution Venues in market share are categorized as Tier 1 while the bottom 25% of Options Execution Venues in market share are categorized as Tier 2. In the sample scenario below, Options Execution Venue L is initially categorized as a Tier 2 Options Execution Venue in Period A due to its market share. When market share is recalculated for Period B, the market share of Execution Venue L increases, and it is therefore subsequently reranked and reassigned to Tier 1 in Period B. Correspondingly, Options Execution Venue K, initially a Tier 1 Options Execution Venue in Period A, is reassigned to Tier 2 in Period B due to decreases in its market share.

Period A			Period B		
Options Execution Venue	Market share rank	Tier	Options Execution Venue	Market share rank	Tier
Options Execution Venue A	1	1	Options Execution Venue A	1	1
Options Execution Venue B	2	1	Options Execution Venue B	2	1
Options Execution Venue C	3	1	Options Execution Venue C	3	1
Options Execution Venue D	4	1	Options Execution Venue D	4	1
Options Execution Venue E	5	1	Options Execution Venue E	5	1
Options Execution Venue F	6	1	Options Execution Venue F	6	1
Options Execution Venue G	7	1	Options Execution Venue I	7	1
Options Execution Venue H	8	1	Options Execution Venue H	8	1
Options Execution Venue I	9	1	Options Execution Venue G	9	1
Options Execution Venue J	10	1	Options Execution Venue J	10	1
Options Execution Venue K	11	1	Options Execution Venue L	11	1
Options Execution Venue L	12	2	Options Execution Venue K	12	2
Options Execution Venue M	13	2	Options Execution Venue N	13	2
Options Execution Venue N	14	2	Options Execution Venue M	14	2
Options Execution Venue O	15	2	Options Execution Venue O	15	2

For each periodic tier reassignment, the Operating Committee will review the new tier assignments, particularly those assignments for CAT Reporters that shift from the lowest tier to a higher tier. This review is intended to evaluate whether potential changes to the market or CAT Reporters (e.g., dissolution of a large CAT Reporter) adversely affect the tier reassignments.

(J) Sunset Provision

The Operating Committee developed the proposed funding model by analyzing currently available historical data. Such historical data, however, is not as comprehensive as data that will be submitted to the CAT. Accordingly, the Operating Committee believes that it will be appropriate to revisit the funding model once CAT Reporters

have actual experience with the funding model. Accordingly, the Operating Committee determined to include an automatic sunset provision for the proposed fees. Specifically, the Operating Committee determined that the CAT Fees should automatically expire two years after the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. The Operating Committee intends to monitor

<sup>58</sup>The CAT Fees are designed to recover the costs associated with the CAT. Accordingly, CAT Fees would not be affected by increases or decreases in other non-CAT expenses incurred by the

Participants, such as any changes in costs related to the retirement of existing regulatory systems, such as OATS.

<sup>59</sup>Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85006.

the operation of the funding model during this two year period and to evaluate its effectiveness during that period. Such a process will inform the Operating Committee’s approach to funding the CAT after the two year period.

(3) Proposed CAT Fee Schedule

The Exchange proposes the Consolidated Audit Trail Funding Fees to impose the CAT Fees determined by the Operating Committee on the Exchange’s members. The proposed fee schedule has four sections, covering definitions, the fee schedule for CAT Fees, the timing and manner of payments, and the automatic sunseting of the CAT Fees. Each of these sections is discussed in detail below.

(A) Definitions

Paragraph (a) of the proposed fee schedule sets forth the definitions for the proposed fee schedule. Paragraph (a)(1) states that, for purposes of the Consolidated Audit Trail Funding Fees, the terms “CAT”, “CAT NMS Plan,” “Industry Member,” “NMS Stock,” “OTC Equity Security”, “Options Market Maker”, and “Participant” are defined as set forth in Rule 900 (Consolidated Audit Trail—Definitions).

The proposed fee schedule imposes different fees on Equity ATSs and Industry Members that are not Equity ATSs. Accordingly, the proposed fee schedule defines the term “Equity ATS.” First, paragraph (a)(2) defines an “ATS” to mean an alternative trading system as defined in Rule 300(a) of Regulation ATS under the Securities Exchange Act of 1934, as amended, that operates pursuant to Rule 301 of Regulation ATS. This is the same definition of an ATS as set forth in Section 1.1 of the CAT NMS Plan in the definition of an “Execution Venue.” Then, paragraph (a)(4) defines an “Equity ATS” as an ATS that executes transactions in NMS Stocks and/or OTC Equity Securities.

Paragraph (a)(3) of the proposed fee schedule defines the term “CAT Fee” to mean the Consolidated Audit Trail Funding Fee(s) to be paid by Industry Members as set forth in paragraph (b) in the proposed fee schedule.

Finally, Paragraph (a)(6) defines an “Execution Venue” as a Participant or an ATS (excluding any such ATS that does not execute orders). This definition is the same substantive definition as set forth in Section 1.1 of the CAT NMS Plan. Paragraph (a)(5) defines an “Equity Execution Venue” as an Execution Venue that trades NMS Stocks and/or OTC Equity Securities.

(B) Fee Schedule

The Exchange proposes to impose the CAT Fees applicable to its Industry Members through paragraph (b) of the proposed fee schedule. Paragraph (b)(1) of the proposed fee schedule sets forth the CAT Fees applicable to Industry Members other than Equity ATSs. Specifically, paragraph (b)(1) states that the Company will assign each Industry Member (other than an Equity ATS) to a fee tier once every quarter, where such tier assignment is calculated by ranking each Industry Member based on its total message traffic (with discounts for equity market maker quotes and Options Market Maker quotes based on the trade to quote ratio for equities and options, respectively) for the three months prior to the quarterly tier calculation day and assigning each Industry Member to a tier based on that ranking and predefined Industry Member percentages. The Industry Members with the highest total quarterly message traffic will be ranked in Tier 1, and the Industry Members with lowest quarterly message traffic will be ranked in Tier 7. Each quarter, each Industry Member (other than an Equity ATS) shall pay the following CAT Fee corresponding to the tier assigned by the Company for such Industry Member for that quarter:

Tier	Percentage of Industry Members	Quarterly CAT Fee
1 .....	0.900	\$81,483
2 .....	2.150	59,055
3 .....	2.800	40,899
4 .....	7.750	25,566
5 .....	8.300	7,428
6 .....	18.800	1,968
7 .....	59.300	105

Paragraph (b)(2) of the proposed fee schedule sets forth the CAT Fees applicable to Equity ATSs.<sup>60</sup> These are the same fees that Participants that trade NMS Stocks and/or OTC Equity Securities will pay. Specifically, paragraph (b)(2) states that the Company will assign each Equity ATS to a fee tier once every quarter, where such tier assignment is calculated by ranking each Equity Execution Venue based on its total market share of NMS Stocks and OTC Equity Securities (with a discount for the OTC Equity Securities market share of Equity ATSs trading OTC Equity Securities based on the average shares per trade ratio between NMS Stocks and OTC Equity Securities) for the three months prior to the quarterly

<sup>60</sup>Note that no fee schedule is provided for Execution Venue ATSs that execute transactions in Listed Options, as no such Execution Venue ATSs currently exist due to trading restrictions related to Listed Options.

tier calculation day and assigning each Equity ATS to a tier based on that ranking and predefined Equity Execution Venue percentages. The Equity ATSs with the higher total quarterly market share will be ranked in Tier 1, and the Equity ATSs with the lowest quarterly market share will be ranked in Tier 4. Specifically, paragraph (b)(2) states that, each quarter, each Equity ATS shall pay the following CAT Fee corresponding to the tier assigned by the Company for such Equity ATS for that quarter:

Tier	Percentage of Equity Execution Venues	Quarterly CAT Fee
1 .....	25.00	\$81,048
2 .....	42.00	37,062
3 .....	23.00	21,126
4 .....	10.00	129

(C) Timing and Manner of Payment

Section 11.4 of the CAT NMS Plan states that the Operating Committee shall establish a system for the collection of fees authorized under the CAT NMS Plan. The Operating Committee may include such collection responsibility as a function of the Plan Processor or another administrator. To implement the payment process to be adopted by the Operating Committee, paragraph (c)(1) of the proposed fee schedule states that the Company will provide each Industry Member with one invoice each quarter for its CAT Fees as determined pursuant to paragraph (b) of the proposed fee schedule, regardless of whether the Industry Member is a member of multiple self-regulatory organizations. Paragraph (c)(1) further states that each Industry Member will pay its CAT Fees to the Company via the centralized system for the collection of CAT Fees established by the Company in the manner prescribed by the Company. The Exchange will provide Industry Members with details regarding the manner of payment of CAT Fees by *Regulatory Notice*.

All CAT fees will be billed and collected centrally through the Company via the Plan Processor. Although each Participant will adopt its own fee schedule regarding CAT Fees, no CAT Fees or portion thereof will be collected by the individual Participants. Each Industry Member will receive from the Company one invoice for its applicable CAT fees, not separate invoices from each Participant of which it is a member. The Industry Members will pay the CAT Fees to the Company via the centralized system for the



collection of CAT fees established by the Company.<sup>61</sup>

Section 11.4 of the CAT NMS Plan also states that Participants shall require each Industry Member to pay all applicable authorized CAT Fees within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). Section 11.4 further states that, if an Industry Member fails to pay any such fee when due, such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (i) The Prime Rate plus 300 basis points; or (ii) the maximum rate permitted by applicable law. Therefore, in accordance with Section 11.4 of the CAT NMS Plan, the Exchange proposed to adopt paragraph (c)(2) of the proposed fee schedule. Paragraph (c)(2) of the proposed fee schedule states that each Industry Member shall pay CAT Fees within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If an Industry Member fails to pay any such fee when due, such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (i) The Prime Rate plus 300 basis points; or (ii) the maximum rate permitted by applicable law.

#### (D) Sunset Provision

The Operating Committee has determined to require that the CAT Fees automatically sunset two years from the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. Accordingly, the Exchange proposes paragraph (d) of the fee schedule, which states that “[t]hese Consolidated Audit Trailing Funding Fees will automatically expire two years after the operative date of the amendment of the CAT NMS Plan that adopts CAT fees for the Participants.”

#### (4) Changes to Prior CAT Fee Plan Amendment

The proposed funding model set forth in this Amendment is a revised version of the Original Proposal. The Commission received a number of comment letters in response to the Original Proposal.<sup>62</sup> The SEC suspended the Original Proposal and instituted proceedings to determine whether to

approve or disapprove it.<sup>63</sup> Pursuant to those proceedings, additional comment letters were submitted regarding the proposed funding model.<sup>64</sup> In developing this Amendment, the Operating Committee carefully considered these comments and made a number of changes to the Original Proposal to address these comments where appropriate.

This Amendment makes the following changes to the Original Proposal: (1) Adds two additional CAT Fee tiers for Equity Execution Venues; (2) discounts the OTC Equity Securities market share of Execution Venue ATSS trading OTC Equity Securities as well as the market share of the FINRA ORF by the average shares per trade ratio between NMS Stocks and OTC Equity Securities (calculated as 0.17% based on available data from the second quarter of 2017) when calculating the market share of Execution Venue ATSS trading OTC Equity Securities and FINRA; (3) discounts the Options Market Maker quotes by the trade to quote ratio for options (calculated as 0.01% based on available data for June 2016 through June 2017) when calculating message traffic for Options Market Makers; (4) discounts equity market maker quotes by the trade to quote ratio for equities (calculated as 5.43% based on available data for June 2016 through June 2017) when calculating message traffic for equity market makers; (5) decreases the number of tiers for Industry Members (other than the Execution Venue ATSS) from nine to seven; (6) changes the allocation of CAT costs between Equity Execution Venues and Options Execution Venues from 75%/25% to 67%/33%; (7) adjusts tier percentages and recovery allocations for Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATSS); (8) focuses the comparability of CAT Fees on the individual entity level, rather than primarily on the comparability of affiliated entities; (9) commences invoicing of CAT Reporters as promptly as possible following the latest of the operative date of the Consolidated Audit Trail Funding Fees for each of the Participants and the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants; and (10) requires the proposed fees to automatically expire two years from the operative date of the CAT NMS Plan amendment adopting CAT Fees for the Participants.

#### (A) Equity Execution Venues

##### (i) Small Equity Execution Venues

In the Original Proposal, the Operating Committee proposed to establish two fee tiers for Equity Execution Venues. The Commission and commenters raised the concern that, by establishing only two tiers, smaller Equity Execution Venues (e.g., those Equity ATSS representing less than 1% of NMS market share) would be placed in the same fee tier as larger Equity Execution Venues, thereby imposing an undue or inappropriate burden on competition.<sup>65</sup> To address this concern, the Operating Committee proposes to add two additional tiers for Equity Execution Venues, a third tier for smaller Equity Execution Venues and a fourth tier for the smallest Equity Execution Venues.

Specifically, the Original Proposal had two tiers of Equity Execution Venues. Tier 1 required the largest Equity Execution Venues to pay a quarterly fee of \$63,375. Based on available data, these largest Equity Execution Venues were those that had equity market share of share volume greater than or equal to 1%.<sup>66</sup> Tier 2 required the remaining smaller Equity Execution Venues to pay a quarterly fee of \$38,820.

To address concerns about the potential for the \$38,820 quarterly fee to impose an undue burden on smaller Equity Execution Venues, the Operating Committee determined to move to a four tier structure for Equity Execution Venues. Tier 1 would continue to include the largest Equity Execution Venues by share volume (that is, based on currently available data, those with market share of equity share volume greater than or equal to one percent), and these Equity Execution Venues would be required to pay a quarterly fee of \$81,048. The Operating Committee determined to divide the original Tier 2 into three tiers. The new Tier 2 Equity Execution Venues, which would include the next largest Equity Execution Venues by equity share volume, would be required to pay a quarterly fee of \$37,062. The new Tier

<sup>65</sup> See Suspension Order at 31664; SIFMA Letter at 3.

<sup>66</sup> Note that while these equity market share thresholds were referenced as data points to help differentiate between Equity Execution Venue tiers, the proposed funding model is directly driven not by market share thresholds, but rather by fixed percentages of Equity Execution Venues across tiers to account for fluctuating levels of market share across time. Actual market share in any tier will vary based on the actual market activity in a given measurement period, as well as the number of Equity Execution Venues included in the measurement period.

<sup>61</sup> Section 11.4 of the CAT NMS Plan.

<sup>62</sup> For a description of the comments submitted in response to the Original Proposal, see Suspension Order.

<sup>63</sup> Suspension Order.

<sup>64</sup> See MFA Letter; SIFMA Letter; FIA Principal Traders Group Letter; Belvedere Letter; Sidley Letter; Group One Letter; and Virtu Financial Letter.

3 Equity Execution Venues would be required to pay a quarterly fee of \$21,126. The new Tier 4 Equity Execution Venues, which would include the smallest Equity Execution Venues by share volume, would be required to pay a quarterly fee of \$129.

In developing the proposed four tier structure, the Operating Committee considered keeping the existing two tiers, as well as shifting to three, four or five Equity Execution Venue tiers (the maximum number of tiers permitted under the Plan), to address the concerns regarding small Equity Execution Venues. For each of the two, three, four and five tier alternatives, the Operating Committee considered the assignment of various percentages of Equity Execution Venues to each tier as well as various percentage of Equity Execution Venue recovery allocations for each alternative. As discussed below in more detail, each of these options was considered in the context of the full model, as changes in each variable in the model affect other variables in the model when allocating the total CAT costs among CAT Reporters. The Operating Committee determined that the four tier alternative addressed the spectrum of different Equity Execution Venues. The Operating Committee determined that neither a two tier structure nor a three tier structure sufficiently accounted for the range of market shares of smaller Equity Execution Venues. The Operating Committee also determined that, given the limited number of Equity Execution Venues, that a fifth tier was unnecessary to address the range of market shares of the Equity Execution Venues.

By increasing the number of tiers for Equity Execution Venues and reducing the proposed CAT Fees for the smaller Equity Execution Venues, the Operating Committee believes that the proposed fees for Equity Execution Venues would not impose an undue or inappropriate burden on competition under Section 6 or Section 15A of the Exchange Act. Moreover, the Operating Committee believes that the proposed fees appropriately take into account the distinctions in the securities trading operations of different Equity Execution Venues, as required under the funding principles of the CAT NMS Plan.<sup>67</sup> The larger number of tiers more closely tracks the variety of sizes of equity share volume of Equity Execution Venues. In addition, the reduction in the fees for the smaller Equity Execution Venues recognizes the potential burden of larger fees on smaller entities. In particular, the very small quarterly fee of \$129 for

Tier 4 Equity Execution Venues reflects the fact that certain Equity Execution Venues have a very small share volume due to their typically more focused business models.

Accordingly, with this Amendment, the Exchange proposes to amend paragraph (b)(2) of the proposed fee schedule to add the two additional tiers for Equity Execution Venues, to establish the percentages and fees for Tiers 3 and 4 as described, and to revise the percentages and fees for Tiers 1 and 2 as described.

(ii) Execution Venues for OTC Equity Securities

In the Original Proposal, the Operating Committee proposed to group Execution Venues for OTC Equity Securities and Execution Venues for NMS Stocks in the same tier structure. The Commission and commenters raised concerns as to whether this determination to place Execution Venues for OTC Equity Securities in the same tier structure as Execution Venues for NMS Stocks would result in an undue or inappropriate burden on competition, recognizing that the application of share volume may lead to different outcomes as applied to OTC Equity Securities and NMS Stocks.<sup>68</sup> To address this concern, the Operating Committee proposes to discount the OTC Equity Securities market share of Execution Venue ATSs trading OTC Equity Securities as well as the market share of the FINRA ORF by the average shares per trade ratio between NMS Stocks and OTC Equity Securities (0.17% for the second quarter of 2017) in order to adjust for the greater number of shares being traded in the OTC Equity Securities market, which is generally a function of a lower per share price for OTC Equity Securities when compared to NMS Stocks.

As commenters noted, many OTC Equity Securities are priced at less than one dollar—and a significant number at less than one penny—and low-priced shares tend to trade in larger quantities. Accordingly, a disproportionately large number of shares are involved in transactions involving OTC Equity Securities versus NMS Stocks, which has the effect of overstating an Execution Venue's true market share when the Execution Venue is involved in the trading of OTC Equity Securities. Because the proposed fee tiers are based on market share calculated by share volume, Execution Venue ATSs trading OTC Equity Securities and FINRA may be subject to higher tiers than their

operations may warrant.<sup>69</sup> The Operating Committee proposes to address this concern in two ways. First, the Operating Committee proposes to increase the number of Equity Execution Venue tiers, as discussed above. Second, the Operating Committee determined to discount the OTC Equity Securities market share of Execution Venue ATSs trading OTC Equity Securities as well as the market share of the FINRA ORF when calculating their tier placement. Because the disparity in share volume between Execution Venues trading in OTC Equity Securities and NMS Stocks is based on the different number of shares per trade for OTC Equity Securities and NMS Stocks, the Operating Committee believes that discounting the OTC Equity Securities share volume of such Execution Venue ATSs as well as the market share of the FINRA ORF would address the difference in shares per trade for OTC Equity Securities and NMS Stocks. Specifically, the Operating Committee proposes to impose a discount based on the objective measure of the average shares per trade ratio between NMS Stocks and OTC Equity Securities. Based on available data from the second quarter of 2017, the average shares per trade ratio between NMS Stocks and OTC Equity Securities is 0.17%.

The practical effect of applying such a discount for trading in OTC Equity Securities is to shift Execution Venue ATSs trading OTC Equity Securities to tiers for smaller Execution Venues and with lower fees. For example, under the Original Proposal, one Execution Venue ATS trading OTC Equity Securities was placed in the first CAT Fee tier, which had a quarterly fee of \$63,375. With the imposition of the proposed tier changes and the discount, this ATS would be ranked in Tier 3 and would owe a quarterly fee of \$21,126.

In developing the proposed discount for Equity Execution Venue ATSs trading OTC Equity Securities and FINRA, the Operating Committee evaluated different alternatives to address the concerns related to OTC Equity Securities, including creating a separate tier structure for Execution Venues trading OTC Equity Securities (like the separate tier for Options Execution Venues) as well as the proposed discounting method for Execution Venue ATSs trading OTC Equity Securities and FINRA. For these alternatives, the Operating Committee considered how each alternative would affect the recovery allocations. In addition, each of these options was considered in the context of the full

<sup>67</sup> Section 11.2(b) of the CAT NMS Plan.

<sup>68</sup> See Suspension Order at 31664–5.

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

model, as changes in each variable in the model affect other variables in the model when allocating the total CAT costs among CAT Reporters. The Operating Committee did not adopt a separate tier structure for Equity Execution Venues trading OTC Equity Securities as they determined that the proposed discount approach appropriately addresses the concern. The Operating Committee determined to adopt the proposed discount because it directly relates to the concern regarding the trading patterns and operations in the OTC Equity Securities markets, and is an objective discounting method.

By increasing the number of tiers for Equity Execution Venues and imposing a discount on the market share of share volume calculation for trading in OTC Equity Securities, the Operating Committee believes that the proposed fees for Equity Execution Venues would not impose an undue or inappropriate burden on competition under Section 6 or Section 15A of the Exchange Act. Moreover, the Operating Committee believes that the proposed fees appropriately take into account the distinctions in the securities trading operations of different Equity Execution Venues, as required under the funding principles of the CAT NMS Plan.<sup>70</sup> As discussed above, the larger number of tiers more closely tracks the variety of sizes of equity share volume of Equity Execution Venues. In addition, the proposed discount recognizes the different types of trading operations at Equity Execution Venues trading OTC Equity Securities versus those trading NMS Stocks, thereby more closely matching the relative revenue generation by Equity Execution Venues trading OTC Equity Securities to their CAT Fees.

Accordingly, with this Amendment, the Exchange proposes to amend paragraph (b)(2) of the proposed fee schedule to indicate that the OTC Equity Securities market share for Equity ATSs trading OTC Equity Securities as well as the market share of the FINRA ORF would be discounted. In addition, as discussed above, to address concerns related to smaller ATSs, including those that trade OTC Equity Securities, the Exchange proposes to amend paragraph (b)(2) of the proposed fee schedule to add two additional tiers for Equity Execution Venues, to establish the percentages and fees for Tiers 3 and 4 as described, and to revise the percentages and fees for Tiers 1 and 2 as described.

<sup>70</sup> Section 11.2(b) of the CAT NMS Plan.

#### (B) Market Makers

In the Original Proposal, the Operating Committee proposed to include both Options Market Maker quotes and equities market maker quotes in the calculation of total message traffic for such market makers for purposes of tiering for Industry Members (other than Execution Venue ATSs). The Commission and commenters raised questions as to whether the proposed treatment of Options Market Maker quotes may result in an undue or inappropriate burden on competition or may lead to a reduction in market quality.<sup>71</sup> To address this concern, the Operating Committee determined to discount the Options Market Maker quotes by the trade to quote ratio for options when calculating message traffic for Options Market Makers. Similarly, to avoid disincentives to quoting behavior on the equities side as well, the Operating Committee determined to discount equity market maker quotes by the trade to quote ratio for equities when calculating message traffic for equities market makers.

In the Original Proposal, market maker quotes were treated the same as other message traffic for purposes of tiering for Industry Members (other than Execution Venue ATSs). Commenters noted, however, that charging Industry Members on the basis of message traffic will impact market makers disproportionately because of their continuous quoting obligations. Moreover, in the context of options market makers, message traffic would include bids and offers for every listed options strikes and series, which are not an issue for equities.<sup>72</sup> The Operating Committee proposes to address this concern in two ways. First, the Operating Committee proposes to discount Options Market Maker quotes when calculating the Options Market Makers' tier placement. Specifically, the Operating Committee proposes to impose a discount based on the objective measure of the trade to quote ratio for options. Based on available data from June 2016 through June 2017, the trade to quote ratio for options is 0.01%. Second, the Operating Committee proposes to discount equities market maker quotes when calculating the equities market makers' tier placement. Specifically, the Operating Committee proposes to impose a discount based on the

<sup>71</sup> See Suspension Order at 31663-4; SIFMA Letter at 4-6; FIA Principal Traders Group Letter at 3; Sidley Letter at 2-6; Group One Letter at 2-6; and Belvedere Letter at 2.

<sup>72</sup> Suspension Order at 31664.

objective measure of the trade to quote ratio for equities. Based on available data for June 2016 through June 2017, this trade to quote ratio for equities is 5.43%.

The practical effect of applying such discounts for quoting activity is to shift market makers' calculated message traffic lower, leading to the potential shift to tiers for lower message traffic and reduced fees. Such an approach would move sixteen Industry Member CAT Reporters that are market makers to a lower tier than in the Original Proposal. For example, under the Original Proposal, Broker-Dealer Firm ABC was placed in the first CAT Fee tier, which had a quarterly fee of \$101,004. With the imposition of the proposed tier changes and the discount, Broker-Dealer Firm ABC, an options market maker, would be ranked in Tier 3 and would owe a quarterly fee of \$40,899.

In developing the proposed market maker discounts, the Operating Committee considered various discounts for Options Market Makers and equity market makers, including discounts of 50%, 25%, 0.00002%, as well as the 5.43% for option market makers and 0.01% for equity market makers. Each of these options were considered in the context of the full model, as changes in each variable in the model affect other variables in the model when allocating the total CAT costs among CAT Reporters. The Operating Committee determined to adopt the proposed discount because it directly relates to the concern regarding the quoting requirement, is an objective discounting method, and has the desired potential to shift market makers to lower fee tiers.

By imposing a discount on Options Market Makers and equities market makers' quoting traffic for the calculation of message traffic, the Operating Committee believes that the proposed fees for market makers would not impose an undue or inappropriate burden on competition under Section 6 or Section 15A of the Exchange Act. Moreover, the Operating Committee believes that the proposed fees appropriately take into account the distinctions in the securities trading operations of different Industry Members, and avoid disincentives, such as a reduction in market quality, as required under the funding principles of the CAT NMS Plan.<sup>73</sup> The proposed discounts recognize the different types of trading operations presented by Options Market Makers and equities market makers, as well as the value of

<sup>73</sup> Section 11.2(b) of the CAT NMS Plan.

the market makers' quoting activity to the market as a whole. Accordingly, the Operating Committee believes that the proposed discounts will not impact the ability of small Options Market Makers or equities market makers to provide liquidity.

Accordingly, with this Amendment, the Exchange proposes to amend paragraph (b)(1) of the proposed fee schedule to indicate that the message traffic related to equity market maker quotes and Options Market Maker quotes would be discounted. In addition, the Exchange proposes to define the term "Options Market Maker" in paragraph (a)(1) of the proposed fee schedule.

#### (C) Comparability/Allocation of Costs

Under the Original Proposal, 75% of CAT costs were allocated to Industry Members (other than Execution Venue ATSS) and 25% of CAT costs were allocated to Execution Venues. This cost allocation sought to maintain the greatest level of comparability across the funding model, where comparability considered affiliations among or between CAT Reporters. The Commission and commenters expressed concerns regarding whether the proposed 75%/25% allocation of CAT costs is consistent with the Plan's funding principles and the Exchange Act, including whether the allocation places a burden on competition or reduces market quality. The Commission and commenters also questioned whether the approach of accounting for affiliations among CAT Reporters in setting CAT Fees disadvantages non-affiliated CAT Reporters or otherwise burdens competition in the market for trading services.<sup>74</sup>

In response to these concerns, the Operating Committee determined to revise the proposed funding model to focus the comparability of CAT Fees on the individual entity level, rather than primarily on the comparability of affiliated entities. In light of the interconnected nature of the various aspects of the funding model, the Operating Committee determined to revise various aspects of the model to enhance comparability at the individual entity level. Specifically, to achieve such comparability, the Operating Committee determined to (1) decrease the number of tiers for Industry Members (other than Execution Venue ATSS) from nine to seven; (2) change the allocation of CAT costs between Equity

Execution Venues and Options Execution Venues from 75%/25% to 67%/33%; and (3) adjust tier percentages and recovery allocations for Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATSS). With these changes, the proposed funding model provides fee comparability for the largest individual entities, with the largest Industry Members (other than Execution Venue ATSS), Equity Execution Venues and Options Execution Venues each paying a CAT Fee of approximately \$81,000 each quarter.

#### (i) Number of Industry Member Tiers

In the Original Proposal, the proposed funding model had nine tiers for Industry Members (other than Execution Venue ATSS). The Operating Committee determined that reducing the number of tiers from nine tiers to seven tiers (and adjusting the predefined Industry Member Percentages as well) continues to provide a fair allocation of fees among Industry Members and appropriately distinguishes between Industry Members with differing levels of message traffic. In reaching this conclusion, the Operating Committee considered historical message traffic generated by Industry Members across all exchanges and as submitted to FINRA's OATS, and considered the distribution of firms with similar levels of message traffic, grouping together firms with similar levels of message traffic. Based on this, the Operating Committee determined that seven tiers would group firms with similar levels of message traffic, while also achieving greater comparability in the model for the individual CAT Reporters with the greatest market share or message traffic.

In developing the proposed seven tier structure, the Operating Committee considered remaining at nine tiers, as well as reducing the number of tiers down to seven when considering how to address the concerns raised regarding comparability. For each of the alternatives, the Operating Committee considered the assignment of various percentages of Industry Members to each tier as well as various percentages of Industry Member recovery allocations for each alternative. Each of these options was considered in the context of its effects on the full funding model, as changes in each variable in the model affect other variables in the model when allocating the total CAT costs among CAT Reporters. The Operating Committee determined that the seven tier alternative provided the most fee comparability at the individual entity level for the largest CAT Reporters,

while both providing logical breaks in tiering for Industry Members with different levels of message traffic and a sufficient number of tiers to provide for the full spectrum of different levels of message traffic for all Industry Members.

#### (ii) Allocation of CAT Costs Between Equity and Options Execution Venues

The Operating Committee also determined to adjust the allocation of CAT costs between Equity Execution Venues and Options Execution Venues to enhance comparability at the individual entity level. In the Original Proposal, 75% of Execution Venue CAT costs were allocated to Equity Execution Venues, and 25% of Execution Venue CAT costs were allocated to Options Execution Venues. To achieve the goal of increased comparability at the individual entity level, the Operating Committee analyzed a range of alternative splits for revenue recovery between Equity and Options Execution Venues, along with other changes in the proposed funding model. Based on this analysis, the Operating Committee determined to allocate 67 percent of Execution Venue costs recovered to Equity Execution Venues and 33 percent to Options Execution Venues. The Operating Committee determined that a 67/33 allocation between Equity and Options Execution Venues enhances the level of fee comparability for the largest CAT Reporters. Specifically, the largest Equity and Options Execution Venues would pay a quarterly CAT Fee of approximately \$81,000.

In developing the proposed allocation of CAT costs between Equity and Options Execution Venues, the Operating Committee considered various different options for such allocation, including keeping the original 75%/25% allocation, as well as shifting to a 70%/30%, 67%/33%, or 57.75%/42.25% allocation. For each of the alternatives, the Operating Committee considered the effect each allocation would have on the assignment of various percentages of Equity Execution Venues to each tier as well as various percentages of Equity Execution Venue recovery allocations for each alternative. Moreover, each of these options was considered in the context of the full model, as changes in each variable in the model affect other variables in the model when allocating the total CAT costs among CAT Reporters. The Operating Committee determined that the 67%/33% allocation between Equity and Options Execution Venues provided the greatest level of fee comparability at the individual entity level for the largest

<sup>74</sup> See Suspension Order at 31662-3; SIFMA Letter at 3; Sidley Letter at 6-7; Group One Letter at 2; and Belvedere Letter at 2.

CAT Reporters, while still providing for appropriate fee levels across all tiers for all CAT Reporters.

(iii) Allocation of Costs Between Execution Venues and Industry Members

The Operating Committee determined to allocate 25% of CAT costs to Execution Venues and 75% to Industry Members (other than Execution Venue ATs), as it had in the Original Proposal. The Operating Committee determined that this 75%/25% allocation, along with the other changes proposed above, led to the most comparable fees for the largest Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATs). The largest Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATs) would each pay a quarterly CAT Fee of approximately \$81,000.

As a preliminary matter, the Operating Committee determined that it is appropriate to allocate most of the costs to create, implement and maintain the CAT to Industry Members for several reasons. First, there are many more broker-dealers expected to report to the CAT than Participants (*i.e.*, 1,541 broker-dealer CAT Reporters versus 22 Participants). Second, since most of the costs to process CAT reportable data is generated by Industry Members, Industry Members could be expected to contribute toward such costs. Finally, as noted by the SEC, the CAT “substantially enhance[s] the ability of the SROs and the Commission to oversee today’s securities markets,”<sup>75</sup> thereby benefitting all market participants. After making this determination, the Operating Committee analyzed several different cost allocations, as discussed further below, and determined that an allocation where 75% of the CAT costs should be borne by the Industry Members (other than Execution Venue ATs) and 25% should be paid by Execution Venues was most appropriate and led to the greatest comparability of CAT Fees for the largest CAT Reporters.

In developing the proposed allocation of CAT costs between Execution Venues and Industry Members (other than Execution Venue ATs), the Operating Committee considered various different options for such allocation, including keeping the original 75%/25% allocation, as well as shifting to an 80%/20%, 70%/30%, or 65%/35%

allocation. Each of these options was considered in the context of the full model, including the effect on each of the changes discussed above, as changes in each variable in the model affect other variables in the model when allocating the total CAT costs among CAT Reporters. In particular, for each of the alternatives, the Operating Committee considered the effect each allocation had on the assignment of various percentages of Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATs) to each relevant tier as well as various percentages of recovery allocations for each tier. The Operating Committee determined that the 75%/25% allocation between Execution Venues and Industry Members (other than Execution Venue ATs) provided the greatest level of fee comparability at the individual entity level for the largest CAT Reporters, while still providing for appropriate fee levels across all tiers for all CAT Reporters.

(iv) Affiliations

The funding principles set forth in Section 11.2 of the Plan require that the fees charged to CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venue and/or Industry Members). The proposed funding model satisfies this requirement. As discussed above, under the proposed funding model, the largest Equity Execution Venues, Options Execution Venues, and Industry Members (other than Execution Venue ATs) pay approximately the same fee. Moreover, the Operating Committee believes that the proposed funding model takes into consideration affiliations between or among CAT Reporters as complexes with multiple CAT Reporters will pay the appropriate fee based on the proposed fee schedule for each of the CAT Reporters in the complex. For example, a complex with a Tier 1 Equity Execution Venue and Tier 2 Industry Member will pay the same as another complex with a Tier 1 Equity Execution Venue and Tier 2 Industry Member.

(v) Fee Schedule Changes

Accordingly, with this Amendment, the Exchange proposes to amend paragraphs (b)(1) and (2) of the proposed fee schedule to reflect the changes discussed in this section. Specifically, the Exchange proposes to amend paragraph (b)(1) and (2) of the

proposed fee schedule to update the number of tiers, and the fees and percentages assigned to each tier to reflect the described changes.

(D) Market Share/Message Traffic

In the Original Proposal, the Operating Committee proposed to charge Execution Venues based on market share and Industry Members (other than Execution Venue ATs) based on message traffic. Commenters questioned the use of the two different metrics for calculating CAT Fees.<sup>76</sup> The Operating Committee continues to believe that the proposed use of market share and message traffic satisfies the requirements of the Exchange Act and the funding principles set forth in the CAT NMS Plan. Accordingly, the proposed funding model continues to charge Execution Venues based on market share and Industry Members (other than Execution Venue ATs) based on message traffic.

In drafting the Plan and the Original Proposal, the Operating Committee expressed the view that the correlation between message traffic and size does not apply to Execution Venues, which they described as producing similar amounts of message traffic regardless of size. The Operating Committee believed that charging Execution Venues based on message traffic would result in both large and small Execution Venues paying comparable fees, which would be inequitable, so the Operating Committee determined that it would be more appropriate to treat Execution Venues differently from Industry Members in the funding model. Upon a more detailed analysis of available data, however, the Operating Committee noted that Execution Venues have varying levels of message traffic. Nevertheless, the Operating Committee continues to believe that a bifurcated funding model—where Industry Members (other than Execution Venue ATs) are charged fees based on message traffic and Execution Venues are charged based on market share—complies with the Plan and meets the standards of the Exchange Act for the reasons set forth below.

Charging Industry Members based on message traffic is the most equitable means for establishing fees for Industry Members (other than Execution Venue ATs). This approach will assess fees to Industry Members that create larger volumes of message traffic that are relatively higher than those fees charged to Industry Members that create smaller volumes of message traffic. Since

<sup>75</sup> Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722, 45726 (August 1, 2012) (“Rule 613 Adopting Release”).

<sup>76</sup> Suspension Order at 31663; FIA Principal Traders Group Letter at 2.

message traffic, along with fixed costs of the Plan Processor, is a key component of the costs of operating the CAT, message traffic is an appropriate criterion for placing Industry Members in a particular fee tier.

The Operating Committee also believes that it is appropriate to charge Execution Venues CAT Fees based on their market share. In contrast to Industry Members (other than Execution Venue ATSS), which determine the degree to which they produce the message traffic that constitutes CAT Reportable Events, the CAT Reportable Events of Execution Venues are largely derivative of quotations and orders received from Industry Members that the Execution Venues are required to display. The business model for Execution Venues, however, is focused on executions in their markets. As a result, the Operating Committee believes that it is more equitable to charge Execution Venues based on their market share rather than their message traffic.

Similarly, focusing on message traffic would make it more difficult to draw distinctions between large and small exchanges, including options exchanges in particular. For instance, the Operating Committee analyzed the message traffic of Execution Venues and Industry Members for the period of April 2017 to June 2017 and placed all CAT Reporters into a nine-tier framework (*i.e.*, a single tier may include both Execution Venues and Industry Members). The Operating Committee's analysis found that the majority of exchanges (15 total) were grouped in Tiers 1 and 2. Moreover, virtually all of the options exchanges were in Tiers 1 and 2.<sup>77</sup> Given the concentration of options exchanges in Tiers 1 and 2, the Operating Committee believes that using a funding model based purely on message traffic would make it more difficult to distinguish between large and small options exchanges, as compared to the proposed bifurcated fee approach.

In addition, the Operating Committee also believes that it is appropriate to treat ATSS as Execution Venues under the proposed funding model since ATSS have business models that are similar to those of exchanges, and ATSS also compete with exchanges. For these reasons, the Operating Committee believes that charging Execution Venues based on market share is more appropriate and equitable than charging

Execution Venues based on message traffic.

#### (E) Time Limit

In the Original Proposal, the Operating Committee did not impose any time limit on the application of the proposed CAT Fees. As discussed above, the Operating Committee developed the proposed funding model by analyzing currently available historical data. Such historical data, however, is not as comprehensive as data that will be submitted to the CAT. Accordingly, the Operating Committee believes that it will be appropriate to revisit the funding model once CAT Reporters have actual experience with the funding model. Accordingly, the Operating Committee proposes to include a sunset provision in the proposed fee model. The proposed CAT Fees will sunset two years after the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. Specifically, the Exchange proposes to add paragraph (d) of the proposed fee schedule to include this sunset provision. Such a provision will provide the Operating Committee and other market participants with the opportunity to reevaluate the performance of the proposed funding model.

#### (F) Tier Structure/Decreasing Cost per Unit

In the Original Proposal, the Operating Committee determined to use a tiered fee structure. The Commission and commenters questioned whether the decreasing cost per additional unit (of message traffic in the case of Industry Members, or of share volume in the case of Execution Venues) in the proposed fee schedules burdens competition by disadvantaging small Industry Members and Execution Venues and/or by creating barriers to entry in the market for trading services and/or the market for broker-dealer services.<sup>78</sup>

The Operating Committee does not believe that decreasing cost per additional unit in the proposed fee schedules places an unfair competitive burden on Small Industry Members and Execution Venues. While the cost per unit of message traffic or share volume necessarily will decrease as volume increases in any tiered fee model using fixed fee percentages and, as a result, Small Industry Members and small Execution Venues may pay a larger fee per message or share, this comment fails to take account of the substantial differences in the absolute fees paid by

Small Industry Members and small Execution Venues as opposed to large Industry Members and large Execution Venues. For example, under the fee proposals, Tier 7 Industry Members would pay a quarterly fee of \$105, while Tier 1 Industry Members would pay a quarterly fee of \$81,483. Similarly, a Tier 4 Equity Execution Venue would pay a quarterly fee of \$129, while a Tier 1 Equity Execution Venue would pay a quarterly fee of \$81,048. Thus, Small Industry Members and small Execution Venues are not disadvantaged in terms of the total fees that they actually pay. In contrast to a tiered model using fixed fee percentages, the Operating Committee believes that strictly variable or metered funding models based on message traffic or share volume would be more likely to affect market behavior and may present administrative challenges (*e.g.*, the costs to calculate and monitor fees may exceed the fees charged to the smallest CAT Reporters).

#### (G) Other Alternatives Considered

In addition to the various funding model alternatives discussed above regarding discounts, number of tiers and allocation percentages, the Operating Committee also discussed other possible funding models. For example, the Operating Committee considered allocating the total CAT costs equally among each of the Participants, and then permitting each Participant to charge its own members as it deems appropriate.<sup>79</sup> The Operating Committee determined that such an approach raised a variety of issues, including the likely inconsistency of the ensuing charges, potential for lack of transparency, and the impracticality of multiple SROs submitting invoices for CAT charges. The Operating Committee therefore determined that the proposed funding model was preferable to this alternative.

#### (H) Industry Member Input

Commenters expressed concern regarding the level of Industry Member input into the development of the proposed funding model, and certain commenters have recommended a greater role in the governance of the CAT.<sup>80</sup> The Participants previously addressed this concern in its letters responding to comments on the Plan and the CAT Fees.<sup>81</sup> As discussed in

<sup>79</sup> See FIA Principal Traders Group Letter at 2; Belvedere Letter at 4.

<sup>80</sup> See Suspension Order at 31662; MFA Letter at 1–2.

<sup>81</sup> Letter from Participants to Brent J. Fields, Secretary, SEC (Sept. 23, 2016) (“Plan Response Letter”); Letter from CAT NMS Plan Participants to

<sup>77</sup> The Participants note that this analysis did not place MIAX PEARL in Tier 1 or Tier 2 since the exchange commenced trading on February 6, 2017.

<sup>78</sup> Suspension Order at 31667.

those letters, the Participants discussed the funding model with the Development Advisory Group (“DAG”), the advisory group formed to assist in the development of the Plan, during its original development.<sup>82</sup> Moreover, Industry Members currently have a voice in the affairs of the Operating Committee and operation of the CAT generally through the Advisory Committee established pursuant to Rule 613(b)(7) and Section 4.13 of the Plan. The Advisory Committee attends all meetings of the Operating Committee, as well as meetings of various subcommittees and working groups, and provides valuable and critical input for the Participants’ and Operating Committee’s consideration. The Operating Committee continues to believe that that Industry Members have an appropriate voice regarding the funding of the Company.

#### (I) Conflicts of Interest

Commenters also raised concerns regarding Participant conflicts of interest in setting the CAT Fees.<sup>83</sup> The Participants previously responded to this concern in both the Plan Response Letter and the Fee Rule Response Letter.<sup>84</sup> As discussed in those letters, the Plan, as approved by the SEC, adopts various measures to protect against the potential conflicts issues raised by the Participants’ fee-setting authority. Such measures include the operation of the Company as a not for profit business league and on a break-even basis, and the requirement that the Participants file all CAT Fees under Section 19(b) of the Exchange Act. The Operating Committee continues to believe that these measures adequately protect against concerns regarding conflicts of interest in setting fees, and that additional measures, such as an independent third party to evaluate an appropriate CAT Fee, are unnecessary.

#### (J) Fee Transparency

Commenters also argued that they could not adequately assess whether the CAT Fees were fair and equitable because the Operating Committee has not provided details as to what the Participants are receiving in return for the CAT Fees.<sup>85</sup> The Operating Committee provided a detailed

discussion of the proposed funding model in the Plan, including the expenses to be covered by the CAT Fees. In addition, the agreement between the Company and the Plan Processor sets forth a comprehensive set of services to be provided to the Company with regard to the CAT. Such services include, without limitation: User support services (e.g., a help desk); tools to allow each CAT Reporter to monitor and correct their submissions; a comprehensive compliance program to monitor CAT Reporters’ adherence to Rule 613; publication of detailed Technical Specifications for Industry Members and Participants; performing data linkage functions; creating comprehensive data security and confidentiality safeguards; creating query functionality for regulatory users (i.e., the Participants, and the SEC and SEC staff); and performing billing and collection functions. The Operating Committee further notes that the services provided by the Plan Processor and the costs related thereto were subject to a bidding process.

#### (K) Funding Authority

Commenters also questioned the authority of the Operating Committee to impose CAT Fees on Industry Members.<sup>86</sup> The Participants previously responded to this same comment in the Plan Response Letter and the Fee Rule Response Letter.<sup>87</sup> As the Participants previously noted, SEC Rule 613 specifically contemplates broker-dealers contributing to the funding of the CAT. In addition, as noted by the SEC, the CAT “substantially enhance[s] the ability of the SROs and the Commission to oversee today’s securities markets,”<sup>88</sup> thereby benefitting all market participants. Therefore, the Operating Committee continues to believe that it is equitable for both Participants and Industry Members to contribute to funding the cost of the CAT.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>89</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>90</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, is not designed to permit unfair

discrimination between customers, issuers, brokers, or dealers, and is 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. As discussed above, the SEC approved the bifurcated, tiered, fixed fee funding model in the CAT NMS Plan, finding it was reasonable and that it equitably allocated fees among Participants and Industry Members. The Exchange believes that the proposed tiered fees adopted pursuant to the funding model approved by the SEC in the CAT NMS Plan are reasonable, equitably allocated and not unfairly discriminatory.

The Exchange believes that this proposal is consistent with the Act because it implements, interprets or clarifies the provisions of the Plan, and is designed to assist the Exchange and its Industry Members 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.”<sup>91</sup> To the extent that this proposal implements, interprets or clarifies the Plan and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

The Exchange believes that the proposed tiered fees are reasonable. First, the total CAT Fees to be collected would be directly associated with the costs of establishing and maintaining the CAT, where such costs include Plan Processor costs and costs related to insurance, third party services and the operational reserve. The CAT Fees would not cover Participant services unrelated to the CAT. In addition, any surplus CAT Fees cannot be distributed to the individual Participants; such surpluses must be used as a reserve to offset future fees. Given the direct relationship between the fees and the CAT costs, the Exchange believes that the total level of the CAT Fees is reasonable.

In addition, the Exchange believes that the proposed CAT Fees are reasonably designed to allocate the total costs of the CAT equitably between and among the Participants and Industry Members, and are therefore not unfairly

Brent J. Fields, Secretary, SEC (June 29, 2017) (“Fee Rule Response Letter”).

<sup>82</sup> Fee Rule Response Letter at 2; Plan Response Letter at 18.

<sup>83</sup> See Suspension Order at 31662; FIA Principal Traders Group at 3.

<sup>84</sup> See Plan Response Letter at 16, 17; Fee Rule Response Letter at 10–12.

<sup>85</sup> See FIA Principal Traders Group at 3; SIFMA Letter at 3.

<sup>86</sup> See Suspension Order at 31661–2; SIFMA Letter at 2.

<sup>87</sup> See Plan Response Letter at 9–10; Fee Rule Response Letter at 3–4.

<sup>88</sup> Rule 613 Adopting Release at 45726.

<sup>89</sup> 15 U.S.C. 78f(b).

<sup>90</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>91</sup> Approval Order at 84697.



discriminatory. As discussed in detail above, the proposed tiered fees impose comparable fees on similarly situated CAT Reporters. For example, those with a larger impact on the CAT (measured via message traffic or market share) pay higher fees, whereas CAT Reporters with a smaller impact pay lower fees. Correspondingly, the tiered structure lessens the impact on smaller CAT Reporters by imposing smaller fees on those CAT Reporters with less market share or message traffic. In addition, the fee structure takes into consideration distinctions in securities trading operations of CAT Reporters, including ATSS trading OTC Equity Securities, and equity and options market makers.

Moreover, the Exchange believes that the division of the total CAT costs between Industry Members and Execution Venues, and the division of the Execution Venue portion of total costs between Equity and Options Execution Venues, is reasonably designed to allocate CAT costs among CAT Reporters. The 75%/25% division between Industry Members (other than Execution Venue ATSS) and Execution Venues maintains the greatest level of comparability across the funding model. For example, the cost allocation establishes fees for the largest Industry Members (*i.e.*, those Industry Members in Tiers 1) that are comparable to the largest Equity Execution Venues and Options Execution Venues (*i.e.*, those Execution Venues in Tier 1). Furthermore, the allocation of total CAT cost recovery recognizes the difference in the number of CAT Reporters that are Industry Members (other than Execution Venue ATSS) versus CAT Reporters that are Execution Venues. Similarly, the 67%/33% allocation between Equity and Options Execution Venues also helps to provide fee comparability for the largest CAT Reporters.

Finally, the Exchange 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 fixed fee. Such factors are crucial to estimating a reliable revenue stream for the Company and for permitting CAT Reporters to reasonably predict their payment obligations for budgeting purposes.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change implements provisions of the

CAT NMS Plan approved by the Commission, and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. Similarly, all national securities exchanges and FINRA are proposing this proposed fee schedule 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 exchanges and FINRA.

Moreover, as previously described, the Exchange believes that the proposed rule change fairly and equitably allocates costs among CAT Reporters. In particular, the proposed fee schedule is structured to impose comparable fees on similarly situated CAT Reporters, and lessen the impact on smaller CAT Reporters. CAT Reporters with similar levels of CAT activity will pay similar fees. For example, Industry Members (other than Execution Venue ATSS) with higher levels of message traffic will pay higher fees, and those with lower levels of message traffic will pay lower fees. Similarly, Execution Venue ATSS and other Execution Venues with larger market share will pay higher fees, and those with lower levels of market share will pay lower fees. Therefore, given that there is generally a relationship between message traffic and/or market share to the CAT Reporter's size, smaller CAT Reporters generally pay less than larger CAT Reporters. Accordingly, the Exchange does not believe that the CAT Fees would have a disproportionate effect on smaller or larger CAT Reporters. In addition, ATSS and exchanges will pay the same fees based on market share. Therefore, the Exchange does not believe that the fees will impose any burden on the competition between ATSS and exchanges. Accordingly, the Exchange believes that the proposed fees will minimize the potential for adverse effects on competition between CAT Reporters in the market.

Furthermore, the tiered, fixed fee funding model limits the disincentives to providing liquidity to the market. Therefore, the proposed fees are structured to limit burdens on competitive quoting and other liquidity provision in the market.

In addition, the Operating Committee believes that the proposed changes to the Original Proposal, as discussed above in detail, address certain competitive concerns raised by commenters, including concerns related to, among other things, smaller ATSS, ATSS trading OTC Equity Securities, market making quoting and fee comparability. As discussed above, the

Operating Committee believes that the proposals address the competitive concerns raised by commenters.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has set forth responses to comments received regarding the Original Proposal in Section 3(a)(4) above.

#### **III. Solicitation of Comments on Amendment No. 2**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 2 is consistent with the Act. In particular, the Commission seeks comment on the following:

##### *Allocation of Costs*

(1) Commenters' views as to whether the allocation of CAT costs is consistent with the funding principle expressed in the CAT NMS Plan that requires the Operating Committee to "avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality."<sup>92</sup>

(2) Commenters' views as to whether the allocation of 25% of CAT costs to the Execution Venues (including all the Participants) and 75% to Industry Members, will incentivize or disincentivize the Participants to effectively and efficiently manage the CAT costs incurred by the Participants since they will only bear 25% of such costs.

(3) Commenters' views on the determination to allocate 75% of all costs incurred by the Participants from November 21, 2016 to November 21, 2017 to Industry Members (other than Execution Venue ATSS), when such costs are development and build costs and when Industry Member reporting is scheduled to commence a year later, including views on whether such "fees, costs and expenses . . . [are] fairly and reasonably shared among the Participants and Industry Members" in accordance with the CAT NMS Plan.<sup>93</sup>

(4) Commenters' views on whether an analysis of the ratio of the expected Industry Member-reported CAT messages to the expected SRO-reported CAT messages should be the basis for determining the allocation of costs between Industry Members and Execution Venues.<sup>94</sup>

<sup>92</sup> Section 11.2(e) of the CAT NMS Plan.

<sup>93</sup> Section 11.1(c) of the CAT NMS Plan.

<sup>94</sup> The Notice for the CAT NMS Plan did not provide a comprehensive count of audit trail



(5) Any additional data analysis on the allocation of CAT costs, including any existing supporting evidence.

#### *Comparability*

(6) Commenters' views on the shift in the standard used to assess the comparability of CAT Fees, with the emphasis now on comparability of individual entities instead of affiliated entities, including views as to whether this shift is consistent with the funding principle expressed in the CAT NMS Plan that requires the Operating Committee to establish a fee structure in which the fees charged to "CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venues and/or Industry Members)." <sup>95</sup>

(7) Commenters' views as to whether the reduction in the number of tiers for Industry Members (other than Execution Venue ATs) from nine to seven, the revised allocation of CAT costs between Equity Execution Venues and Options Execution Venues from a 75%/25% split to a 67%/33% split, and the adjustment of all tier percentages and recovery allocations achieves comparability across individual entities, and whether these changes should have resulted in a change to the allocation of 75% of total CAT costs to Industry Members (other than Execution Venue ATs) and 25% of such costs to Execution Venues.

#### *Discounts*

(8) Commenters' views as to whether the discounts for options market-makers, equities market-makers, and Equity ATs trading OTC Equity Securities are clear, reasonable, and consistent with the funding principle expressed in the CAT NMS Plan that requires the Operating Committee to "avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality," <sup>96</sup> including views as to whether the discounts for market-makers limit any potential disincentives to act as a market-maker and/or to provide liquidity due to CAT fees.

message traffic from different regulatory data sources, but the Commission did estimate the ratio of all SRO audit trail messages to OATS audit trail messages to be 1.9431. See Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30613, 30721 n.919 and accompanying text (May 17, 2016).

<sup>95</sup> Section 11.2(c) of the CAT NMS Plan.

<sup>96</sup> Section 11.2(e) of the CAT NMS Plan.

#### *Calculation of Costs and Imposition of CAT Fees*

(9) Commenters' views as to whether the amendment provides sufficient information regarding the amount of costs incurred from November 21, 2016 to November 21, 2017, particularly, how those costs were calculated, how those costs relate to the proposed CAT Fees, and how costs incurred after November 21, 2017 will be assessed upon Industry Members and Execution Venues;

(10) Commenters' views as to whether the timing of the imposition and collection of CAT Fees on Execution Venues and Industry Members is reasonably related to the timing of when the Company expects to incur such development and implementation costs. <sup>97</sup>

(11) Commenters' views on dividing CAT costs equally among each of the Participants, and then each Participant charging its own members as it deems appropriate, taking into consideration the possibility of inconsistency in charges, the potential for lack of transparency, and the impracticality of multiple SROs submitting invoices for CAT charges.

#### *Burden on Competition and Barriers to Entry*

(12) Commenters' views as to whether the allocation of 75% of CAT costs to Industry Members (other than Execution Venue ATs) imposes any burdens on competition to Industry Members, including views on what baseline competitive landscape the Commission should consider when analyzing the proposed allocation of CAT costs.

(13) Commenters' views on the burdens on competition, including the relevant markets and services and the impact of such burdens on the baseline competitive landscape in those relevant markets and services.

(14) Commenters' views on any potential burdens imposed by the fees on competition between and among CAT Reporters, including views on which baseline markets and services the fees could have competitive effects on and whether the fees are designed to minimize such effects.

(15) Commenters' general views on the impact of the proposed fees on economies of scale and barriers to entry.

(16) Commenters' views on the baseline economies of scale and barriers to entry for Industry Members and Execution Venues and the relevant markets and services over which these economies of scale and barriers to entry exist.

<sup>97</sup> Section 11.1(c) of the CAT NMS Plan.

(17) Commenters' views as to whether a tiered fee structure necessarily results in less active tiers paying more per unit than those in more active tiers, thus creating economies of scale, with supporting information if possible.

(18) Commenters' views as to how the level of the fees for the least active tiers would or would not affect barriers to entry.

(19) Commenters' views on whether the difference between the cost per unit (messages or market share) in less active tiers compared to the cost per unit in more active tiers creates regulatory economies of scale that favor larger competitors and, if so:

(a) How those economies of scale compare to operational economies of scale; and

(b) Whether those economies of scale reduce or increase the current advantages enjoyed by larger competitors or otherwise alter the competitive landscape.

(20) Commenters' views on whether the fees could affect competition between and among national securities exchanges and FINRA, in light of the fact that implementation of the fees does not require the unanimous consent of all such entities, and, specifically:

(a) Whether any of the national securities exchanges or FINRA are disadvantaged by the fees; and

(b) If so, whether any such disadvantages would be of a magnitude that would alter the competitive landscape.

(21) Commenters' views on any potential burden imposed by the fees on competitive quoting and other liquidity provision in the market, including, specifically:

(a) Commenters' views on the kinds of disincentives that discourage liquidity provision and/or disincentives that the Commission should consider in its analysis;

(b) Commenters' views as to whether the fees could disincentivize the provision of liquidity; and

(c) Commenters' views as to whether the fees limit any disincentives to provide liquidity.

(22) Commenters' views as to whether the amendment adequately responds to and/or addresses comments received on related filings.

#### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2017-45 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-ISE-2017-45. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2017-45, and should be submitted on or before January 5, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>98</sup>

**Robert W. Errett,**  
Deputy Secretary.

[FR Doc. 2017-27005 Filed 12-14-17; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-82275; File No. SR-BatsBYX-2017-11]

**Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing of Amendment No. 2 to the Proposed Rule Change To Amend the Schedule of Fees and Assessments To Adopt a Fee Schedule To Establish Fees for Industry Members Related to the National Market System Plan Governing the Consolidated Audit Trail**

December 11, 2017.

**I. Introduction**

On May 16, 2017, Bats BYX Exchange Inc., n/k/a Cboe BYX Exchange, Inc., ("Exchange" or "SRO") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt a fee schedule to establish the fees for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail ("CAT NMS Plan"). The proposed rule change was published in the **Federal Register** for comment on June 6, 2017.<sup>3</sup> The Commission received seven comment letters on the proposed rule change,<sup>4</sup>

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 80809 (May 30, 2017), 82 FR 25837 (June 5, 2017) ("Original Proposal").

<sup>4</sup> Since the CAT NMS Plan Participants' proposed rule changes to adopt fees to be charged to Industry Members to fund the consolidated audit trail are substantively identical, the Commission is considering all comments received on the proposed rule changes regardless of the comment file to which they were submitted. See text accompanying note 12 *infra*, for a list of the CAT NMS Plan Participants. See Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Brent J. Fields, Secretary, Commission (dated June 6, 2017), available at: <https://www.sec.gov/comments/sr-batsbx-2017-38/batsbx201738-1788188-153228.pdf>; Letter from Patricia L. Cerny and Steven O'Malley, Compliance Consultants, to Brent J. Fields, Secretary, Commission (dated June 12, 2017), available at: <https://www.sec.gov/comments/sr-cboe-2017-040/cboe2017040-1799253-153675.pdf>; Letter from Daniel Zinn, General Counsel, OTC Markets Group Inc., to Eduardo A. Aleman, Assistant Secretary, Commission (dated June 13, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-1801717-153703.pdf>; Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission (dated June 22, 2017), available at: <https://www.sec.gov/comments/sr-cboe-2017-040/cboe2017040-1819670-154195.pdf>; Letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, Commission (dated June 23, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/>

and a response to comments from the CAT NMS Plan Participants.<sup>5</sup> On June 30, 2017, the Commission temporarily suspended and initiated proceedings to determine whether to approve or disapprove the proposed rule change.<sup>6</sup> The Commission thereafter received seven comment letters,<sup>7</sup> and a response to comments from the Participants.<sup>8</sup> On November 3, 2017, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>9</sup> On November 9, 2017, the Commission extended the time period within which to approve the proposed rule change or disapprove the proposed

[finra2017011-1822454-154283.pdf](https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-1822454-154283.pdf); and Letter from Suzanne H. Shatto, Investor, to Commission (dated June 27, 2017), available at: <https://www.sec.gov/comments/sr-batsedgx-2017-22/batsedgx201722-154443.pdf>. The Commission also received a comment letter which is not pertinent to these proposed rule changes. See Letter from Christina Crouch, Smart Ltd., to Brent J. Fields, Secretary, Commission (dated June 5, 2017), available at: <https://www.sec.gov/comments/sr-batsbx-2017-38/batsbx201738-1785545-153152.htm>.

<sup>5</sup> See Letter from CAT NMS Plan Participants to Brent J. Fields, Secretary, Commission (dated June 29, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-1832632-154584.pdf>.

<sup>6</sup> See Securities Exchange Act Release No. 81067 (June 30, 2017), 82 FR 31656 (July 7, 2017).

<sup>7</sup> See Letter from W. Hardy Callcott, Partner, Sidley Austin LLP, to Brent J. Fields, Secretary, Commission (dated July 27, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2148338-157737.pdf>; Letter from Kevin Coleman, General Counsel and Chief Compliance Officer, Belvedere Trading LLC, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2148360-157740.pdf>; Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2151228-157745.pdf>; Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2150977-157744.pdf>; Letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2150818-157743.pdf>; Letter from John Kinahan, Chief Executive Officer, Group One Trading, L.P., to Brent J. Fields, Secretary, Commission (dated August 10, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-2214568-160619.pdf>; Letter from Joseph Molluso, Executive Vice President and CFO, Virtu Financial, to Brent J. Fields, Commission (dated August 18, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-2238648-160830.pdf>.

<sup>8</sup> See Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Brent J. Fields, Commission, Secretary (dated November 2, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2674608-161412.pdf>.

<sup>9</sup> Amendment No. 1 to the proposed rule change replaced and superseded the Original Proposal in its entirety. See Securities Exchange Act Release No. 34-82274 (December 11, 2017).

<sup>98</sup> 17 CFR 200.30-3(a)(12).

rule change to January 14, 2018.<sup>10</sup> On December 7, 2017, the Exchange filed Amendment No. 2 to the proposed rule change, as described in Item II, which Item has been prepared by the Exchange. The Commission is publishing this notice to solicit comments from interested persons on Amendment No. 2.

## II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Amendment

On May 16, 2017, Cboe BYX Exchange, Inc. ("SRO") filed with the Securities and Exchange Commission ("Commission" or "SEC") proposed rule change SR-BatsBYX-2017-11 (the "Original Proposal"), pursuant to which SRO proposed to adopt a fee schedule to establish the fees for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail (the "CAT NMS Plan" or "Plan").<sup>11</sup> On November 3, 2017, SRO filed an amendment to the Original Proposal ("First Amendment"). SRO files this proposed rule change (the "Second Amendment") to amend the Original Proposal as amended by the First Amendment.

With this Second Amendment, SRO is including Exhibit 4, which reflects the changes to the text of the proposed rule change as set forth in the First Amendment, and Exhibit 5, which reflects all proposed changes to SRO's current rule text.

BOX Options Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc. ("FINRA"), Investors' Exchange LLC, Miami International Securities Exchange, LLC, MIAX PEARL, LLC, NASDAQ BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc. and NYSE National, Inc.<sup>12</sup> (collectively, the "Participants")

<sup>10</sup> See Securities Exchange Act Release No. 82049 (November 9, 2017), 82 FR 53549 (November 16, 2017).

<sup>11</sup> Unless otherwise specified, capitalized terms used in this fee filing are defined as set forth herein, the CAT Compliance Rule Series, in the CAT NMS Plan, or the Original Proposal.

<sup>12</sup> Note that Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., LLC, C2 Options Exchange, Incorporated, and Chicago Board Options Exchange, Incorporated, have been renamed Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., respectively.

filed with the Commission, pursuant to Section 11A of the Exchange Act<sup>13</sup> and Rule 608 of Regulation NMS thereunder,<sup>14</sup> the CAT NMS Plan.<sup>15</sup> The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act. The Plan was published for comment in the **Federal Register** on May 17, 2016,<sup>16</sup> and approved by the Commission, as modified, on November 15, 2016.<sup>17</sup> The Plan is designed to create, implement and maintain a consolidated audit trail ("CAT") that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. The Plan accomplishes this by creating CAT NMS, LLC (the "Company"), of which each Participant is a member, to operate the CAT.<sup>18</sup> Under the CAT NMS Plan, the Operating Committee of the Company ("Operating Committee") has discretion to establish funding for the Company to operate the CAT, including establishing fees that the Participants will pay, and establishing fees for Industry Members that will be implemented by the Participants ("CAT Fees").<sup>19</sup> The Participants are required to file with the SEC under Section 19(b) of the Exchange Act any such CAT Fees applicable to Industry Members that the Operating Committee approves.<sup>20</sup> Accordingly, SRO submitted the Original Proposal to propose the Consolidated Audit Trail Funding Fees, which would require Industry Members that are SRO members to pay the CAT Fees determined by the Operating Committee.

The Commission published the Original Proposal for public comment in the **Federal Register** on June 5, 2017,<sup>21</sup> and received comments in response to the Original Proposal or similar fee

filings by other Participants.<sup>22</sup> On June 30, 2017, the Commission suspended, and instituted proceedings to determine whether to approve or disapprove, the Original Proposal.<sup>23</sup> The Commission received seven comment letters in response to those proceedings.<sup>24</sup>

In response to the comments on the Original Proposal, the Operating Committee determined to make the following changes to the funding model: (1) Adds two additional CAT Fee tiers for Equity Execution Venues; (2) discounts the market share of Execution Venue ATSs exclusively trading OTC Equity Securities as well as the market share of the FINRA over-the-counter reporting facility ("ORF") by the average shares per trade ratio between NMS Stocks and OTC Equity Securities (calculated as 0.17% based on available data from the second quarter of 2017) when calculating the market share of Execution Venue ATSs exclusively trading OTC Equity Securities and FINRA; (3) discounts the Options Market Maker quotes by the trade to quote ratio for options (calculated as 0.01% based on available data for June 2016 through June 2017) when calculating message traffic for Options Market Makers; (4) discounts equity market maker quotes by the trade to quote ratio for equities (calculated as 5.43% based on available data for June 2016 through June 2017) when calculating message traffic for equity market makers; (5) decreases the number of tiers for Industry Members (other than the Execution Venue ATSs) from nine to seven; (6) changes the allocation of CAT costs between Equity Execution Venues and Options Execution Venues from 75%/25% to 67%/33%; (7) adjusts tier percentages and recovery allocations for Equity Execution Venues, Options Execution Venues and Industry Members (other

<sup>22</sup> For a summary of comments, see generally Securities Exchange Act Rel. No. 81067 (June 30, 2017), 82 FR 31656 (July 7, 2017) ("Suspension Order").

<sup>23</sup> Suspension Order.

<sup>24</sup> See Letter from Stuart J. Kaswell, Executive Vice President, Managing Director and General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, SEC (July 28, 2017); Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Brent J. Fields, Secretary, SEC (July 28, 2017); Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, SEC (July 28, 2017); Letter from Kevin Coleman, General Counsel & Chief Compliance Officer, Belvedere Trading LLC, to Brent J. Fields, Secretary, SEC (July 28, 2017); Letter from W. Hardy Callcott, Sidley Austin LLP, to Brent J. Fields, Secretary, SEC (July 27, 2017); Letter from John Kinahan, Chief Executive Officer, Group One Trading, L.P., to Brent J. Fields, Secretary, SEC (Aug. 10, 2017); and Letter from Joseph Molluso, Executive Vice President, Virtu Financial, to Brent J. Fields, Secretary, SEC (Aug. 18, 2017).

<sup>13</sup> 15 U.S.C. 78k-1.

<sup>14</sup> 17 CFR 242.608.

<sup>15</sup> See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. See Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.

<sup>16</sup> Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

<sup>17</sup> Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) ("Approval Order").

<sup>18</sup> The Plan also serves as the limited liability company agreement for the Company.

<sup>19</sup> Section 11.1(b) of the CAT NMS Plan.

<sup>20</sup> *Id.*

<sup>21</sup> Securities Exchange Act Rel. No. 80809 (May 30, 2017), 82 FR 25837 (June 5, 2017) (SR-BatsBYX-2017-11).

than Execution Venue ATSS); (8) focuses the comparability of CAT Fees on the individual entity level, rather than primarily on the comparability of affiliated entities; (9) commences invoicing of CAT Reporters as promptly as possible following the latest of the operative date of the Consolidated Audit Trail Funding Fees for each of the Participants and the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants; and (10) requires the proposed fees to automatically expire two years from the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. On November 3, 2017, SRO filed the First Amendment and proposed to amend the Original Proposal to reflect these changes.

SRO submits this Second Amendment to the revise the proposal as set forth in the First Amendment to discount the OTC Equity Securities market share of all Execution Venue ATSS trading OTC Equity Securities, rather than applying the discount solely to those Execution Venue ATSS that exclusively trade OTC Equity Securities, when calculating the market share of Execution Venue ATSS trading OTC Equity Securities. As discussed in the First Amendment:

The Operating Committee determined to discount the market share of Execution Venue ATSS exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF in recognition of the different trading characteristics of the OTC Equity Securities market as compared to the market in NMS Stocks. Many OTC Equity Securities are priced at less than one dollar—and a significant number at less than one penny—per share and low-priced shares tend to trade in larger quantities. Accordingly, a disproportionately large number of shares are involved in transactions involving OTC Equity Securities versus NMS Stocks. Because the proposed fee tiers are based on market share calculated by share volume, Execution Venue ATSS exclusively trading OTC Equity Securities and FINRA would likely be subject to higher tiers than their operations may warrant.<sup>25</sup>

The Operating Committee believes that this argument applies equally to both Execution Venue ATSS exclusively trading OTC Equity Securities and to Execution Venue ATSS that trade OTC Equity Securities as well as other securities. Accordingly, SRO proposes to amend paragraph (b)(2) of the Consolidated Audit Trail Funding Fees to apply the discount to all Execution Venue ATSS trading OTC Equity Securities. Specifically, SRO proposes to change the parenthetical regarding the OTC Equity Securities discount in

paragraph (b)(2) of the proposed fee schedule from “with a discount for Equity ATSS exclusively trading OTC Equity Securities based on the average shares per trade ratio between NMS Stocks and OTC Equity Securities” to “with a discount for OTC Equity Securities market share of Equity ATSS trading OTC Equity Securities based on the average shares per trade ratio between NMS Stocks and OTC Equity Securities.”

### III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal, as amended by Amendment No. 1 and Amendment No. 2, is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission’s internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR–BatsBYX–2017–11 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–BatsBYX–2017–11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit

personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsBYX–2017–11, and should be submitted on or before January 5, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

**Robert W. Errett,**  
Deputy Secretary.

[FR Doc. 2017–27000 Filed 12–14–17; 8:45 am]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82265; File No. SR–NYSEARCA–2017–52]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 2 to Proposed Rule Change Amending the Consolidated Audit Trail Funding Fees

December 11, 2017.

On May 10, 2017, NYSE Arca, Inc. (“Exchange” or “SRO”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> a proposed rule change to adopt a fee schedule to establish the fees for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail (“CAT NMS Plan”). The proposed rule change was published in the **Federal Register** for comment on May 22, 2017.<sup>3</sup> The Commission received seven comment letters on the proposed rule change,<sup>4</sup>

<sup>26</sup> 17 CFR 200.30–3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> See Securities Exchange Act Release No. 80698 (May 16, 2017), 82 FR 23457 (May 22, 2017) (“Original Proposal”).

<sup>4</sup> Since the CAT NMS Plan Participants’ proposed rule changes to adopt fees to be charged to Industry Members to fund the consolidated audit trail are substantively identical, the Commission is considering all comments received on the proposed rule changes regardless of the comment file to which they were submitted. See text accompanying note 12 *infra*, for a list of the CAT NMS Plan Participants. See Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Brent J. Fields, Secretary, Commission (dated June 6, 2017), available at: <https://www.sec.gov/comments/sr-batsbzx-2017-38/batsbzx201738-1788188-153228.pdf>; Letter from Patricia L. Cerny and Steven O’Malley, Compliance Consultants, to Brent J. Fields, Secretary, Commission (dated June 12, 2017), available at: <https://www.sec.gov/comments/sr-cboe-2017-040/cboe2017040-1799253-153675.pdf>; Letter from

<sup>25</sup> SR–BatsBYX–2017–11, Amendment No. 1 at page 30.

and a response to comments from the CAT NMS Plan Participants.<sup>5</sup> On June 30, 2017, the Commission temporarily suspended and initiated proceedings to determine whether to approve or disapprove the proposed rule change.<sup>6</sup> The Commission thereafter received seven comment letters,<sup>7</sup> and a response to comments from the Participants.<sup>8</sup> On

Daniel Zinn, General Counsel, OTC Markets Group Inc., to Eduardo A. Aleman, Assistant Secretary, Commission (dated June 13, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-1801717-153703.pdf>; Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission (dated June 22, 2017), available at: <https://www.sec.gov/comments/sr-cboe-2017-040/cboe2017040-1819670-154195.pdf>; Letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, Commission (dated June 23, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-1822454-154283.pdf>; and Letter from Suzanne H. Shatto, Investor, to Commission (dated June 27, 2017), available at: <https://www.sec.gov/comments/sr-batsedgx-2017-22/batsedgx201722-154443.pdf>. The Commission also received a comment letter which is not pertinent to these proposed rule changes. See Letter from Christina Crouch, Smart Ltd., to Brent J. Fields, Secretary, Commission (dated June 5, 2017), available at: <https://www.sec.gov/comments/sr-batsbzx-2017-38/batsbzx201738-1785545-153152.htm>.

<sup>5</sup> See Letter from CAT NMS Plan Participants to Brent J. Fields, Secretary, Commission (dated June 29, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-1832632-154584.pdf>.

<sup>6</sup> See Securities Exchange Act Release No. 81067 (June 30, 2017), 82 FR 31656 (July 7, 2017).

<sup>7</sup> See Letter from W. Hardy Callcott, Partner, Sidley Austin LLP, to Brent J. Fields, Secretary, Commission (dated July 27, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2148338-157737.pdf>; Letter from Kevin Coleman, General Counsel and Chief Compliance Officer, Belvedere Trading LLC, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2148360-157740.pdf>; Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2151228-157745.pdf>; Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2150977-157744.pdf>; Letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2150818-157743.pdf>; Letter from John Kinahan, Chief Executive Officer, Group One Trading, L.P., to Brent J. Fields, Secretary, Commission (dated August 10, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-2214568-160619.pdf>; Letter from Joseph Molluso, Executive Vice President and CFO, Virtu Financial, to Brent J. Fields, Secretary, Commission (dated August 18, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-2238648-160830.pdf>.

<sup>8</sup> See Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Brent J. Fields, Secretary, Commission (dated November 2, 2017),

October 25, 2017, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>9</sup> On November 9, 2017, the Commission extended the time period within which to approve the proposed rule change or disapprove the proposed rule change to January 14, 2018.<sup>10</sup> On November 29, 2017, the Exchange filed Amendment No. 2 to the proposed rule change, as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments from interested persons on Amendment No. 2.

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

The Exchange proposes to amend the NYSE Arca Equities Fees and Charges ("Arca Fee Schedule"), and the NYSE Arca Options Fees and Charges ("Arca Options Fee Schedule"), to adopt the fees for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail (the "CAT NMS Plan" or "Plan").<sup>11</sup> On October 25, 2017, NYSE Arca filed an amendment to the Original Proposal ("First Amendment"). The Exchange files this proposed rule change (the "Second Amendment") to amend the Original Proposal, as amended by the First Amendment. The proposed rule change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

available at <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2674608-161412.pdf>.

<sup>9</sup> Amendment No. 1 to the proposed rule change replaced and superseded the Original Proposal in its entirety. See Securities Exchange Act Release No. 82264 (December 11, 2017).

<sup>10</sup> See Securities Exchange Act Release No. 82049 (November 9, 2017), 82 FR 53549 (November 16, 2017).

<sup>11</sup> Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth herein, the CAT Compliance Rule or in the CAT NMS Plan.

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

#### 1. Purpose

BOX Options Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc. ("FINRA"), Investors' Exchange LLC, Miami International Securities Exchange, LLC, MIAX PEARL, LLC, NASDAQ BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc. and NYSE National, Inc.<sup>12</sup> (collectively, the "Participants") filed with the Commission, pursuant to Section 11A of the Exchange Act<sup>13</sup> and Rule 608 of Regulation NMS thereunder,<sup>14</sup> the CAT NMS Plan.<sup>15</sup> The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act. The Plan was published for comment in the **Federal Register** on May 17, 2016,<sup>16</sup> and approved by the Commission, as modified, on November 15, 2016.<sup>17</sup> The Plan is designed to create, implement and maintain a consolidated audit trail ("CAT") that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. The Plan accomplishes this by creating CAT NMS, LLC (the "Company"), of which each Participant is a member, to

<sup>12</sup> Note that Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., LLC, C2 Options Exchange, Incorporated, and Chicago Board Options Exchange, Incorporated, have been renamed Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., respectively.

<sup>13</sup> 15 U.S.C. 78k-1.

<sup>14</sup> 17 CFR 242.608.

<sup>15</sup> See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. See Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.

<sup>16</sup> Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

<sup>17</sup> Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) ("Approval Order").

operate the CAT.<sup>18</sup> Under the CAT NMS Plan, the Operating Committee of the Company (“Operating Committee”) has discretion to establish funding for the Company to operate the CAT, including establishing fees that the Participants will pay, and establishing fees for Industry Members that will be implemented by the Participants (“CAT Fees”).<sup>19</sup> The Participants are required to file with the SEC under Section 19(b) of the Exchange Act any such CAT Fees applicable to Industry Members that the Operating Committee approves.<sup>20</sup> Accordingly, the Exchange submitted the Original Proposal to amend the Arca Fee Schedule and the Arca Options Fee Schedule to adopt the Consolidated Audit Trail Funding Fees, which would require Industry Members that are Exchange members to pay the CAT Fees determined by the Operating Committee.

The Commission published the Original Proposal for public comment in the **Federal Register** on May 22, 2017,<sup>21</sup> and received comments in response to the Original Proposal or similar fee filings by other Participants.<sup>22</sup> On June 30, 2017, the Commission suspended, and instituted proceedings to determine whether to approve or disapprove, the Original Proposal.<sup>23</sup> The Commission received seven comment letters in response to those proceedings.<sup>24</sup>

In response to the comments on the Original Proposal, the Operating Committee determined to make the following changes to the funding model:

(1) Add two additional CAT Fee tiers for Equity Execution Venues; (2) discount the market share of Execution Venue ATSS exclusively trading OTC Equity Securities as well as the market share of the FINRA over-the-counter reporting facility (“ORF”) by the average shares per trade ratio between NMS Stocks and OTC Equity Securities (calculated as 0.17% based on available data from the second quarter of June 2017) when calculating the market share of Execution Venue ATS exclusively trading OTC Equity Securities and FINRA; (3) discount the Options Market Maker quotes by the trade to quote ratio for options (calculated as 0.01% based on available data for June 2016 through June 2017) when calculating message traffic for Options Market Makers; (4) discount equity market maker quotes by the trade to quote ratio for equities (calculated as 5.43% based on available data for June 2016 through June 2017) when calculating message traffic for equity market makers; (5) decrease the number of tiers for Industry Members (other than the Execution Venue ATSS) from nine to seven; (6) change the allocation of CAT costs between Equity Execution Venues and Options Execution Venues from 75%/25% to 67%/33%; (7) adjust tier percentages and recovery allocations for Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATSS); (8) focus the comparability of CAT Fees on the individual entity level, rather than primarily on the comparability of affiliated entities; (9) commence invoicing of CAT Reporters as promptly as possible following the latest of the operative date of the Consolidated Audit Trail Funding Fees for each of the Participants and the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants; and (10) require the proposed fees to automatically expire two years from the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. On October 25, 2017, the Exchange filed the First Amendment and proposed to amend the Original Proposal to reflect these changes.

NYSE Arca submits this Second Amendment to the revise the proposal as set forth in the First Amendment to discount the OTC Equity Securities market share of all Execution Venue ATSS trading OTC Equity Securities, rather than applying the discount solely to those Execution Venue ATSS that exclusively trade OTC Equity Securities, when calculating the market share of Execution Venue ATS trading OTC

Equity Securities. As discussed in the First Amendment:

The Operating Committee determined to discount the market share of Execution Venue ATSS exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF in recognition of the different trading characteristics of the OTC Equity Securities market as compared to the market in NMS Stocks. Many OTC Equity Securities are priced at less than one dollar—and a significant number at less than one penny—per share and low-priced shares tend to trade in larger quantities. Accordingly, a disproportionately large number of shares are involved in transactions involving OTC Equity Securities versus NMS Stocks. Because the proposed fee tiers are based on market share calculated by share volume, Execution Venue ATSS exclusively trading OTC Equity Securities and FINRA would likely be subject to higher tiers than their operations may warrant.<sup>25</sup>

The Operating Committee believes that this argument applies equally to both Execution Venue ATSS exclusively trading OTC Equity Securities and to Execution Venue ATSS that trade OTC Equity Securities as well as other securities. Accordingly, NYSE Arca proposes to amend paragraph (b)(2) of the Consolidated Audit Trail Funding Fees to apply the discount to all Execution Venue ATSS trading OTC Equity Securities. Specifically, the Exchange proposes to change the parenthetical regarding the OTC Equity Securities discount in paragraph (b)(2) of the proposed fee schedule from “with a discount for Equity ATSS exclusively trading OTC Equity Securities based on the average shares per trade ratio between NMS Stocks and OTC Equity Securities” to “with a discount for OTC Equity Securities market share of Equity ATSS trading OTC Equity Securities based on the average shares per trade ratio between NMS Stocks and OTC Equity Securities.”

Additionally, the Exchange proposes to delete footnote 45 in Section 3(a) on page 23 of the First Amendment as the footnote is erroneous and was included inadvertently.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)(4) of the Act,<sup>26</sup> because it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using its facilities. The Exchange believes the proposed rule change is also consistent

<sup>18</sup> The Plan also serves as the limited liability company agreement for the Company.

<sup>19</sup> Section 11.1(b) of the CAT NMS Plan.

<sup>20</sup> *Id.*

<sup>21</sup> Securities Exchange Act Rel. No. 80698 (May 16, 2017), 82 FR 23457 (May 22, 2017) (SR–NYSEArca–2017–52).

<sup>22</sup> For a summary of comments, see generally Securities Exchange Act Rel. No. 81067 (June 30, 2017), 82 FR 31656 (July 7, 2017) (“Suspension Order”).

<sup>23</sup> Suspension Order.

<sup>24</sup> See Letter from Stuart J. Kaswell, Executive Vice President, Managing Director and General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, SEC (July 28, 2017) (“MFA Letter”); Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Brent J. Fields, Secretary, SEC (July 28, 2017) (“SIFMA Letter”); Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, SEC (July 28, 2017) (“FIA Principal Traders Group Letter”); Letter from Kevin Coleman, General Counsel & Chief Compliance Officer, Belvedere Trading LLC, to Brent J. Fields, Secretary, SEC (July 28, 2017) (“Belvedere Letter”); Letter from W. Hardy Callcott, Sidley Austin LLP, to Brent J. Fields, Secretary, SEC (July 27, 2017) (“Sidley Letter”); Letter from John Kinahan, Chief Executive Officer, Group One Trading, L.P., to Brent J. Fields, Secretary, SEC (Aug. 10, 2017) (“Group One Letter”); and Letter from Joseph Molluso, Executive Vice President, Virtu Financial, to Brent J. Fields, Secretary, SEC (Aug. 18, 2017) (“Virtu Financial Letter”).

<sup>25</sup> See SR–NYSEArca–2017–52, Amendment 1, Section 3(a), at page 22.

<sup>26</sup> 15 U.S.C. 78f(b)(4).



with Section 6(b)(5) of the Act,<sup>27</sup> which requires, among other things, that the Exchange's rules 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 believes that the proposed rule change is consistent with the Act, and that the proposed fees are reasonable, equitably allocated and not unfairly discriminatory. In particular, the Exchange believes that the proposed rule change would treat all Equity ATSS trading OTC Equity Securities in a comparable manner when calculating applicable fees. In addition, the proposed fee structure would take into consideration distinctions in securities trading operations of CAT Reporters, including all ATSS trading OTC Equity Securities.

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

Section 6(b)(8) of the Act<sup>28</sup> require that the Exchange's rules not impose any burden on competition that is not necessary or appropriate. 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. As previously described, the Exchange believes that the proposed rule change fairly and equitably allocates costs among CAT Reporters. In particular, the proposed rule change is structured to impose comparable fees on similarly situated CAT Reporters. The Exchange believes that the proposed rule change would treat all Equity ATSS trading OTC Equity Securities in a comparable manner when calculating applicable fees. In addition, the proposed rule change would take into consideration distinctions in securities trading operations of CAT Reporters, including all ATSS trading OTC Equity Securities. Moreover, the Operating Committee believes that the proposed rule change addresses certain competitive concerns raised by commenters related to ATSS trading OTC Equity Securities.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

### III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal, as amended by Amendment No. 1 and Amendment No. 2, is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEARCA-2017-52 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-NYSEARCA-2017-52. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEARCA-2017-52 and should be submitted on or before January 5, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>29</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

[FR Doc. 2017-27025 Filed 12-14-17; 8:45 am]

BILLING CODE 8011-01-P

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82278; File No. SR-BatsBZX-2017-38]

#### **Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of Amendment No. 1 to a Proposed Rule Change To Establish the Fees for Industry Members Related to the National Market System Plan Governing the Consolidated Audit Trail**

December 11, 2017.

On May 23, 2017, Bats BZX Exchange Inc., n/k/a Cboe BZX Exchange, Inc., ("Exchange" or "SRO") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt a fee schedule to establish the fees for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail ("CAT NMS Plan"). The proposed rule change was published in the **Federal Register** for comment on June 6, 2017.<sup>3</sup> The Commission received seven comment letters on the proposed rule change,<sup>4</sup>

<sup>29</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 80822 (May 31, 2017), 82 FR 26148 (June 6, 2017) ("Original Proposal").

<sup>4</sup> Since the CAT NMS Plan Participants' proposed rule changes to adopt fees to be charged to Industry Members to fund the consolidated audit trail are substantively identical, the Commission is considering all comments received on the proposed rule changes regardless of the comment file to which they were submitted. See text accompanying notes 13-16 *infra*, for a list of the CAT NMS Plan Participants. See Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Brent J. Fields, Secretary, Commission (dated June 6, 2017), available at: <https://www.sec.gov/comments/sr-batsbzx-2017-38/batsbzx201738-1788188-153228.pdf>; Letter from Patricia L. Cerny and Steven O'Malley, Compliance Consultants, to Brent J. Fields, Secretary, Commission (dated June 12, 2017), available at: <https://www.sec.gov/comments/sr-cboe-2017-040/cboe2017040-1799253-153675.pdf>; Letter from Daniel Zinn, General Counsel, OTC Markets Group Inc., to Eduardo A. Aleman, Assistant Secretary, Commission (dated June 13, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-1801717-153703.pdf>; Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission (dated June 22, 2017), available at: <https://>

<sup>27</sup> 15 U.S.C. 78f(b)(6).

<sup>28</sup> 15 U.S.C. 78f(b)(8).

and a response to comments from the Participants.<sup>5</sup> On June 30, 2017, the Commission temporarily suspended and initiated proceedings to determine whether to approve or disapprove the proposed rule change.<sup>6</sup> The Commission thereafter received seven comment letters,<sup>7</sup> and a response to comments from the Participants.<sup>8</sup> On November 3, 2017, the Exchange filed Amendment No. 1 to the proposed rule change, as described in Items I and II below, which Items have been prepared by the

[www.sec.gov/comments/sr-cboe-2017-040/cboe2017040-1819670-154195.pdf](http://www.sec.gov/comments/sr-cboe-2017-040/cboe2017040-1819670-154195.pdf); Letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, Commission (dated June 23, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-1822454-154283.pdf>; and Letter from Suzanne H. Shatto, Investor, to Commission (dated June 27, 2017), available at: <https://www.sec.gov/comments/sr-batsedgx-2017-22/batsedgx201722-154443.pdf>. The Commission also received a comment letter which is not pertinent to these proposed rule changes. See Letter from Christina Crouch, Smart Ltd., to Brent J. Fields, Secretary, Commission (dated June 5, 2017), available at: <https://www.sec.gov/comments/sr-batsbzx-2017-38/batsbzx201738-1785545-153152.htm>.

<sup>5</sup> See Letter from CAT NMS Plan Participants to Brent J. Fields, Secretary, Commission (dated June 29, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-1832632-154584.pdf>.

<sup>6</sup> See Securities Exchange Act Release No. 81067 (June 30, 2017), 82 FR 31656 (July 7, 2017).

<sup>7</sup> See Letter from W. Hardy Callcott, Partner, Sidley Austin LLP, to Brent J. Fields, Secretary, Commission (dated July 27, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2148338-157737.pdf>; Letter from Kevin Coleman, General Counsel and Chief Compliance Officer, Belvedere Trading LLC, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2148360-157740.pdf>; Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2151228-157745.pdf>; Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2150977-157744.pdf>; Letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2150818-157743.pdf>; Letter from John Kinahan, Chief Executive Officer, Group One Trading, L.P., to Brent J. Fields, Secretary, Commission (dated August 10, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-2214568-160619.pdf>; Letter from Joseph Molluso, Executive Vice President and CFO, Virtu Financial, to Brent J. Fields, Commission (dated August 18, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-2238648-160830.pdf>.

<sup>8</sup> See Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Brent J. Fields, Secretary, Commission (dated November 2, 2017), available at <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2674608-161412.pdf>.

Exchange.<sup>9</sup> On November 9, 2017, the Commission extended the time period within which to approve the proposed rule change or disapprove the proposed rule change to January 14, 2018.<sup>10</sup> The Commission is publishing this notice to solicit comments from interested persons on Amendment No. 1.<sup>11</sup>

### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange filed a proposed rule change SR-BZX-2017-38 (the "Original Proposal"), pursuant to which SRO proposed to amend fees for its Equities Platform ("Cboe BZX U.S. Equities Fee Schedule") and to amend fees for its Options Platform ("Cboe BZX Options Fee Schedule") to establish the fees for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail (the "CAT NMS Plan" or "Plan").<sup>12</sup> SRO files this proposed rule change (the "Amendment") to amend the Original Proposal. This Amendment replaces the Original Proposal in its entirety, and also describes the changes from the Original Proposal.

The text of the proposed rule change is available at the Exchange's website at [www.markets.cboe.com](http://www.markets.cboe.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these

<sup>9</sup> Amendment No. 1 to the proposed rule change replaces and supersedes the Original Proposal in its entirety.

<sup>10</sup> See Securities Exchange Act Release No. 82049 (November 9, 2017), 82 FR 53549 (November 16, 2017).

<sup>11</sup> The Commission notes that on December 7, 2017, the Exchange filed Amendment No. 2 to the proposed rule change. Amendment No. 2 is a partial amendment to the proposed rule change, as amended by Amendment No. 1. Amendment No. 2 proposes to change the parenthetical regarding the OTC Equity Securities discount in paragraph (b)(2) of the proposed fee schedule from "with a discount for Equity ATSS exclusively trading OTC Equity Securities based on the average shares per trade ratio between NMS Stocks and OTC Equity Securities" to "with a discount for OTC Equity Securities market share of Equity ATSS trading OTC Equity Securities based on the average shares per trade ratio between NMS Stocks and OTC Equity Securities." See Securities Exchange Act Release No. 34-82279 (December 11, 2017).

<sup>12</sup> Unless otherwise specified, capitalized terms used in this fee filing are defined as set forth herein, the CAT Compliance Rule Series, in the CAT NMS Plan, or the Original Proposal.

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

BOX Options Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc.,<sup>13</sup> Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc. ("FINRA"), Investors' Exchange LLC, Miami International Securities Exchange, LLC, MIAx PEARL, LLC, NASDAQ BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC,<sup>14</sup> NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC,<sup>15</sup> NYSE Arca, Inc. and NYSE National, Inc.<sup>16</sup> (collectively, the "Participants") filed with the Commission, pursuant to Section 11A of the Exchange Act<sup>17</sup> and Rule 608 of Regulation NMS thereunder,<sup>18</sup> the CAT NMS Plan.<sup>19</sup> The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act. The Plan was published for comment in the **Federal Register** on

<sup>13</sup> Note that Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., LLC, C2 Options Exchange, Incorporated, and Chicago Board Options Exchange, Incorporated, have been renamed Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., respectively.

<sup>14</sup> ISE Gemini, LLC, ISE Mercury, LLC and International Securities Exchange, LLC have been renamed Nasdaq GEMX, LLC, Nasdaq MRX, LLC, and Nasdaq ISE, LLC, respectively. See Securities Exchange Act Rel. No. 80248 (Mar. 15, 2017), 82 FR 14547 (Mar. 21, 2017); Securities Exchange Act Rel. No. 80326 (Mar. 29, 2017), 82 FR 16460 (Apr. 4, 2017); and Securities Exchange Act Rel. No. 80325 (Mar. 29, 2017), 82 FR 16445 (Apr. 4, 2017).

<sup>15</sup> NYSE MKT LLC has been renamed NYSE American LLC. See Securities Exchange Act Rel. No. 80283 (Mar. 21, 2017), 82 FR 15244 (Mar. 27, 2017).

<sup>16</sup> National Stock Exchange, Inc. has been renamed NYSE National, Inc. See Securities Exchange Act Rel. No. 79902 (Jan. 30, 2017), 82 FR 9258 (Feb. 3, 2017).

<sup>17</sup> 15 U.S.C. 78k-1.

<sup>18</sup> 17 CFR 242.608.

<sup>19</sup> See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. See Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.



May 17, 2016,<sup>20</sup> and approved by the Commission, as modified, on November 15, 2016.<sup>21</sup> The Plan is designed to create, implement and maintain a consolidated audit trail (“CAT”) that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. The Plan accomplishes this by creating CAT NMS, LLC (the “Company”), of which each Participant is a member, to operate the CAT.<sup>22</sup> Under the CAT NMS Plan, the Operating Committee of the Company (“Operating Committee”) has discretion to establish funding for the Company to operate the CAT, including establishing fees that the Participants will pay, and establishing fees for Industry Members that will be implemented by the Participants (“CAT Fees”).<sup>23</sup> The Participants are required to file with the SEC under Section 19(b) of the Exchange Act any such CAT Fees applicable to Industry Members that the Operating Committee approves.<sup>24</sup> Accordingly, SRO submitted the Original Proposal to propose the Consolidated Audit Trail Funding Fees, which would require Industry Members that are SRO members to pay the CAT Fees determined by the Operating Committee.

The Commission published the Original Proposal for public comment in the **Federal Register** on June 6, 2017,<sup>25</sup> and received comments in response to the Original Proposal or similar fee filings by other Participants.<sup>26</sup> On June 30, 2017, the Commission suspended, and instituted proceedings to determine whether to approve or disapprove, the Original Proposal.<sup>27</sup> The Commission received seven comment letters in response to those proceedings.<sup>28</sup>

<sup>20</sup> Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

<sup>21</sup> Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (“Approval Order”).

<sup>22</sup> The Plan also serves as the limited liability company agreement for the Company.

<sup>23</sup> Section 11.1(b) of the CAT NMS Plan.

<sup>24</sup> *Id.*

<sup>25</sup> Securities Exchange Act Rel. No. 80822 (May 31, 2017), 82 FR 26148 (June 6, 2017) (SR–BatsBZX–2017–38).

<sup>26</sup> For a summary of comments, see generally Securities Exchange Act Rel. No. 81067 (June 30, 2017), 82 FR 31656 (July 7, 2017) (“Suspension Order”).

<sup>27</sup> Suspension Order.

<sup>28</sup> See Letter from Stuart J. Kaswell, Executive Vice President, Managing Director and General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, SEC (July 28, 2017) (“MFA Letter”); Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to

In response to the comments on the Original Proposal, the Operating Committee determined to make the following changes to the funding model: (1) Adds two additional CAT Fee tiers for Equity Execution Venues; (2) discounts the market share of Execution Venue ATSs exclusively trading OTC Equity Securities as well as the market share of the FINRA over-the-counter reporting facility (“ORF”) by the average shares per trade ratio between NMS Stocks and OTC Equity Securities (calculated as 0.17% based on available data from the second quarter of 2017) when calculating the market share of Execution Venue ATS exclusively trading OTC Equity Securities and FINRA; (3) discounts the Options Market Maker quotes by the trade to quote ratio for options (calculated as 0.01% based on available data for June 2016 through June 2017) when calculating message traffic for Options Market Makers; (4) discounts equity market maker quotes by the trade to quote ratio for equities (calculated as 5.43% based on available data for June 2016 through June 2017) when calculating message traffic for equity market makers; (5) decreases the number of tiers for Industry Members (other than the Execution Venue ATSs) from nine to seven; (6) changes the allocation of CAT costs between Equity Execution Venues and Options Execution Venues from 75%/25% to 67%/33%; (7) adjusts tier percentages and recovery allocations for Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATSs); (8) focuses the comparability of CAT Fees on the individual entity level, rather than primarily on the comparability of affiliated entities; (9) commences invoicing of CAT Reporters as promptly as possible following the latest of the operative date of the Consolidated Audit Trail Funding Fees for each of the Participants and the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants; and (10) requires the proposed fees to

Brent J. Fields, Secretary, SEC (July 28, 2017) (“SIFMA Letter”); Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, SEC (July 28, 2017) (“FIA Principal Traders Group Letter”); Letter from Kevin Coleman, General Counsel & Chief Compliance Officer, Belvedere Trading LLC, to Brent J. Fields, Secretary, SEC (July 28, 2017) (“Belvedere Letter”); Letter from W. Hardy Callcott, Sidley Austin LLP, to Brent J. Fields, Secretary, SEC (July 27, 2017) (“Sidley Letter”); Letter from John Kinahan, Chief Executive Officer, Group One Trading, L.P., to Brent J. Fields, Secretary, SEC (Aug. 10, 2017) (“Group One Letter”); and Letter from Joseph Molluso, Executive Vice President, Virtu Financial, to Brent J. Fields, Secretary, SEC (Aug. 18, 2017) (“Virtu Financial Letter”).

automatically expire two years from the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. As discussed in detail below, SRO proposes to amend the Original Proposal to reflect these changes.

#### (1) Executive Summary

The following provides an executive summary of the CAT funding model approved by the Operating Committee, as well as Industry Members’ rights and obligations related to the payment of CAT Fees calculated pursuant to the CAT funding model, as amended by this Amendment. A detailed description of the CAT funding model and the CAT Fees, as amended by this Amendment, as well as the changes made to the Original Proposal follows this executive summary.

#### (A) CAT Funding Model

- *CAT Costs.* The CAT funding model is designed to establish CAT-specific fees to collectively recover the costs of building and operating the CAT from all CAT Reporters, including Industry Members and Participants. The overall CAT costs used in calculating the CAT Fees in this fee filing are comprised of Plan Processor CAT costs and non-Plan Processor CAT costs incurred, and estimated to be incurred, from November 21, 2016 through November 21, 2017. Although the CAT costs from November 21, 2016 through November 21, 2017 were used in calculating the CAT Fees, the CAT Fees set forth in this fee filing would be in effect until the automatic sunset date, as discussed below. (See Section 3(a)(2)(E) below)

- *Bifurcated Funding Model.* The CAT NMS Plan requires a bifurcated funding model, where costs associated with building and operating the CAT would be borne by (1) Participants and Industry Members that are Execution Venues for Eligible Securities through fixed tier fees based on market share, and (2) Industry Members (other than alternative trading systems (“ATs”)) that execute transactions in Eligible Securities (“Execution Venue ATSs”) through fixed tier fees based on message traffic for Eligible Securities. (See Section 3(a)(2) below)

- *Industry Member Fees.* Each Industry Member (other than Execution Venue ATSs) will be placed into one of seven tiers of fixed fees, based on “message traffic” in Eligible Securities for a defined period (as discussed below). Prior to the start of CAT reporting, “message traffic” will be comprised of historical equity and equity options orders, cancels, quotes and executions provided by each

exchange and FINRA over the previous three months. After an Industry Member begins reporting to the CAT, “message traffic” will be calculated based on the Industry Member’s Reportable Events reported to the CAT. Industry Members with lower levels of message traffic will pay a lower fee and Industry Members with higher levels of message traffic will pay a higher fee. To avoid disincentives to quoting behavior, Options Market Maker and equity market maker quotes will be discounted when calculating message traffic. (See Section 3(a)(2)(B) below)

- *Execution Venue Fees.* Each Equity Execution Venue will be placed in one of four tiers of fixed fees based on market share, and each Options Execution Venue will be placed in one of two tiers of fixed fees based on market share. Equity Execution Venue market share will be determined by calculating each Equity Execution Venue’s proportion of the total volume of NMS Stock and OTC Equity shares reported by all Equity Execution Venues during the relevant time period. For purposes of calculating market share, the market share of Execution Venue ATSS exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF will be discounted. Similarly, market share for Options Execution Venues will be determined by calculating each Options Execution Venue’s proportion of the total volume of Listed Options contracts reported by all Options Execution Venues during the relevant time period. Equity Execution Venues with a larger market share will pay a larger CAT Fee than Equity Execution Venues with a smaller market share. Similarly, Options Execution Venues with a larger market share will pay a larger CAT Fee than Options Execution Venues with a smaller market share. (See Section 3(a)(2)(C) below)

- *Cost Allocation.* For the reasons discussed below, in designing the model, the Operating Committee determined that 75 percent of total costs recovered would be allocated to Industry Members (other than Execution Venue ATSS) and 25 percent would be allocated to Execution Venues. In addition, the Operating Committee determined to allocate 67 percent of Execution Venue costs recovered to Equity Execution Venues and 33 percent to Options Execution Venues. (See Section 3(a)(2)(D) below)

- *Comparability of Fees.* The CAT funding model charges CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable)

comparable CAT Fees. (See Section 3(a)(2)(F) below)

(B) CAT Fees for Industry Members

- *Fee Schedule.* The quarterly CAT Fees for each tier for Industry Members are set forth in the two fee schedules in the Consolidated Audit Trail Funding Fees, one for Equity ATSS and one for Industry Members other than Equity ATSS. (See Section 3(a)(3)(B) below)

- *Quarterly Invoices.* Industry Members will be billed quarterly for CAT Fees, with the invoices payable within 30 days. The quarterly invoices will identify within which tier the Industry Member falls. (See Section 3(a)(3)(C) below)

- *Centralized Payment.* Each Industry Member will receive from the Company one invoice for its applicable CAT Fees, not separate invoices from each Participant of which it is a member. Each Industry Member will pay its CAT Fees to the Company via the centralized system for the collection of CAT Fees established by the Operating Committee. (See Section 3(a)(3)(C) below)

- *Billing Commencement.* Industry Members will begin to receive invoices for CAT Fees as promptly as possible following the latest of the operative date of the Consolidated Audit Trail Funding Fees for each of the Participants and the operative date of the Plan amendment adopting CAT Fees for Participants. (See Section 3(a)(2)(G) below)

- *Sunset Provision.* The Consolidated Audit Trail Funding Fees will sunset automatically two years from the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. (See Section 3(a)(2)(J) below)

(2) Description of the CAT Funding Model

Article XI of the CAT NMS Plan requires the Operating Committee to approve the operating budget, including projected costs of developing and operating the CAT for the upcoming year. In addition to a budget, Article XI of the CAT NMS Plan provides that the Operating Committee has discretion to establish funding for the Company, consistent with a bifurcated funding model, where costs associated with building and operating the Central Repository would be borne by (1) Participants and Industry Members that are Execution Venues through fixed tier fees based on market share, and (2) Industry Members (other than Execution Venue ATSS) through fixed tier fees based on message traffic. In its order approving the CAT NMS Plan, the Commission determined that the proposed funding model was

“reasonable”<sup>29</sup> and “reflects a reasonable exercise of the Participants’ funding authority to recover the Participants’ costs related to the CAT.”<sup>30</sup>

More specifically, the Commission stated in approving the CAT NMS Plan that “[t]he Commission believes that the proposed funding model is reasonably designed to allocate the costs of the CAT between the Participants and Industry Members.”<sup>31</sup> The Commission further noted the following:

The Commission believes that the proposed funding model reflects a reasonable exercise of the Participants’ funding authority to recover the Participants’ costs related to the CAT. The CAT is a regulatory facility jointly owned by the Participants and . . . the Exchange Act specifically permits the Participants to charge their members fees to fund their self-regulatory obligations. The Commission further believes that the proposed funding model is designed to impose fees reasonably related to the Participants’ self-regulatory obligations because the fees would be directly associated with the costs of establishing and maintaining the CAT, and not unrelated SRO services.<sup>32</sup>

Accordingly, the funding model approved by the Operating Committee imposes fees on both Participants and Industry Members.

As discussed in Appendix C of the CAT NMS Plan, in developing and approving the approved funding model, the Operating Committee considered the advantages and disadvantages of a variety of alternative funding and cost allocation models before selecting the proposed model.<sup>33</sup> After analyzing the various alternatives, the Operating Committee determined that the proposed tiered, fixed fee funding model provides a variety of advantages in comparison to the alternatives.

In particular, the fixed fee model, as opposed to a variable fee model, provides transparency, ease of calculation, ease of billing and other administrative functions, and predictability of a fixed fee. Such factors are crucial to estimating a reliable revenue stream for the Company and for permitting CAT Reporters to reasonably predict their payment obligations for budgeting purposes. Additionally, a strictly variable or metered funding model based on message volume would be far more likely to affect market behavior and place an inappropriate burden on competition.

<sup>29</sup> Approval Order at 84796.

<sup>30</sup> *Id.* at 84794.

<sup>31</sup> *Id.* at 84795.

<sup>32</sup> *Id.* at 84794.

<sup>33</sup> Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85006.

In addition, reviews from varying time periods of current broker-dealer order and trading data submitted under existing reporting requirements showed a wide range in activity among broker-dealers, with a number of broker-dealers submitting fewer than 1,000 orders per month and other broker-dealers submitting millions and even billions of orders in the same period. Accordingly, the CAT NMS Plan includes a tiered approach to fees. The tiered approach helps ensure that fees are equitably allocated among similarly situated CAT Reporters and furthers the goal of lessening the impact on smaller firms.<sup>34</sup> In addition, in choosing a tiered fee structure, the Operating Committee concluded that the variety of benefits offered by a tiered fee structure, discussed above, outweighed the fact that CAT Reporters in any particular tier would pay different rates per message traffic order event or per market share (e.g., an Industry Member with the largest amount of message traffic in one tier would pay a smaller amount per order event than an Industry Member in the same tier with the least amount of message traffic). Such variation is the natural result of a tiered fee structure.<sup>35</sup> The Operating Committee considered several approaches to developing a tiered model, including defining fee tiers based on such factors as size of firm, message traffic or trading dollar volume. After analyzing the alternatives, it was concluded that the tiering should be based on message traffic which will reflect the relative impact of CAT Reporters on the CAT System.

Accordingly, the CAT NMS Plan contemplates that costs will be allocated across the CAT Reporters on a tiered basis in order to allocate higher costs to those CAT Reporters that contribute more to the costs of creating, implementing and maintaining the CAT and lower costs to those that contribute less.<sup>36</sup> The fees to be assessed at each tier are calculated so as to recoup a proportion of costs appropriate to the message traffic or market share (as applicable) from CAT Reporters in each tier. Therefore, Industry Members generating the most message traffic will be in the higher tiers, and will be charged a higher fee. Industry Members with lower levels of message traffic will be in lower tiers and will be assessed a

smaller fee for the CAT.<sup>37</sup> Correspondingly, Execution Venues with the highest market shares will be in the top tier, and will be charged higher fees. Execution Venues with the lowest market shares will be in the lowest tier and will be assessed smaller fees for the CAT.<sup>38</sup>

The CAT NMS Plan states that Industry Members (other than Execution Venue ATSs) will be charged based on message traffic, and that Execution Venues will be charged based on market share.<sup>39</sup> While there are multiple factors that contribute to the cost of building, maintaining and using the CAT, processing and storage of incoming message traffic is one of the most significant cost drivers for the CAT.<sup>40</sup> Thus, the CAT NMS Plan provides that the fees payable by Industry Members (other than Execution Venue ATSs) will be based on the message traffic generated by such Industry Member.<sup>41</sup>

In contrast to Industry Members, which determine the degree to which they produce message traffic that constitute CAT Reportable Events, the CAT Reportable Events of the Execution Venues are largely derivative of quotations and orders received from Industry Members that they are required to display. The business model for Execution Venues (other than FINRA), however, is focused on executions in their markets. As a result, the Operating Committee believes that it is more equitable to charge Execution Venues based on their market share rather than their message traffic.

Focusing on message traffic would make it more difficult to draw distinctions between large and small Execution Venues and, in particular, between large and small options exchanges. For instance, the Operating Committee analyzed the message traffic of Execution Venues and Industry Members for the period of April 2017 to June 2017 and placed all CAT Reporters into a nine-tier framework (i.e., a single tier may include both Execution Venues and Industry Members). The Operating Committee's analysis found that the majority of exchanges (15 total) were grouped in Tiers 1 and 2. Moreover, virtually all of the options exchanges were in Tiers 1 and 2.<sup>42</sup> Given the resulting concentration of options

exchanges in Tiers 1 and 2 under this approach, the analysis shows that a funding model for Execution Venues based on message traffic would make it more difficult to distinguish between large and small options exchanges, as compared to the proposed fee approach that bases fees for Execution Venues on market share.

The CAT NMS Plan's funding model also is structured to avoid a "reduction in market quality."<sup>43</sup> The tiered, fixed fee funding model is designed to limit the disincentives to providing liquidity to the market. For example, the Operating Committee expects that a firm that has a large volume of quotes would likely be categorized in one of the upper tiers, and would not be assessed a fee for this traffic directly as they would under a more directly metered model. In contrast, strictly variable or metered funding models based on message volume are far more likely to affect market behavior. In approving the CAT NMS Plan, the SEC stated that "[t]he Participants also offered a reasonable basis for establishing a funding model based on broad tiers, in that it may be . . . less likely to have an incremental deterrent effect on liquidity provision."<sup>44</sup>

The funding model also is structured to avoid a reduction market quality because it discounts Options Market Maker and equity market maker quotes when calculating message traffic for Options Market Makers and equity market makers, respectively. As discussed in more detail below, the Operating Committee determined to discount the Options Market Maker quotes by the trade to quote ratio for options when calculating message traffic for Options Market Makers. Similarly, to avoid disincentives to quoting behavior on the equities side as well, the Operating Committee determined to discount equity market maker quotes by the trade to quote ratio for equities when calculating message traffic for equity market makers. The proposed discounts recognize the value of the market makers' quoting activity to the market as a whole.

The CAT NMS Plan is further structured to avoid potential conflicts raised by the Operating Committee determining fees applicable to its own members—the Participants. First, the Company will operate on a "break-even" basis, with fees imposed to cover costs and an appropriate reserve. Any surpluses will be treated as an operational reserve to offset future fees and will not be distributed to the

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> Section 11.3(a) and (b) of the CAT NMS Plan.

<sup>40</sup> Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85005.

<sup>41</sup> Section 11.3(b) of the CAT NMS Plan.

<sup>42</sup> The Operating Committee notes that this analysis did not place MIAx PEARL in Tier 1 or Tier 2 since the exchange commenced trading on February 6, 2017.

<sup>43</sup> Section 11.2(e) of the CAT NMS Plan.

<sup>44</sup> Approval Order at 84796.

<sup>34</sup> Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85006.

<sup>35</sup> Moreover, as the SEC noted in approving the CAT NMS Plan, "[t]he Participants also have offered a reasonable basis for establishing a funding model based on broad tiers, in that it may be easier to implement." Approval Order at 84796.

<sup>36</sup> Approval Order at 85005.

Participants as profits.<sup>45</sup> To ensure that the Participants' operation of the CAT will not contribute to the funding of their other operations, Section 11.1(c) of the CAT NMS Plan specifically states that "[a]ny surplus of the Company's revenues over its expenses shall be treated as an operational reserve to offset future fees." In addition, as set forth in Article VIII of the CAT NMS Plan, the Company "intends to operate in a manner such that it qualifies as a 'business league' within the meaning of Section 501(c)(6) of the [Internal Revenue] Code." To qualify as a business league, an organization must "not [be] organized for profit and no part of the net earnings of [the organization can] inure[] to the benefit of any private shareholder or individual."<sup>46</sup> As the SEC stated when approving the CAT NMS Plan, "the Commission believes that the Company's application for Section 501(c)(6) business league status addresses issues raised by commenters about the Plan's proposed allocation of profit and loss by mitigating concerns that the Company's earnings could be used to benefit individual Participants."<sup>47</sup> The Internal Revenue Service recently has determined that the Company is exempt from federal income tax under Section 501(c)(6) of the Internal Revenue Code.

The funding model also is structured to take into account distinctions in the securities trading operations of Participants and Industry Members. For example, the Operating Committee designed the model to address the different trading characteristics in the OTC Equity Securities market. Specifically, the Operating Committee proposes to discount the market share of Execution Venue ATSs exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF by the average shares per trade ratio between NMS Stocks and OTC Equity Securities to adjust for the greater number of shares being traded in the OTC Equity Securities market, which is generally a function of a lower per share price for OTC Equity Securities when compared to NMS Stocks. In addition, the Operating Committee also proposes to discount Options Market Maker and equity market maker message traffic in recognition of their role in the securities markets. Furthermore, the funding model creates separate tiers for Equity and Options Execution Venues due to the different trading characteristics of those markets.

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

A full description of the funding model is set forth below. This description includes the framework for the funding model as set forth in the CAT NMS Plan, as well as the details as to how the funding model will be applied in practice, including the number of fee tiers and the applicable fees for each tier. The complete funding model is described below, including those fees that are to be paid by the Participants. The proposed Consolidated Audit Trail Funding Fees, however, do not apply to the Participants; the proposed Consolidated Audit Trail Funding Fees only apply to Industry Members. The CAT Fees for Participants will be imposed separately by the Operating Committee pursuant to the CAT NMS Plan.

#### (A) Funding Principles

Section 11.2 of the CAT NMS Plan sets forth the principles that the Operating Committee applied in establishing the funding for the Company. The Operating Committee has considered these funding principles as well as the other funding requirements set forth in the CAT NMS Plan and in Rule 613 in developing the proposed funding model. The following are the funding principles in Section 11.2 of the CAT NMS Plan:

- To create transparent, predictable revenue streams for the Company that are aligned with the anticipated costs to build, operate and administer the CAT and other costs of the Company;
- To establish an allocation of the Company's related costs among Participants and Industry Members that is consistent with the Exchange Act, taking into account the timeline for implementation of the CAT and distinctions in the securities trading operations of Participants and Industry Members and their relative impact upon the Company's resources and operations;
- To establish a tiered fee structure in which the fees charged to: (i) CAT Reporters that are Execution Venues, including ATSs, are based upon the level of market share; (ii) Industry Members' non-ATS activities are based upon message traffic; (iii) the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are

generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venue and/or Industry Members);

- To provide for ease of billing and other administrative functions;
- To avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality; and
- To build financial stability to support the Company as a going concern.

#### (B) Industry Member Tiering

Under Section 11.3(b) of the CAT NMS Plan, the Operating Committee is required to establish fixed fees to be payable by Industry Members, based on message traffic generated by such Industry Member, with the Operating Committee establishing at least five and no more than nine tiers.

The CAT NMS Plan clarifies that the fixed fees payable by Industry Members pursuant to Section 11.3(b) shall, in addition to any other applicable message traffic, include message traffic generated by: (i) An ATS that does not execute orders that is sponsored by such Industry Member; and (ii) routing orders to and from any ATS sponsored by such Industry Member. In addition, the Industry Member fees will apply to Industry Members that act as routing broker-dealers for exchanges. The Industry Member fees will not be applicable, however, to an ATS that qualifies as an Execution Venue, as discussed in more detail in the section on Execution Venue tiering.

In accordance with Section 11.3(b), the Operating Committee approved a tiered fee structure for Industry Members (other than Execution Venue ATSs) as described in this section. In determining the tiers, the Operating Committee considered the funding principles set forth in Section 11.2 of the CAT NMS Plan, seeking to create funding tiers that take into account the relative impact on CAT System resources of different Industry Members, and that establish comparable fees among the CAT Reporters with the most Reportable Events. The Operating Committee has determined that establishing seven tiers results in an allocation of fees that distinguishes between Industry Members with differing levels of message traffic. Thus, each such Industry Member will be placed into one of seven tiers of fixed fees, based on "message traffic" for a defined period (as discussed below).

A seven tier structure was selected to provide a wide range of levels for tiering

<sup>45</sup> *Id.* at 84792.

<sup>46</sup> 26 U.S.C. 501(c)(6).

<sup>47</sup> Approval Order at 84793.

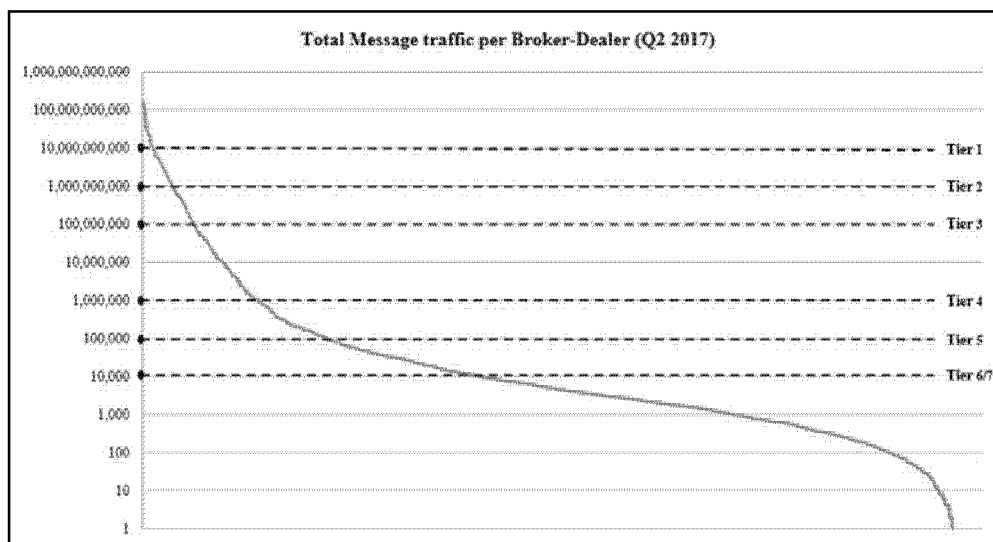
Industry Members such that Industry Members submitting significantly less message traffic to the CAT would be adequately differentiated from Industry Members submitting substantially more message traffic. The Operating Committee considered historical message traffic from multiple time periods, generated by Industry Members across all exchanges and as submitted to FINRA's Order Audit Trail System ("OATS"), and considered the distribution of firms with similar levels of message traffic, grouping together firms with similar levels of message traffic. Based on this, the Operating Committee determined that seven tiers would group firms with similar levels of message traffic, charging those firms with higher impact on the CAT more, while lowering the burden on Industry Members that have less CAT-related activity. Furthermore, the selection of seven tiers establishes comparable fees among the largest CAT Reporters.

Each Industry Member (other than Execution Venue ATSs) will be ranked by message traffic and tiered by predefined Industry Member percentages (the "Industry Member Percentages"). The Operating Committee determined to use predefined percentages rather than fixed volume thresholds to ensure that the total CAT Fees collected recover the expected CAT costs regardless of changes in the total level of message traffic. To determine the fixed percentage of Industry Members in each tier, the Operating Committee analyzed historical message traffic generated by Industry Members across all exchanges and as submitted to OATS, and considered the distribution of firms

with similar levels of message traffic, grouping together firms with similar levels of message traffic. Based on this, the Operating Committee identified seven tiers that would group firms with similar levels of message traffic.

The percentage of costs recovered by each Industry Member tier will be determined by predefined percentage allocations (the "Industry Member Recovery Allocation"). In determining the fixed percentage allocation of costs recovered for each tier, the Operating Committee considered the impact of CAT Reporter message traffic on the CAT System as well as the distribution of total message volume across Industry Members while seeking to maintain comparable fees among the largest CAT Reporters. Accordingly, following the determination of the percentage of Industry Members in each tier, the Operating Committee identified the percentage of total market volume for each tier based on the historical message traffic upon which Industry Members had been initially ranked. Taking this into account along with the resulting percentage of total recovery, the percentage allocation of costs recovered for each tier were assigned, allocating higher percentages of recovery to tiers with higher levels of message traffic while avoiding any inappropriate burden on competition. Furthermore, by using percentages of Industry Members and costs recovered per tier, the Operating Committee sought to include elasticity within the funding model, allowing the funding model to respond to changes in either the total number of Industry Members or the total level of message traffic.

The following chart illustrates the breakdown of seven Industry Member tiers across the monthly average of total equity and equity options orders, cancels, quotes and executions in the second quarter of 2017 as well as message traffic thresholds between the largest of Industry Member message traffic gaps. The Operating Committee referenced similar distribution illustrations to determine the appropriate division of Industry Member percentages in each tier by considering the grouping of firms with similar levels of message traffic and seeking to identify relative breakpoints in the message traffic between such groupings. In reviewing the chart and its corresponding table, note that while these distribution illustrations were referenced to help differentiate between Industry Member tiers, the proposed funding model is driven by fixed percentages of Industry Members across tiers to account for fluctuating levels of message traffic over time. This approach also provides financial stability for the CAT by ensuring that the funding model will recover the required amounts regardless of changes in the number of Industry Members or the amount of message traffic. Actual messages in any tier will vary based on the actual traffic in a given measurement period, as well as the number of firms included in the measurement period. The Industry Member Percentages and Industry Member Recovery Allocation for each tier will remain fixed with each Industry Member's tier to be reassigned periodically, as described below in Section 3(a)(2)(I).



Industry Member tier	Approximate message traffic per Industry Member (Q2 2017) (orders, quotes, cancels and executions)
Tier 1 .....	>10,000,000,000
Tier 2 .....	1,000,000,000–10,000,000,000
Tier 3 .....	100,000,000–1,000,000,000
Tier 4 .....	1,000,000–100,000,000
Tier 5 .....	100,000–1,000,000
Tier 6 .....	10,000–100,000
Tier 7 .....	<10,000

Based on the above analysis, the Operating Committee approved the following Industry Member Percentages and Industry Member Recovery Allocations:

Industry Member tier	Percentage of Industry Members	Percentage of Industry Member Recovery	Percentage of total recovery
Tier 1 .....	0.900	12.00	9.00
Tier 2 .....	2.150	20.50	15.38
Tier 3 .....	2.800	18.50	13.88
Tier 4 .....	7.750	32.00	24.00
Tier 5 .....	8.300	10.00	7.50
Tier 6 .....	18.800	6.00	4.50
Tier 7 .....	59.300	1.00	0.75
Total .....	100	100	75

For the purposes of creating these tiers based on message traffic, the Operating Committee determined to define the term “message traffic” separately for the period before the commencement of CAT reporting and for the period after the start of CAT reporting. The different definition for message traffic is necessary as there will be no Reportable Events as defined in the Plan, prior to the commencement of CAT reporting. Accordingly, prior to the start of CAT reporting, “message traffic” will be comprised of historical equity and equity options orders, cancels, quotes and executions provided by each exchange and FINRA over the previous three months. Prior to the start of CAT reporting, orders would be comprised of the total number of equity and equity options orders received and originated by a member of an exchange or FINRA over the previous three-month period, including principal orders, cancel/replace orders, market maker orders originated by a member of an exchange, and reserve (iceberg) orders as well as executions originated by a member of FINRA, and excluding order rejects, system-modified orders, order routes and implied orders.<sup>48</sup> In addition, prior to the start of CAT reporting, cancels

would be comprised of the total number of equity and equity option cancels received and originated by a member of an exchange or FINRA over a three-month period, excluding order modifications (e.g., order updates, order splits, partial cancels) and multiple cancels of a complex order. Furthermore, prior to the start of CAT reporting, quotes would be comprised of information readily available to the exchanges and FINRA, such as the total number of historical equity and equity options quotes received and originated by a member of an exchange or FINRA over the prior three-month period. Additionally, prior to the start of CAT reporting, executions would be comprised of the total number of equity and equity option executions received or originated by a member of an exchange or FINRA over a three-month period.

After an Industry Member begins reporting to the CAT, “message traffic” will be calculated based on the Industry Member’s Reportable Events reported to the CAT as will be defined in the Technical Specifications.<sup>49</sup>

Quotes of Options Market Makers and equity market makers will be included

in the calculation of total message traffic for those market makers for purposes of tiering under the CAT funding model both prior to CAT reporting and once CAT reporting commences.<sup>50</sup> To address potential concerns regarding burdens on competition or market quality of including quotes in the calculation of message traffic, however, the Operating Committee determined to discount the Options Market Maker quotes by the trade to quote ratio for options when calculating message traffic for Options Market Makers. Based on available data for June 2016 through June 2017, the trade to quote ratio for options is 0.01%. Similarly, to avoid disincentives to quoting behavior on the equities side, the Operating Committee determined to discount equity market maker quotes by the trade to quote ratio for equities. Based on available data for

<sup>50</sup> The SEC approved exemptive relief permitting Options Market Maker quotes to be reported to the Central Repository by the relevant Options Exchange in lieu of requiring that such reporting be done by both the Options Exchange and the Options Market Maker, as required by Rule 613 of Regulation NMS. See Securities Exchange Act Rel. No. 77265 (Mar. 1, 2017), 81 FR 11856 (Mar. 7, 2016). This exemption applies to Options Market Maker quotes for CAT reporting purposes only. Therefore, notwithstanding the reporting exemption provided for Options Market Maker quotes, Options Market Maker quotes will be included in the calculation of total message traffic for Options Market Makers for purposes of tiering under the CAT funding model both prior to CAT reporting and once CAT reporting commences.

<sup>48</sup> Consequently, firms that do not have “message traffic” reported to an exchange or OATS before they are reporting to the CAT would not be subject to a fee until they begin to report information to CAT.

<sup>49</sup> If an Industry Member (other than an Execution Venue ATS) has no orders, cancels, quotes and executions prior to the commencement of CAT Reporting, or no Reportable Events after CAT reporting commences, then the Industry Member would not have a CAT Fee obligation.

June 2016 through June 2017, the trade to quote ratio for equities is 5.43%.<sup>51</sup> The trade to quote ratio for options and the trade to quote ratio for equities will be calculated every three months when tiers are recalculated (as discussed below).

The Operating Committee has determined to calculate fee tiers every three months, on a calendar quarter basis, based on message traffic from the prior three months. Based on its analysis of historical data, the Operating Committee believes that calculating tiers based on three months of data will provide the best balance between reflecting changes in activity by Industry Members while still providing predictability in the tiering for Industry Members. Because fee tiers will be calculated based on message traffic from the prior three months, the Operating Committee will begin calculating message traffic based on an Industry Member's Reportable Events reported to the CAT once the Industry Member has been reporting to the CAT for three months. Prior to that, fee tiers will be calculated as discussed above with regard to the period prior to CAT reporting.

#### (C) Execution Venue Tiering

Under Section 11.3(a) of the CAT NMS Plan, the Operating Committee is required to establish fixed fees payable by Execution Venues. Section 1.1 of the CAT NMS Plan defines an Execution Venue as "a Participant or an alternative trading system ("ATS") (as defined in Rule 300 of Regulation ATS) that operates pursuant to Rule 301 of Regulation ATS (excluding any such ATS that does not execute orders)."<sup>52</sup>

The Operating Committee determined that ATSs should be included within the definition of Execution Venue. The Operating Committee believes that it is appropriate to treat ATSs as Execution Venues under the proposed funding model since ATSs have business models that are similar to those of exchanges, and ATSs also compete with exchanges.

Given the differences between Execution Venues that trade NMS Stocks and/or OTC Equity Securities and Execution Venues that trade Listed Options, Section 11.3(a) addresses Execution Venues that trade NMS Stocks and/or OTC Equity Securities

separately from Execution Venues that trade Listed Options. Equity and Options Execution Venues are treated separately for two reasons. First, the differing quoting behavior of Equity and Options Execution Venues makes comparison of activity between such Execution Venues difficult. Second, Execution Venue tiers are calculated based on market share of share volume, and it is therefore difficult to compare market share between asset classes (*i.e.*, equity shares versus options contracts). Discussed below is how the funding model treats the two types of Execution Venues.

#### (I) NMS Stocks and OTC Equity Securities

Section 11.3(a)(i) of the CAT NMS Plan states that each Execution Venue that (i) executes transactions or, (ii) in the case of a national securities association, has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange, in NMS Stocks or OTC Equity Securities will pay a fixed fee depending on the market share of that Execution Venue in NMS Stocks and OTC Equity Securities, with the Operating Committee establishing at least two and not more than five tiers of fixed fees, based on an Execution Venue's NMS Stocks and OTC Equity Securities market share. For these purposes, market share for Execution Venues that execute transactions will be calculated by share volume, and market share for a national securities association that has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange in NMS Stocks or OTC Equity Securities will be calculated based on share volume of trades reported, provided, however, that the share volume reported to such national securities association by an Execution Venue shall not be included in the calculation of such national security association's market share.

In accordance with Section 11.3(a)(i) of the CAT NMS Plan, the Operating Committee approved a tiered fee structure for Equity Execution Venues and Option Execution Venues. In determining the Equity Execution Venue Tiers, the Operating Committee considered the funding principles set forth in Section 11.2 of the CAT NMS Plan, seeking to create funding tiers that take into account the relative impact on system resources of different Equity Execution Venues, and that establish comparable fees among the CAT Reporters with the most Reportable Events. Each Equity Execution Venue

will be placed into one of four tiers of fixed fees, based on the Execution Venue's NMS Stocks and OTC Equity Securities market share. In choosing four tiers, the Operating Committee performed an analysis similar to that discussed above with regard to the non-Execution Venue Industry Members to determine the number of tiers for Equity Execution Venues. The Operating Committee determined to establish four tiers for Equity Execution Venues, rather than a larger number of tiers as established for non-Execution Venue Industry Members, because the four tiers were sufficient to distinguish between the smaller number of Equity Execution Venues based on market share. Furthermore, the selection of four tiers serves to help establish comparability among the largest CAT Reporters.

Each Equity Execution Venue will be ranked by market share and tiered by predefined Execution Venue percentages, (the "Equity Execution Venue Percentages"). In determining the fixed percentage of Equity Execution Venues in each tier, the Operating Committee reviewed historical market share of share volume for Execution Venues. Equity Execution Venue market shares of share volume were sourced from market statistics made publicly-available by Bats Global Markets, Inc. ("Bats"). ATS market shares of share volume was sourced from market statistics made publicly-available by FINRA. FINRA trade reporting facility ("TRF") and ORF market share of share volume was sourced from market statistics made publicly available by FINRA. Based on data from FINRA and *otcmrkt.com*, ATSs accounted for 39.12% of the share volume across the TRFs and ORFs during the recent tiering period. A 39.12/60.88 split was applied to the ATS and non-ATS breakdown of FINRA market share, with FINRA tiered based only on the non-ATS portion of its market share of share volume.

The Operating Committee determined to discount the market share of Execution Venue ATSs exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF in recognition of the different trading characteristics of the OTC Equity Securities market as compared to the market in NMS Stocks. Many OTC Equity Securities are priced at less than one dollar—and a significant number at less than one penny—per share and low-priced shares tend to trade in larger quantities. Accordingly, a disproportionately large number of shares are involved in transactions involving OTC Equity Securities versus NMS Stocks. Because the proposed fee

<sup>51</sup> The trade to quote ratios were calculated based on the inverse of the average of the monthly equity SIP and OPRA quote to trade ratios from June 2016–June 2017 that were compiled by the Financial Information Forum using data from NASDAQ and SIAC.

<sup>52</sup> Although FINRA does not operate an execution venue, because it is a Participant, it is considered an "Execution Venue" under the Plan for purposes of determining fees.



tiers are based on market share calculated by share volume, Execution Venue ATSS exclusively trading OTC Equity Securities and FINRA would likely be subject to higher tiers than their operations may warrant. To address this potential concern, the Operating Committee determined to discount the market share of Execution Venue ATSS exclusively trading OTC Equity Securities and the market share of the FINRA ORF by multiplying such market share by the average shares per trade ratio between NMS Stocks and OTC Equity Securities in order to adjust for the greater number of shares being traded in the OTC Equity Securities market. Based on available data for the second quarter of 2017, the average shares per trade ratio between NMS Stocks and OTC Equity Securities is 0.17%.<sup>53</sup> The average shares per trade ratio between NMS Stocks and OTC Equity Securities will be recalculated

every three months when tiers are recalculated.

Based on this, the Operating Committee considered the distribution of Execution Venues, and grouped together Execution Venues with similar levels of market share. The percentage of costs recovered by each Equity Execution Venue tier will be determined by predefined percentage allocations (the “Equity Execution Venue Recovery Allocation”). In determining the fixed percentage allocation of costs to be recovered from each tier, the Operating Committee considered the impact of CAT Reporter market share activity on the CAT System as well as the distribution of total market volume across Equity Execution Venues while seeking to maintain comparable fees among the largest CAT Reporters. Accordingly, following the determination of the percentage of Execution Venues in each tier, the Operating Committee identified the

percentage of total market volume for each tier based on the historical market share upon which Execution Venues had been initially ranked. Taking this into account along with the resulting percentage of total recovery, the percentage allocation of cost recovery for each tier were assigned, allocating higher percentages of recovery to the tier with a higher level of market share while avoiding any inappropriate burden on competition. Furthermore, by using percentages of Equity Execution Venues and cost recovery per tier, the Operating Committee sought to include elasticity within the funding model, allowing the funding model to respond to changes in either the total number of Equity Execution Venues or changes in market share.

Based on this analysis, the Operating Committee approved the following Equity Execution Venue Percentages and Recovery Allocations:

Equity Execution Venue tier	Percentage of Equity Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1 .....	25.00	33.25	8.31
Tier 2 .....	42.00	25.73	6.43
Tier 3 .....	23.00	8.00	2.00
Tier 4 .....	10.00	0.02	0.01
Total .....	100	67	16.75

(II) Listed Options

Section 11.3(a)(ii) of the CAT NMS Plan states that each Execution Venue that executes transactions in Listed Options will pay a fixed fee depending on the Listed Options market share of that Execution Venue, with the Operating Committee establishing at least two and no more than five tiers of fixed fees, based on an Execution Venue’s Listed Options market share. For these purposes, market share will be calculated by contract volume.

In accordance with Section 11.3(a)(ii) of the CAT NMS Plan, the Operating Committee approved a tiered fee structure for Options Execution Venues. In determining the tiers, the Operating Committee considered the funding principles set forth in Section 11.2 of the CAT NMS Plan, seeking to create funding tiers that take into account the relative impact on system resources of different Options Execution Venues, and that establish comparable fees among the CAT Reporters with the most Reportable Events. Each Options

Execution Venue will be placed into one of two tiers of fixed fees, based on the Execution Venue’s Listed Options market share. In choosing two tiers, the Operating Committee performed an analysis similar to that discussed above with regard to Industry Members (other than Execution Venue ATSS) to determine the number of tiers for Options Execution Venues. The Operating Committee determined to establish two tiers for Options Execution Venues, rather than a larger number, because the two tiers were sufficient to distinguish between the smaller number of Options Execution Venues based on market share. Furthermore, due to the smaller number of Options Execution Venues, the incorporation of additional Options Execution Venue tiers would result in significantly higher fees for Tier 1 Options Execution Venues and reduce comparability between Execution Venues and Industry Members. Furthermore, the selection of two tiers

served to establish comparable fees among the largest CAT Reporters.

Each Options Execution Venue will be ranked by market share and tiered by predefined Execution Venue percentages, (the “Options Execution Venue Percentages”). To determine the fixed percentage of Options Execution Venues in each tier, the Operating Committee analyzed the historical and publicly available market share of Options Execution Venues to group Options Execution Venues with similar market shares across the tiers. Options Execution Venue market share of share volume were sourced from market statistics made publicly-available by Bats. The process for developing the Options Execution Venue Percentages was the same as discussed above with regard to Equity Execution Venues.

The percentage of costs to be recovered from each Options Execution Venue tier will be determined by predefined percentage allocations (the “Options Execution Venue Recovery Allocation”). In determining the fixed

<sup>53</sup> The average shares per trade ratio for both NMS Stocks and OTC Equity Securities from the second quarter of 2017 was calculated using publicly

available market volume data from Bats and OTC Markets Group, and the totals were divided to

determine the average number of shares per trade between NMS Stocks and OTC Equity Securities.



percentage allocation of cost recovery for each tier, the Operating Committee considered the impact of CAT Reporter market share activity on the CAT System as well as the distribution of total market volume across Options Execution Venues while seeking to maintain comparable fees among the largest CAT Reporters. Furthermore, by

using percentages of Options Execution Venues and cost recovery per tier, the Operating Committee sought to include elasticity within the funding model, allowing the funding model to respond to changes in either the total number of Options Execution Venues or changes in market share. The process for developing the Options Execution

Venue Recovery Allocation was the same as discussed above with regard to Equity Execution Venues.

Based on this analysis, the Operating Committee approved the following Options Execution Venue Percentages and Recovery Allocations:

Options Execution Venue tier	Percentage of Options Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1 .....	75.00	28.25	7.06
Tier 2 .....	25.00	4.75	1.19
Total .....	100	33	8.25

(III) Market Share/Tier Assignments

The Operating Committee determined that, prior to the start of CAT reporting, market share for Execution Venues would be sourced from publicly-available market data. Options and equity volumes for Participants will be sourced from market data made publicly available by Bats while Execution Venue ATS volumes will be sourced from market data made publicly available by FINRA and OTC Markets. Set forth in the Appendix are two charts, one listing the current Equity Execution Venues, each with its rank and tier, and one listing the current Options Execution Venues, each with its rank and tier.

After the commencement of CAT reporting, market share for Execution Venues will be sourced from data reported to the CAT. Equity Execution Venue market share will be determined by calculating each Equity Execution Venue's proportion of the total volume of NMS Stock and OTC Equity shares reported by all Equity Execution Venues during the relevant time period (with the discounting of market share of Execution Venue ATSs exclusively trading OTC Equity Securities, as described above). Similarly, market share for Options Execution Venues will be determined by calculating each Options Execution Venue's proportion of the total volume of Listed Options contracts reported by all Options Execution Venues during the relevant time period.

The Operating Committee has determined to calculate fee tiers for Execution Venues every three months based on market share from the prior three months. Based on its analysis of historical data, the Operating Committee believes calculating tiers based on three months of data will provide the best balance between reflecting changes in

activity by Execution Venues while still providing predictability in the tiering for Execution Venues.

(D) Allocation of Costs

In addition to the funding principles discussed above, including comparability of fees, Section 11.1(c) of the CAT NMS Plan also requires expenses to be fairly and reasonably shared among the Participants and Industry Members. Accordingly, in developing the proposed fee schedules pursuant to the funding model, the Operating Committee calculated how the CAT costs would be allocated between Industry Members and Execution Venues, and how the portion of CAT costs allocated to Execution Venues would be allocated between Equity Execution Venues and Options Execution Venues. These determinations are described below.

(I) Allocation Between Industry Members and Execution Venues

In determining the cost allocation between Industry Members (other than Execution Venue ATSs) and Execution Venues, the Operating Committee analyzed a range of possible splits for revenue recovery from such Industry Members and Execution Venues, including 80%/20%, 75%/25%, 70%/30% and 65%/35% allocations. Based on this analysis, the Operating Committee determined that 75 percent of total costs recovered would be allocated to Industry Members (other than Execution Venue ATSs) and 25 percent would be allocated to Execution Venues. The Operating Committee determined that this 75%/25% division maintained the greatest level of comparability across the funding model. For example, the cost allocation establishes fees for the largest Industry Members (i.e., those Industry Members in Tiers 1) that are comparable to the

largest Equity Execution Venues and Options Execution Venues (i.e., those Execution Venues in Tier 1).

Furthermore, the allocation of total CAT cost recovery recognizes the difference in the number of CAT Reporters that are Industry Members versus CAT Reporters that are Execution Venues. Specifically, the cost allocation takes into consideration that there are approximately 23 times more Industry Members expected to report to the CAT than Execution Venues (e.g., an estimated 1541 Industry Members versus 67 Execution Venues as of June 2017).

(II) Allocation Between Equity Execution Venues and Options Execution Venues

The Operating Committee also analyzed how the portion of CAT costs allocated to Execution Venues would be allocated between Equity Execution Venues and Options Execution Venues. In considering this allocation of costs, the Operating Committee analyzed a range of alternative splits for revenue recovered between Equity and Options Execution Venues, including a 70%/30%, 67%/33%, 65%/35%, 50%/50% and 25%/75% split. Based on this analysis, the Operating Committee determined to allocate 67 percent of Execution Venue costs recovered to Equity Execution Venues and 33 percent to Options Execution Venues. The Operating Committee determined that a 67%/33% allocation between Equity and Options Execution Venues maintained the greatest level of fee equitability and comparability based on the current number of Equity and Options Execution Venues. For example, the allocation establishes fees for the larger Equity Execution Venues that are comparable to the larger Options Execution Venues. Specifically,

Tier 1 Equity Execution Venues would pay a quarterly fee of \$81,047 and Tier 1 Options Execution Venues would pay a quarterly fee of \$81,379. In addition to fee comparability between Equity Execution Venues and Options Execution Venues, the allocation also establishes equitability between larger (Tier 1) and smaller (Tier 2) Execution Venues based upon the level of market share. Furthermore, the allocation is intended to reflect the relative levels of current equity and options order events.

(E) Fee Levels

The Operating Committee determined to establish a CAT-specific fee to collectively recover the costs of building and operating the CAT. Accordingly, under the funding model, the sum of the CAT Fees is designed to recover the total cost of the CAT. The Operating Committee has determined overall CAT costs to be comprised of Plan Processor costs and non-Plan Processor costs, which are estimated to be \$50,700,000 in total for the year beginning November 21, 2016.<sup>54</sup>

The Plan Processor costs relate to costs incurred and to be incurred through November 21, 2017 by the Plan Processor and consist of the Plan Processor's current estimates of average yearly ongoing costs, including development costs, which total \$37,500,000. This amount is based upon the fees due to the Plan Processor pursuant to the Company's agreement with the Plan Processor.

The non-Plan Processor estimated costs incurred and to be incurred by the Company through November 21, 2017 consist of three categories of costs. The first category of such costs are third party support costs, which include legal fees, consulting fees and audit fees from November 21, 2016 until the date of filing as well as estimated third party support costs for the rest of the year. These amount to an estimated \$5,200,000. The second category of non-Plan Processor costs are estimated cyber-insurance costs for the year. Based on discussions with potential cyber-insurance providers, assuming \$2–5 million cyber-insurance premium on

\$100 million coverage, the Company has estimated \$3,000,000 for the annual cost. The final cost figures will be determined following receipt of final underwriter quotes. The third category of non-Plan Processor costs is the CAT operational reserve, which is comprised of three months of ongoing Plan Processor costs (\$9,375,000), third party support costs (\$1,300,000) and cyber-insurance costs (\$750,000). The Operating Committee aims to accumulate the necessary funds to establish the three-month operating reserve for the Company through the CAT Fees charged to CAT Reporters for the year. On an ongoing basis, the Operating Committee will account for any potential need to replenish the operating reserve or other changes to total cost during its annual budgeting process. The following table summarizes the Plan Processor and non-Plan Processor cost components which comprise the total estimated CAT costs of \$50,700,000 for the covered period.

Cost category	Cost component	Amount
Plan Processor .....	Operational Costs .....	\$37,500,000
Non-Plan Processor .....	Third Party Support Costs .....	5,200,000
	Operational Reserve .....	<sup>55</sup> 5,000,000
	Cyber-insurance Costs .....	3,000,000
Estimated Total .....		50,700,000

Based on these estimated costs and the calculations for the funding model described above, the Operating

Committee determined to impose the following fees:<sup>56</sup>

For Industry Members (other than Execution Venue ATSs):

Tier	Percentage of Industry Members	Quarterly CAT Fee
1 .....	0.900	\$81,483
2 .....	2.150	59,055
3 .....	2.800	40,899
4 .....	7.750	25,566
5 .....	8.300	7,428
6 .....	18.800	1,968
7 .....	59.300	105

For Execution Venues for NMS Stocks and OTC Equity Securities:

Tier	Percentage of Equity Execution Venues	Quarterly CAT Fee
1 .....	25.00	\$81,048
2 .....	42.00	37,062
3 .....	23.00	21,126

<sup>54</sup> It is anticipated that CAT-related costs incurred prior to November 21, 2016 will be addressed via a separate filing.

<sup>55</sup> This \$5,000,000 represents the gradual accumulation of the funds for a target operating reserve of \$11,425,000.

<sup>56</sup> Note that all monthly, quarterly and annual CAT Fees have been rounded to the nearest dollar.

Tier	Percentage of Equity Execution Venues	Quarterly CAT Fee
4 .....	10.00	129

For Execution Venues for Listed Options:

Tier	Percentage of Options Execution Venues	Quarterly CAT Fee
1 .....	75.00	\$81,381
2 .....	25.00	37,629

The Operating Committee has calculated the schedule of effective fees for Industry Members (other than Execution Venue ATs) and Execution Venues in the following manner. Note that the calculation of CAT Fees assumes 52 Equity Execution Venues, 15 Options Execution Venues and 1,541 Industry Members (other than Execution Venue ATs) as of June 2017.

CALCULATION OF ANNUAL TIER FEES FOR INDUSTRY MEMBERS (“IM”)

Industry Member tier	Percentage of Industry Members	Percentage of Industry Member Recovery	Percentage of total recovery
Tier 1 .....	0.900	12.00	9.00
Tier 2 .....	2.150	20.50	15.38
Tier 3 .....	2.800	18.50	13.88
Tier 4 .....	7.750	32.00	24.00
Tier 5 .....	8.300	10.00	7.50
Tier 6 .....	18.800	6.00	4.50
Tier 7 .....	59.300	1.00	0.75
Total .....	100	100	75

Industry Member tier	Estimated number of Industry Members
Tier 1 .....	14
Tier 2 .....	33
Tier 3 .....	43
Tier 4 .....	119
Tier 5 .....	128
Tier 6 .....	290
Tier 7 .....	914
Total .....	1,541

**Calculation 1.1 (Calculation of a Tier 1 Industry Member Monthly Fee)**

$$1,541 \text{ [Estimated Tot. IMs]} \times 0.9\% \text{ [% of Tier 1 IMs]} = 14 \text{ [Estimated Tier 1 IMs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 75\% \text{ [IM \% of Tot. Ann. CAT Costs]} \times 12\% \text{ [% of Tier 1 IM Recovery]}}{14 \text{ [Estimated Tier 1 IMs]}} \right) \div 12 \text{ [Months per year]} = \$27,161$$

**Calculation 1.2 (Calculation of a Tier 2 Industry Member Monthly Fee)**

$$1,541 \text{ [Estimated Tot. IMs]} \times 2.15\% \text{ [% of Tier 2 IMs]} = 33 \text{ [Estimated Tier 2 IMs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 75\% \text{ [IM \% of Tot. Ann. CAT Costs]} \times 20.5\% \text{ [% of Tier 2 IM Recovery]}}{33 \text{ [Estimated Tier 2 IMs]}} \right) \div 12 \text{ [Months per year]} = \$19,685$$

**Calculation 1.3 (Calculation of a Tier 3 Industry Member Monthly Fee)**

$$1,541 \text{ [Estimated Tot. IMs]} \times 2.125\% \text{ [% of Tier 3 IMs]} = 43 \text{ [Estimated Tier 3 IMs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 75\% \text{ [IM \% of Tot. Ann. CAT Costs]} \times 18.5\% \text{ [% of Tier 3 IM Recovery]}}{43 \text{ [Estimated Tier 3 IMs]}} \right) \div 12 \text{ [Months per year]} = \$13,633$$

**Calculation 1.4 (Calculation of a Tier 4 Industry Member Monthly Fee)**

$$1,541 \text{ [Estimated Tot. IMs]} \times 7.75\% \text{ [% of Tier 4 IMs]} = 119 \text{ [Estimated Tier 4 IMs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 75\% \text{ [IM \% of Tot. Ann. CAT Costs]} \times 32\% \text{ [% of Tier 4 IM Recovery]}}{119 \text{ [Estimated Tier 4 IMs]}} \right) \div 12 \text{ [Months per year]} = \$8522$$

**Calculation 1.5 (Calculation of a Tier 5 Industry Member Annual Fee)**

$$1,541 \text{ [Estimated Tot. IMs]} \times 8.3\% \text{ [% of Tier 5 IMs]} = 128 \text{ [Estimated Tier 5 IMs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 75\% \text{ [IM \% of Tot. Ann. CAT Costs]} \times 7.75\% \text{ [% of Tier 5 IM Recovery]}}{128 \text{ [Estimated Tier 5 IMs]}} \right) \div 12 \text{ [Months per year]} = \$2476$$

**Calculation 1.6 (Calculation of a Tier 6 Industry Member Monthly Fee)**

$$1,541 \text{ [Estimated Tot. IMs]} \times 18.8\% \text{ [% of Tier 6 IMs]} = 290 \text{ [Estimated Tier 6 IMs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 75\% \text{ [IM \% of Tot. Ann. CAT Costs]} \times 6\% \text{ [% of Tier 6 IM Recovery]}}{290 \text{ [Estimated Tier 6 IMs]}} \right) \div 12 \text{ [Months per year]} = \$656$$

**Calculation 1.7 (Calculation of a Tier 7 Industry Member Monthly Fee)**

$$1,541 \text{ [Estimated Tot. IMs]} \times 59.3\% \text{ [% of Tier 7 IMs]} = 914 \text{ [Estimated Tier 7 IMs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 75\% \text{ [IM \% of Tot. Ann. CAT Costs]} \times 1\% \text{ [% of Tier 7 IM Recovery]}}{914 \text{ [Estimated Tier 7 IMs]}} \right) \div 12 \text{ [Months per year]} = \$35$$

**BILLING CODE 8011-01-C**

Equity Execution Venue Tier	Percentage of Equity Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1 .....	25.00	33.25	8.31
Tier 2 .....	42.00	25.73	6.43
Tier 3 .....	23.00	8.00	2.00
Tier 4 .....	10.00	49.00	0.01
Total .....	100	67	16.75

Equity Execution Venue tier	Estimated number of Equity Execution Venues
Tier 1 .....	13
Tier 2 .....	22
Tier 3 .....	12
Tier 4 .....	5

Equity Execution Venue tier	Estimated number of Equity Execution Venues
Total .....	52

**Calculation 2.1 (Calculation of a Tier 1 Equity Execution Venue Monthly Fee)**

$$52 \text{ [Estimated Tot. Equity EVs]} \times 25\% \text{ [% of Tier 1 Equity EVs]} = 13 \text{ [Estimated Tier 1 Equity EVs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann.CAT Costs]} \times 33.25\% \text{ [EV \% of Tot. Ann.CAT Costs]} \times 26\% \text{ [% of Tier 1 Equity EV Recovery]}}{13 \text{ [Estimated Tier 1 Equity EVs]}} \right) \div 12 \text{ [Months per year]} = \$27,016$$

**Calculation 2.2 (Calculation of a Tier 2 Equity Execution Venue Monthly Fee)**

$$52 \text{ [Estimated Tot. Equity EVs]} \times 42\% \text{ [% of Tier 2 Equity EVs]} = 22 \text{ [Estimated Tier 2 Equity EVs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann.CAT Costs]} \times 25\% \text{ [EV \% of Tot. Ann.CAT Costs]} \times 25.73\% \text{ [% of Tier 2 Equity EV Recovery]}}{22 \text{ [Estimated Tier 2 Equity EVs]}} \right) \div 12 \text{ [Months per year]} = \$12,353$$

**Calculation 2.3 (Calculation of a Tier 3 Equity Execution Venue Monthly Fee)**

$$52 \text{ [Estimated Tot. Equity EVs]} \times 23\% \text{ [% of Tier 2 Equity EVs]} = 12 \text{ [Estimated Tier 2 Equity EVs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann.CAT Costs]} \times 25\% \text{ [EV \% of Tot. Ann.CAT Costs]} \times 8\% \text{ [% of Tier 2 Equity EV Recovery]}}{12 \text{ [Estimated Tier 2 Equity EVs]}} \right) \div 12 \text{ [Months per year]} = \$7,042$$

**Calculation 2.4 (Calculation of a Tier 4 Equity Execution Venue Monthly Fee)**

$$52 \text{ [Estimated Tot. Equity EVs]} \times 10\% \text{ [% of Tier 2 Equity EVs]} = 5 \text{ [Estimated Tier 2 Equity EVs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann.CAT Costs]} \times 25\% \text{ [EV \% of Tot. Ann.CAT Costs]} \times 0.02\% \text{ [% of Tier 2 Equity EV Recovery]}}{5 \text{ [Estimated Tier 2 Equity EVs]}} \right) \div 12 \text{ [Months per year]} = \$42$$

**CALCULATION OF ANNUAL TIER FEES FOR OPTIONS EXECUTION VENUES (“EV”)**

Options Execution Venue tier	Percentage of Options Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1 .....	75.00	28.25	7.06
Tier 2 .....	25.00	4.75	1.19
Total .....	100	33	8.25

Options Execution Venue tier	Estimated number of Options Execution Venues
Tier 1 .....	11
Tier 2 .....	4
Total .....	15

**Calculation 3.1 (Calculation of a Tier 1 Options Execution Venue Monthly Fee)**

$$15 \text{ [Estimated Tot. Options EVs]} \times 75\% \text{ [% of Tier 1 Options EVs]} = 11 \text{ [Estimated Tier 1 Options EVs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann.CAT Costs]} \times 25\% \text{ [EV \% of Tot. Ann.CAT Costs]} \times 28.25\% \text{ [% of Tier 1 Options EV Recovery]}}{11 \text{ [Estimated Tier 1 Options EVs]}} \right) \div 12 \text{ [Months per year]} = \$27,127$$

**Calculation 3.2 (Calculation of a Tier 2 Options Execution Venue Annual Fee)**

$$15 \text{ [Estimated Tot. Options EVs]} \times 25\% \text{ [% of Tier 2 Options EVs]} = 4 \text{ [Estimated Tier 2 Options EVs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann.CAT Costs]} \times 25\% \text{ [EV \% of Tot. Ann.CAT Costs]} \times 4.75\% \text{ [% of Tier 2 Options EV Recovery]}}{4 \text{ [Estimated Tier 2 Options EVs]}} \right) \div 12 \text{ [Months per year]} = \$12,543$$

## TRACEABILITY OF TOTAL CAT FEES

Type	Industry Member tier	Estimated number of members	CAT Fees paid Annually	Total recovery
Industry Members .....	Tier 1 .....	14	\$325,932	\$4,563,048
	Tier 2 .....	33	236,220	7,795,260
	Tier 3 .....	43	163,596	7,034,628
	Tier 4 .....	119	102,264	12,169,416
	Tier 5 .....	128	29,712	3,803,136
	Tier 6 .....	290	7,872	2,282,880
	Tier 7 .....	914	420	383,880
Total .....	.....	1,541	.....	38,032,248
Equity Execution Venues .....	Tier 1 .....	13	324,192	4,214,496
	Tier 2 .....	22	148,248	3,261,456
	Tier 3 .....	12	84,504	1,014,048
	Tier 4 .....	5	516	2,580
Total .....	.....	52	.....	8,492,580
Options Execution Venues .....	Tier 1 .....	11	325,524	3,580,764
	Tier 2 .....	4	150,516	602,064
Total .....	.....	15	.....	4,182,828
Total .....	.....	.....	.....	50,700,000
Excess <sup>57</sup> .....	.....	.....	.....	7,656

## (F) Comparability of Fees

The funding principles require a funding model in which the fees charged to the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venue and/or Industry Members). Accordingly, in creating the model, the Operating Committee sought to establish comparable fees for the top tier of Industry Members (other than Execution Venue ATSS), Equity Execution Venues and Options Execution Venues. Specifically, each Tier 1 CAT Reporter would be required to pay a quarterly fee of approximately \$81,000.

## (G) Billing Onset

Under Section 11.1(c) of the CAT NMS Plan, to fund the development and implementation of the CAT, the Company shall time the imposition and collection of all fees on Participants and Industry Members in a manner reasonably related to the timing when the Company expects to incur such development and implementation costs. The Company is currently incurring such development and implementation

<sup>57</sup> The amount in excess of the total CAT costs will contribute to the gradual accumulation of the target operating reserve of \$11.425 million.

costs and will continue to do so prior to the commencement of CAT reporting and thereafter. In accordance with the CAT NMS Plan, all CAT Reporters, including both Industry Members and Execution Venues (including Participants), will be invoiced as promptly as possible following the latest of the operative date of the Consolidated Audit Trail Funding Fees for each of the Participants and the operative date of the Plan amendment adopting CAT Fees for Participants.

## (H) Changes to Fee Levels and Tiers

Section 11.3(d) of the CAT NMS Plan states that “[t]he Operating Committee shall review such fee schedule on at least an annual basis and shall make any changes to such fee schedule that it deems appropriate. The Operating Committee is authorized to review such fee schedule on a more regular basis, but shall not make any changes on more than a semi-annual basis unless, pursuant to a Supermajority Vote, the Operating Committee concludes that such change is necessary for the adequate funding of the Company.” With such reviews, the Operating Committee will review the distribution of Industry Members and Execution Venues across tiers, and make any updates to the percentage of CAT Reporters allocated to each tier as may be necessary. In addition, the reviews will evaluate the estimated ongoing CAT costs and the level of the operating

reserve. To the extent that the total CAT costs decrease, the fees would be adjusted downward, and to the extent that the total CAT costs increase, the fees would be adjusted upward.<sup>58</sup> Furthermore, any surplus of the Company’s revenues over its expenses is to be included within the operational reserve to offset future fees. The limitations on more frequent changes to the fee, however, are intended to provide budgeting certainty for the CAT Reporters and the Company.<sup>59</sup> To the extent that the Operating Committee approves changes to the number of tiers in the funding model or the fees assigned to each tier, then the Operating Committee will file such changes with the SEC pursuant to Rule 608 of the Exchange Act, and the Participants will file such changes with the SEC pursuant to Section 19(b) of the Exchange Act and Rule 19b-4 thereunder, and any such changes will become effective in accordance with the requirements of those provisions.

<sup>58</sup> The CAT Fees are designed to recover the costs associated with the CAT. Accordingly, CAT Fees would not be affected by increases or decreases in other non-CAT expenses incurred by the Participants, such as any changes in costs related to the retirement of existing regulatory systems, such as OATS.

<sup>59</sup> Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85006.

(I) Initial and Periodic Tier Reassignments

The Operating Committee has determined to calculate fee tiers every three months based on market share or message traffic, as applicable, from the prior three months. For the initial tier assignments, the Company will calculate the relevant tier for each CAT Reporter using the three months of data prior to the commencement date. As with the initial tier assignment, for the tri-monthly reassignments, the Company will calculate the relevant tier using the three months of data prior to the relevant tri-monthly date. Any movement of CAT Reporters between tiers will not change the criteria for each tier or the fee amount corresponding to each tier.

In performing the tri-monthly reassignments, the assignment of CAT

Reporters in each assigned tier is relative. Therefore, a CAT Reporter's assigned tier will depend, not only on its own message traffic or market share, but also on the message traffic/market share across all CAT Reporters. For example, the percentage of Industry Members (other than Execution Venue ATSS) in each tier is relative such that such Industry Member's assigned tier will depend on message traffic generated across all CAT Reporters as well as the total number of CAT Reporters. The Operating Committee will inform CAT Reporters of their assigned tier every three months following the periodic tiering process, as the funding model will compare an individual CAT Reporter's activity to that of other CAT Reporters in the marketplace.

The following demonstrates a tier reassignment. In accordance with the funding model, the top 75% of Options Execution Venues in market share are categorized as Tier 1 while the bottom 25% of Options Execution Venues in market share are categorized as Tier 2. In the sample scenario below, Options Execution Venue L is initially categorized as a Tier 2 Options Execution Venue in Period A due to its market share. When market share is recalculated for Period B, the market share of Execution Venue L increases, and it is therefore subsequently reranked and reassigned to Tier 1 in Period B. Correspondingly, Options Execution Venue K, initially a Tier 1 Options Execution Venue in Period A, is reassigned to Tier 2 in Period B due to decreases in its market share.

Period A			Period B		
Options Execution Venue	Market share rank	Tier	Options Execution Venue	Market share rank	Tier
Options Execution Venue A .....	1	1	Options Execution Venue A .....	1	1
Options Execution Venue B .....	2	1	Options Execution Venue B .....	2	1
Options Execution Venue C .....	3	1	Options Execution Venue C .....	3	1
Options Execution Venue D .....	4	1	Options Execution Venue D .....	4	1
Options Execution Venue E .....	5	1	Options Execution Venue E .....	5	1
Options Execution Venue F .....	6	1	Options Execution Venue F .....	6	1
Options Execution Venue G .....	7	1	Options Execution Venue I .....	7	1
Options Execution Venue H .....	8	1	Options Execution Venue H .....	8	1
Options Execution Venue I .....	9	1	Options Execution Venue G .....	9	1
Options Execution Venue J .....	10	1	Options Execution Venue J .....	10	1
Options Execution Venue K .....	11	1	Options Execution Venue L .....	11	1
Options Execution Venue L .....	12	2	Options Execution Venue K .....	12	2
Options Execution Venue M .....	13	2	Options Execution Venue N .....	13	2
Options Execution Venue N .....	14	2	Options Execution Venue M .....	14	2
Options Execution Venue O .....	15	2	Options Execution Venue O .....	15	2

For each periodic tier reassignment, the Operating Committee will review the new tier assignments, particularly those assignments for CAT Reporters that shift from the lowest tier to a higher tier. This review is intended to evaluate whether potential changes to the market or CAT Reporters (e.g., dissolution of a large CAT Reporter) adversely affect the tier reassignments.

(J) Sunset Provision

The Operating Committee developed the proposed funding model by analyzing currently available historical data. Such historical data, however, is not as comprehensive as data that will be submitted to the CAT. Accordingly, the Operating Committee believes that it will be appropriate to revisit the funding model once CAT Reporters have actual experience with the funding model. Accordingly, the Operating Committee determined to include an automatic sunset provision for the

proposed fees. Specifically, the Operating Committee determined that the CAT Fees should automatically expire two years after the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. The Operating Committee intends to monitor the operation of the funding model during this two year period and to evaluate its effectiveness during that period. Such a process will inform the Operating Committee's approach to funding the CAT after the two year period.

(3) Proposed CAT Fee Schedule

SRO proposes the Consolidated Audit Trail Funding Fees to impose the CAT Fees determined by the Operating Committee on SRO's members. The proposed fee schedule has four sections, covering definitions, the fee schedule for CAT Fees, the timing and manner of payments, and the automatic sunset

of the CAT Fees. Each of these sections is discussed in detail below.

(A) Definitions

Paragraph (a) of the proposed fee schedule sets forth the definitions for the proposed fee schedule. Paragraph (a)(1) states that, for purposes of the Consolidated Audit Trail Funding Fees, the terms "CAT", "CAT NMS Plan," "Industry Member," "NMS Stock," "OTC Equity Security", "Options Market Maker", and "Participant" are defined as set forth in Rule 4.5 (Consolidated Audit Trail—Definitions).

The proposed fee schedule imposes different fees on Equity ATSS and Industry Members that are not Equity ATSS. Accordingly, the proposed fee schedule defines the term "Equity ATS." First, paragraph (a)(2) defines an "ATS" to mean an alternative trading system as defined in Rule 300(a) of Regulation ATS under the Securities Exchange Act of 1934, as amended, that

operates pursuant to Rule 301 of Regulation ATS. This is the same definition of an ATS as set forth in Section 1.1 of the CAT NMS Plan in the definition of an "Execution Venue."

Then, paragraph (a)(4) defines an "Equity ATS" as an ATS that executes transactions in NMS Stocks and/or OTC Equity Securities.

Paragraph (a)(3) of the proposed fee schedule defines the term "CAT Fee" to mean the Consolidated Audit Trail Funding Fee(s) to be paid by Industry Members as set forth in paragraph (b) in the proposed fee schedule.

Finally, Paragraph (a)(6) defines an "Execution Venue" as a Participant or an ATS (excluding any such ATS that does not execute orders). This definition is the same substantive definition as set forth in Section 1.1 of the CAT NMS Plan. Paragraph (a)(5) defines an "Equity Execution Venue" as an Execution Venue that trades NMS Stocks and/or OTC Equity Securities.

**(B) Fee Schedule**

SRO proposes to impose the CAT Fees applicable to its Industry Members through paragraph (b) of the proposed fee schedule. Paragraph (b)(1) of the proposed fee schedule sets forth the CAT Fees applicable to Industry Members other than Equity ATSs. Specifically, paragraph (b)(1) states that the Company will assign each Industry Member (other than an Equity ATS) to a fee tier once every quarter, where such tier assignment is calculated by ranking each Industry Member based on its total message traffic (with discounts for equity market maker quotes and Options Market Maker quotes based on the trade to quote ratio for equities and options, respectively) for the three months prior to the quarterly tier calculation day and assigning each Industry Member to a tier based on that ranking and predefined Industry Member percentages. The Industry Members with the highest total quarterly message traffic will be ranked in Tier 1, and the Industry Members with lowest quarterly message traffic will be ranked in Tier 7. Each quarter, each Industry Member (other than an Equity ATS) shall pay the following CAT Fee corresponding to the tier assigned by the Company for such Industry Member for that quarter:

Tier	Percentage of Industry Members	Quarterly CAT Fee
1 .....	0.900	\$81,483
2 .....	2.150	59,055
3 .....	2.800	40,899
4 .....	7.750	25,566
5 .....	8.300	7,428
6 .....	18.800	1,968

Tier	Percentage of Industry Members	Quarterly CAT Fee
7 .....	59.300	105

Paragraph (b)(2) of the proposed fee schedule sets forth the CAT Fees applicable to Equity ATSs.<sup>60</sup> These are the same fees that Participants that trade NMS Stocks and/or OTC Equity Securities will pay. Specifically, paragraph (b)(2) states that the Company will assign each Equity ATS to a fee tier once every quarter, where such tier assignment is calculated by ranking each Equity Execution Venue based on its total market share of NMS Stocks and OTC Equity Securities (with a discount for Equity ATSs exclusively trading OTC Equity Securities based on the average shares per trade ratio between NMS Stocks and OTC Equity Securities) for the three months prior to the quarterly tier calculation day and assigning each Equity ATS to a tier based on that ranking and predefined Equity Execution Venue percentages. The Equity ATSs with the higher total quarterly market share will be ranked in Tier 1, and the Equity ATSs with the lowest quarterly market share will be ranked in Tier 4. Specifically, paragraph (b)(2) states that, each quarter, each Equity ATS shall pay the following CAT Fee corresponding to the tier assigned by the Company for such Equity ATS for that quarter:

Tier	Percentage of Equity Execution Venues	Quarterly CAT Fee
1 .....	25.00	\$81,048
2 .....	42.00	37,062
3 .....	23.00	21,126
4 .....	10.00	129

**(C) Timing and Manner of Payment**

Section 11.4 of the CAT NMS Plan states that the Operating Committee shall establish a system for the collection of fees authorized under the CAT NMS Plan. The Operating Committee may include such collection responsibility as a function of the Plan Processor or another administrator. To implement the payment process to be adopted by the Operating Committee, paragraph (c)(1) of the proposed fee schedule states that the Company will provide each Industry Member with one invoice each quarter for its CAT Fees as determined pursuant to paragraph (b) of

<sup>60</sup>Note that no fee schedule is provided for Execution Venue ATSs that execute transactions in Listed Options, as no such Execution Venue ATSs currently exist due to trading restrictions related to Listed Options.

the proposed fee schedule, regardless of whether the Industry Member is a member of multiple self-regulatory organizations. Paragraph (c)(1) further states that each Industry Member will pay its CAT Fees to the Company via the centralized system for the collection of CAT Fees established by the Company in the manner prescribed by the Company. SRO will provide Industry Members with details regarding the manner of payment of CAT Fees by Regulatory Circular.

All CAT fees will be billed and collected centrally through the Company via the Plan Processor. Although each Participant will adopt its own fee schedule regarding CAT Fees, no CAT Fees or portion thereof will be collected by the individual Participants. Each Industry Member will receive from the Company one invoice for its applicable CAT fees, not separate invoices from each Participant of which it is a member. The Industry Members will pay the CAT Fees to the Company via the centralized system for the collection of CAT fees established by the Company.<sup>61</sup>

Section 11.4 of the CAT NMS Plan also states that Participants shall require each Industry Member to pay all applicable authorized CAT Fees within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). Section 11.4 further states that, if an Industry Member fails to pay any such fee when due, such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (i) The Prime Rate plus 300 basis points; or (ii) the maximum rate permitted by applicable law. Therefore, in accordance with Section 11.4 of the CAT NMS Plan, SRO proposed to adopt paragraph (c)(2) of the proposed fee schedule. Paragraph (c)(2) of the proposed fee schedule states that each Industry Member shall pay CAT Fees within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If an Industry Member fails to pay any such fee when due, such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (i) The Prime Rate plus 300 basis points; or (ii) the maximum rate permitted by applicable law.

<sup>61</sup>Section 11.4 of the CAT NMS Plan.



## (D) Sunset Provision

The Operating Committee has determined to require that the CAT Fees automatically sunset two years from the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. Accordingly, SRO proposes paragraph (d) of the fee schedule, which states that “[t]hese Consolidated Audit Trailing Funding Fees will automatically expire two years after the operative date of the amendment of the CAT NMS Plan that adopts CAT fees for the Participants.”

## (4) Changes to Prior CAT Fee Plan Amendment

The proposed funding model set forth in this Amendment is a revised version of the Original Proposal. The Commission received a number of comment letters in response to the Original Proposal.<sup>62</sup> The SEC suspended the Original Proposal and instituted proceedings to determine whether to approve or disapprove it.<sup>63</sup> Pursuant to those proceedings, additional comment letters were submitted regarding the proposed funding model.<sup>64</sup> In developing this Amendment, the Operating Committee carefully considered these comments and made a number of changes to the Original Proposal to address these comments where appropriate.

This Amendment makes the following changes to the Original Proposal: (1) Adds two additional CAT Fee tiers for Equity Execution Venues; (2) discounts the market share of Execution Venue ATSs exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF by the average shares per trade ratio between NMS Stocks and OTC Equity Securities (calculated as 0.17% based on available data from the second quarter of 2017) when calculating the market share of Execution Venue ATSs exclusively trading OTC Equity Securities and FINRA; (3) discounts the Options Market Maker quotes by the trade to quote ratio for options (calculated as 0.01% based on available data for June 2016 through June 2017) when calculating message traffic for Options Market Makers; (4) discounts equity market maker quotes by the trade to quote ratio for equities (calculated as 5.43% based on available data for June 2016 through June 2017) when

calculating message traffic for equity market makers; (5) decreases the number of tiers for Industry Members (other than the Execution Venue ATSs) from nine to seven; (6) changes the allocation of CAT costs between Equity Execution Venues and Options Execution Venues from 75%/25% to 67%/33%; (7) adjusts tier percentages and recovery allocations for Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATSs); (8) focuses the comparability of CAT Fees on the individual entity level, rather than primarily on the comparability of affiliated entities; (9) commences invoicing of CAT Reporters as promptly as possible following the latest of the operative date of the Consolidated Audit Trail Funding Fees for each of the Participants and the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants; and (10) requires the proposed fees to automatically expire two years from the operative date of the CAT NMS Plan amendment adopting CAT Fees for the Participants.

## (A) Equity Execution Venues

## (i) Small Equity Execution Venues

In the Original Proposal, the Operating Committee proposed to establish two fee tiers for Equity Execution Venues. The Commission and commenters raised the concern that, by establishing only two tiers, smaller Equity Execution Venues (*e.g.*, those Equity ATSs representing less than 1% of NMS market share) would be placed in the same fee tier as larger Equity Execution Venues, thereby imposing an undue or inappropriate burden on competition.<sup>65</sup> To address this concern, the Operating Committee proposes to add two additional tiers for Equity Execution Venues, a third tier for smaller Equity Execution Venues and a fourth tier for the smallest Equity Execution Venues.

Specifically, the Original Proposal had two tiers of Equity Execution Venues. Tier 1 required the largest Equity Execution Venues to pay a quarterly fee of \$63,375. Based on available data, these largest Equity Execution Venues were those that had equity market share of share volume greater than or equal to 1%.<sup>66</sup> Tier 2

required the remaining smaller Equity Execution Venues to pay a quarterly fee of \$38,820.

To address concerns about the potential for the \$38,820 quarterly fee to impose an undue burden on smaller Equity Execution Venues, the Operating Committee determined to move to a four tier structure for Equity Execution Venues. Tier 1 would continue to include the largest Equity Execution Venues by share volume (that is, based on currently available data, those with market share of equity share volume greater than or equal to one percent), and these Equity Execution Venues would be required to pay a quarterly fee of \$81,048. The Operating Committee determined to divide the original Tier 2 into three tiers. The new Tier 2 Equity Execution Venues, which would include the next largest Equity Execution Venues by equity share volume, would be required to pay a quarterly fee of \$37,062. The new Tier 3 Equity Execution Venues would be required to pay a quarterly fee of \$21,126. The new Tier 4 Equity Execution Venues, which would include the smallest Equity Execution Venues by share volume, would be required to pay a quarterly fee of \$129.

In developing the proposed four tier structure, the Operating Committee considered keeping the existing two tiers, as well as shifting to three, four or five Equity Execution Venue tiers (the maximum number of tiers permitted under the Plan), to address the concerns regarding small Equity Execution Venues. For each of the two, three, four and five tier alternatives, the Operating Committee considered the assignment of various percentages of Equity Execution Venues to each tier as well as various percentage of Equity Execution Venue recovery allocations for each alternative. As discussed below in more detail, each of these options was considered in the context of the full model, as changes in each variable in the model affect other variables in the model when allocating the total CAT costs among CAT Reporters. The Operating Committee determined that the four tier alternative addressed the spectrum of different Equity Execution Venues. The Operating Committee determined that neither a two tier structure nor a three tier structure sufficiently accounted for the range of market shares of smaller Equity Execution Venues. The Operating Committee also determined that, given the limited number of Equity

across time. Actual market share in any tier will vary based on the actual market activity in a given measurement period, as well as the number of Equity Execution Venues included in the measurement period.

<sup>62</sup> For a description of the comments submitted in response to the Original Proposal, see Suspension Order.

<sup>63</sup> Suspension Order.

<sup>64</sup> See MFA Letter; SIFMA Letter; FIA Principal Traders Group Letter; Belvedere Letter; Sidley Letter; Group One Letter; and Virtu Financial Letter.

<sup>65</sup> See Suspension Order at 31664; SIFMA Letter at 3.

<sup>66</sup> Note that while these equity market share thresholds were referenced as data points to help differentiate between Equity Execution Venue tiers, the proposed funding model is directly driven not by market share thresholds, but rather by fixed percentages of Equity Execution Venues across tiers to account for fluctuating levels of market share

Execution Venues, that a fifth tier was unnecessary to address the range of market shares of the Equity Execution Venues.

By increasing the number of tiers for Equity Execution Venues and reducing the proposed CAT Fees for the smaller Equity Execution Venues, the Operating Committee believes that the proposed fees for Equity Execution Venues would not impose an undue or inappropriate burden on competition under Section 6 or Section 15A of the Exchange Act. Moreover, the Operating Committee believes that the proposed fees appropriately take into account the distinctions in the securities trading operations of different Equity Execution Venues, as required under the funding principles of the CAT NMS Plan.<sup>67</sup> The larger number of tiers more closely tracks the variety of sizes of equity share volume of Equity Execution Venues. In addition, the reduction in the fees for the smaller Equity Execution Venues recognizes the potential burden of larger fees on smaller entities. In particular, the very small quarterly fee of \$129 for Tier 4 Equity Execution Venues reflects the fact that certain Equity Execution Venues have a very small share volume due to their typically more focused business models.

Accordingly, with this Amendment, SRO proposes to amend paragraph (b)(2) of the proposed fee schedule to add the two additional tiers for Equity Execution Venues, to establish the percentages and fees for Tiers 3 and 4 as described, and to revise the percentages and fees for Tiers 1 and 2 as described.

(ii) Execution Venues for OTC Equity Securities

In the Original Proposal, the Operating Committee proposed to group Execution Venues for OTC Equity Securities and Execution Venues for NMS Stocks in the same tier structure. The Commission and commenters raised concerns as to whether this determination to place Execution Venues for OTC Equity Securities in the same tier structure as Execution Venues for NMS Stocks would result in an undue or inappropriate burden on competition, recognizing that the application of share volume may lead to different outcomes as applied to OTC Equity Securities and NMS Stocks.<sup>68</sup> To address this concern, the Operating Committee proposes to discount the market share of Execution Venue ATSS exclusively trading OTC Equity Securities as well as the market share of

the FINRA ORF by the average shares per trade ratio between NMS Stocks and OTC Equity Securities (0.17% for the second quarter of 2017) in order to adjust for the greater number of shares being traded in the OTC Equity Securities market, which is generally a function of a lower per share price for OTC Equity Securities when compared to NMS Stocks.

As commenters noted, many OTC Equity Securities are priced at less than one dollar—and a significant number at less than one penny—and low-priced shares tend to trade in larger quantities. Accordingly, a disproportionately large number of shares are involved in transactions involving OTC Equity Securities versus NMS Stocks, which has the effect of overstating an Execution Venue's true market share when the Execution Venue is involved in the trading of OTC Equity Securities. Because the proposed fee tiers are based on market share calculated by share volume, Execution Venue ATSS trading OTC Equity Securities and FINRA may be subject to higher tiers than their operations may warrant.<sup>69</sup> The Operating Committee proposes to address this concern in two ways. First, the Operating Committee proposes to increase the number of Equity Execution Venue tiers, as discussed above. Second, the Operating Committee determined to discount the market share of Execution Venue ATSS exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF when calculating their tier placement. Because the disparity in share volume between Execution Venues trading in OTC Equity Securities and NMS Stocks is based on the different number of shares per trade for OTC Equity Securities and NMS Stocks, the Operating Committee believes that discounting the share volume of such Execution Venue ATSS as well as the market share of the FINRA ORF would address the difference in shares per trade for OTC Equity Securities and NMS Stocks. Specifically, the Operating Committee proposes to impose a discount based on the objective measure of the average shares per trade ratio between NMS Stocks and OTC Equity Securities. Based on available data from the second quarter of 2017, the average shares per trade ratio between NMS Stocks and OTC Equity Securities is 0.17%.

The practical effect of applying such a discount for trading in OTC Equity Securities is to shift Execution Venue ATSS exclusively trading OTC Equity Securities to tiers for smaller Execution Venues and with lower fees. For

example, under the Original Proposal, one Execution Venue ATSS exclusively trading OTC Equity Securities was placed in the first CAT Fee tier, which had a quarterly fee of \$63,375. With the imposition of the proposed tier changes and the discount, this ATSS would be ranked in Tier 3 and would owe a quarterly fee of \$21,126.

In developing the proposed discount for Equity Execution Venue ATSS exclusively trading OTC Equity Securities and FINRA, the Operating Committee evaluated different alternatives to address the concerns related to OTC Equity Securities, including creating a separate tier structure for Execution Venues trading OTC Equity Securities (like the separate tier for Options Execution Venues) as well as the proposed discounting method for Execution Venue ATSS exclusively trading OTC Equity Securities and FINRA. For these alternatives, the Operating Committee considered how each alternative would affect the recovery allocations. In addition, each of these options was considered in the context of the full model, as changes in each variable in the model affect other variables in the model when allocating the total CAT costs among CAT Reporters. The Operating Committee did not adopt a separate tier structure for Equity Execution Venues trading OTC Equity Securities as they determined that the proposed discount approach appropriately addresses the concern. The Operating Committee determined to adopt the proposed discount because it directly relates to the concern regarding the trading patterns and operations in the OTC Equity Securities markets, and is an objective discounting method.

By increasing the number of tiers for Equity Execution Venues and imposing a discount on the market share of share volume calculation for trading in OTC Equity Securities, the Operating Committee believes that the proposed fees for Equity Execution Venues would not impose an undue or inappropriate burden on competition under Section 6 or Section 15A of the Exchange Act. Moreover, the Operating Committee believes that the proposed fees appropriately take into account the distinctions in the securities trading operations of different Equity Execution Venues, as required under the funding principles of the CAT NMS Plan.<sup>70</sup> As discussed above, the larger number of tiers more closely tracks the variety of sizes of equity share volume of Equity Execution Venues. In addition, the proposed discount recognizes the

<sup>67</sup> Section 11.2(b) of the CAT NMS Plan.

<sup>68</sup> See Suspension Order at 31664–5.

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

<sup>70</sup> Section 11.2(b) of the CAT NMS Plan.

different types of trading operations at Equity Execution Venues trading OTC Equity Securities versus those trading NMS Stocks, thereby more closely matching the relative revenue generation by Equity Execution Venues trading OTC Equity Securities to their CAT Fees.

Accordingly, with this Amendment, SRO proposes to amend paragraph (b)(2) of the proposed fee schedule to indicate that the market share for Equity ATSS exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF would be discounted. In addition, as discussed above, to address concerns related to smaller ATSS, including those that exclusively trade OTC Equity Securities, SRO proposes to amend paragraph (b)(2) of the proposed fee schedule to add two additional tiers for Equity Execution Venues, to establish the percentages and fees for Tiers 3 and 4 as described, and to revise the percentages and fees for Tiers 1 and 2 as described.

#### (B) Market Makers

In the Original Proposal, the Operating Committee proposed to include both Options Market Maker quotes and equities market maker quotes in the calculation of total message traffic for such market makers for purposes of tiering for Industry Members (other than Execution Venue ATSS). The Commission and commenters raised questions as to whether the proposed treatment of Options Market Maker quotes may result in an undue or inappropriate burden on competition or may lead to a reduction in market quality.<sup>71</sup> To address this concern, the Operating Committee determined to discount the Options Market Maker quotes by the trade to quote ratio for options when calculating message traffic for Options Market Makers. Similarly, to avoid disincentives to quoting behavior on the equities side as well, the Operating Committee determined to discount equity market maker quotes by the trade to quote ratio for equities when calculating message traffic for equities market makers.

In the Original Proposal, market maker quotes were treated the same as other message traffic for purposes of tiering for Industry Members (other than Execution Venue ATSS). Commenters noted, however, that charging Industry Members on the basis of message traffic will impact market makers

disproportionately because of their continuous quoting obligations. Moreover, in the context of options market makers, message traffic would include bids and offers for every listed options strikes and series, which are not an issue for equities.<sup>72</sup> The Operating Committee proposes to address this concern in two ways. First, the Operating Committee proposes to discount Options Market Maker quotes when calculating the Options Market Makers' tier placement. Specifically, the Operating Committee proposes to impose a discount based on the objective measure of the trade to quote ratio for options. Based on available data from June 2016 through June 2017, the trade to quote ratio for options is 0.01%. Second, the Operating Committee proposes to discount equities market maker quotes when calculating the equities market makers' tier placement. Specifically, the Operating Committee proposes to impose a discount based on the objective measure of the trade to quote ratio for equities. Based on available data for June 2016 through June 2017, this trade to quote ratio for equities is 5.43%.

The practical effect of applying such discounts for quoting activity is to shift market makers' calculated message traffic lower, leading to the potential shift to tiers for lower message traffic and reduced fees. Such an approach would move sixteen Industry Member CAT Reporters that are market makers to a lower tier than in the Original Proposal. For example, under the Original Proposal, Broker-Dealer Firm ABC was placed in the first CAT Fee tier, which had a quarterly fee of \$101,004. With the imposition of the proposed tier changes and the discount, Broker-Dealer Firm ABC, an options market maker, would be ranked in Tier 3 and would owe a quarterly fee of \$40,899.

In developing the proposed market maker discounts, the Operating Committee considered various discounts for Options Market Makers and equity market makers, including discounts of 50%, 25%, 0.00002%, as well as the 5.43% for option market makers and 0.01% for equity market makers. Each of these options were considered in the context of the full model, as changes in each variable in the model affect other variables in the model when allocating the total CAT costs among CAT Reporters. The Operating Committee determined to adopt the proposed discount because it directly relates to the concern regarding

the quoting requirement, is an objective discounting method, and has the desired potential to shift market makers to lower fee tiers.

By imposing a discount on Options Market Makers and equities market makers' quoting traffic for the calculation of message traffic, the Operating Committee believes that the proposed fees for market makers would not impose an undue or inappropriate burden on competition under Section 6 or Section 15A of the Exchange Act. Moreover, the Operating Committee believes that the proposed fees appropriately take into account the distinctions in the securities trading operations of different Industry Members, and avoid disincentives, such as a reduction in market quality, as required under the funding principles of the CAT NMS Plan.<sup>73</sup> The proposed discounts recognize the different types of trading operations presented by Options Market Makers and equities market makers, as well as the value of the market makers' quoting activity to the market as a whole. Accordingly, the Operating Committee believes that the proposed discounts will not impact the ability of small Options Market Makers or equities market makers to provide liquidity.

Accordingly, with this Amendment, SRO proposes to amend paragraph (b)(1) of the proposed fee schedule to indicate that the message traffic related to equity market maker quotes and Options Market Maker quotes would be discounted. In addition, SRO proposes to define the term "Options Market Maker" in paragraph (a)(1) of the proposed fee schedule.

#### (C) Comparability/Allocation of Costs

Under the Original Proposal, 75% of CAT costs were allocated to Industry Members (other than Execution Venue ATSS) and 25% of CAT costs were allocated to Execution Venues. This cost allocation sought to maintain the greatest level of comparability across the funding model, where comparability considered affiliations among or between CAT Reporters. The Commission and commenters expressed concerns regarding whether the proposed 75%/25% allocation of CAT costs is consistent with the Plan's funding principles and the Exchange Act, including whether the allocation places a burden on competition or reduces market quality. The Commission and commenters also questioned whether the approach of accounting for affiliations among CAT Reporters in setting CAT Fees

<sup>71</sup> See Suspension Order at 31663-4; SIFMA Letter at 4-6; FIA Principal Traders Group Letter at 3; Sidley Letter at 2-6; Group One Letter at 2-6; and Belvedere Letter at 2.

<sup>72</sup> Suspension Order at 31664.

<sup>73</sup> Section 11.2(b) of the CAT NMS Plan.

disadvantages non-affiliated CAT Reporters or otherwise burdens competition in the market for trading services.<sup>74</sup>

In response to these concerns, the Operating Committee determined to revise the proposed funding model to focus the comparability of CAT Fees on the individual entity level, rather than primarily on the comparability of affiliated entities. In light of the interconnected nature of the various aspects of the funding model, the Operating Committee determined to revise various aspects of the model to enhance comparability at the individual entity level. Specifically, to achieve such comparability, the Operating Committee determined to (1) decrease the number of tiers for Industry Members (other than Execution Venue ATs) from nine to seven; (2) change the allocation of CAT costs between Equity Execution Venues and Options Execution Venues from 75%/25% to 67%/33%; and (3) adjust tier percentages and recovery allocations for Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATs). With these changes, the proposed funding model provides fee comparability for the largest individual entities, with the largest Industry Members (other than Execution Venue ATs), Equity Execution Venues and Options Execution Venues each paying a CAT Fee of approximately \$81,000 each quarter.

#### (i) Number of Industry Member Tiers

In the Original Proposal, the proposed funding model had nine tiers for Industry Members (other than Execution Venue ATs). The Operating Committee determined that reducing the number of tiers from nine tiers to seven tiers (and adjusting the predefined Industry Member Percentages as well) continues to provide a fair allocation of fees among Industry Members and appropriately distinguishes between Industry Members with differing levels of message traffic. In reaching this conclusion, the Operating Committee considered historical message traffic generated by Industry Members across all exchanges and as submitted to FINRA's OATS, and considered the distribution of firms with similar levels of message traffic, grouping together firms with similar levels of message traffic. Based on this, the Operating Committee determined that seven tiers would group firms with similar levels of

message traffic, while also achieving greater comparability in the model for the individual CAT Reporters with the greatest market share or message traffic.

In developing the proposed seven tier structure, the Operating Committee considered remaining at nine tiers, as well as reducing the number of tiers down to seven when considering how to address the concerns raised regarding comparability. For each of the alternatives, the Operating Committee considered the assignment of various percentages of Industry Members to each tier as well as various percentages of Industry Member recovery allocations for each alternative. Each of these options was considered in the context of its effects on the full funding model, as changes in each variable in the model affect other variables in the model when allocating the total CAT costs among CAT Reporters. The Operating Committee determined that the seven tier alternative provided the most fee comparability at the individual entity level for the largest CAT Reporters, while both providing logical breaks in tiering for Industry Members with different levels of message traffic and a sufficient number of tiers to provide for the full spectrum of different levels of message traffic for all Industry Members.

#### (ii) Allocation of CAT Costs Between Equity and Options Execution Venues

The Operating Committee also determined to adjust the allocation of CAT costs between Equity Execution Venues and Options Execution Venues to enhance comparability at the individual entity level. In the Original Proposal, 75% of Execution Venue CAT costs were allocated to Equity Execution Venues, and 25% of Execution Venue CAT costs were allocated to Options Execution Venues. To achieve the goal of increased comparability at the individual entity level, the Operating Committee analyzed a range of alternative splits for revenue recovery between Equity and Options Execution Venues, along with other changes in the proposed funding model. Based on this analysis, the Operating Committee determined to allocate 67 percent of Execution Venue costs recovered to Equity Execution Venues and 33 percent to Options Execution Venues. The Operating Committee determined that a 67/33 allocation between Equity and Options Execution Venues enhances the level of fee comparability for the largest CAT Reporters. Specifically, the largest Equity and Options Execution Venues would pay a quarterly CAT Fee of approximately \$81,000.

In developing the proposed allocation of CAT costs between Equity and Options Execution Venues, the Operating Committee considered various different options for such allocation, including keeping the original 75%/25% allocation, as well as shifting to a 70%/30%, 67%/33%, or 57.75%/42.25% allocation. For each of the alternatives, the Operating Committee considered the effect each allocation would have on the assignment of various percentages of Equity Execution Venues to each tier as well as various percentages of Equity Execution Venue recovery allocations for each alternative. Moreover, each of these options was considered in the context of the full model, as changes in each variable in the model affect other variables in the model when allocating the total CAT costs among CAT Reporters. The Operating Committee determined that the 67%/33% allocation between Equity and Options Execution Venues provided the greatest level of fee comparability at the individual entity level for the largest CAT Reporters, while still providing for appropriate fee levels across all tiers for all CAT Reporters.

#### (iii) Allocation of Costs Between Execution Venues and Industry Members

The Operating Committee determined to allocate 25% of CAT costs to Execution Venues and 75% to Industry Members (other than Execution Venue ATs), as it had in the Original Proposal. The Operating Committee determined that this 75%/25% allocation, along with the other changes proposed above, led to the most comparable fees for the largest Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATs). The largest Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATs) would each pay a quarterly CAT Fee of approximately \$81,000.

As a preliminary matter, the Operating Committee determined that it is appropriate to allocate most of the costs to create, implement and maintain the CAT to Industry Members for several reasons. First, there are many more broker-dealers expected to report to the CAT than Participants (*i.e.*, 1,541 broker-dealer CAT Reporters versus 22 Participants). Second, since most of the costs to process CAT reportable data is generated by Industry Members, Industry Members could be expected to contribute toward such costs. Finally, as noted by the SEC, the CAT "substantially enhance[s] the ability of

<sup>74</sup> See Suspension Order at 31662-3; SIFMA Letter at 3; Sidley Letter at 6-7; Group One Letter at 2; and Belvedere Letter at 2.

the SROs and the Commission to oversee today's securities markets,"<sup>75</sup> thereby benefitting all market participants. After making this determination, the Operating Committee analyzed several different cost allocations, as discussed further below, and determined that an allocation where 75% of the CAT costs should be borne by the Industry Members (other than Execution Venue ATSs) and 25% should be paid by Execution Venues was most appropriate and led to the greatest comparability of CAT Fees for the largest CAT Reporters.

In developing the proposed allocation of CAT costs between Execution Venues and Industry Members (other than Execution Venue ATSs), the Operating Committee considered various different options for such allocation, including keeping the original 75%/25% allocation, as well as shifting to an 80%/20%, 70%/30%, or 65%/35% allocation. Each of these options was considered in the context of the full model, including the effect on each of the changes discussed above, as changes in each variable in the model affect other variables in the model when allocating the total CAT costs among CAT Reporters. In particular, for each of the alternatives, the Operating Committee considered the effect each allocation had on the assignment of various percentages of Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATSs) to each relevant tier as well as various percentages of recovery allocations for each tier. The Operating Committee determined that the 75%/25% allocation between Execution Venues and Industry Members (other than Execution Venue ATSs) provided the greatest level of fee comparability at the individual entity level for the largest CAT Reporters, while still providing for appropriate fee levels across all tiers for all CAT Reporters.

#### (iv) Affiliations

The funding principles set forth in Section 11.2 of the Plan require that the fees charged to CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venue and/or Industry Members). The proposed funding model satisfies this requirement. As discussed

above, under the proposed funding model, the largest Equity Execution Venues, Options Execution Venues, and Industry Members (other than Execution Venue ATSs) pay approximately the same fee. Moreover, the Operating Committee believes that the proposed funding model takes into consideration affiliations between or among CAT Reporters as complexes with multiple CAT Reporters will pay the appropriate fee based on the proposed fee schedule for each of the CAT Reporters in the complex. For example, a complex with a Tier 1 Equity Execution Venue and Tier 2 Industry Member will pay the same as another complex with a Tier 1 Equity Execution Venue and Tier 2 Industry Member.

#### (v) Fee Schedule Changes

Accordingly, with this Amendment, SRO proposes to amend paragraphs (b)(1) and (2) of the proposed fee schedule to reflect the changes discussed in this section. Specifically, SRO proposes to amend paragraph (b)(1) and (2) of the proposed fee schedule to update the number of tiers, and the fees and percentages assigned to each tier to reflect the described changes.

#### (D) Market Share/Message Traffic

In the Original Proposal, the Operating Committee proposed to charge Execution Venues based on market share and Industry Members (other than Execution Venue ATSs) based on message traffic. Commenters questioned the use of the two different metrics for calculating CAT Fees.<sup>76</sup> The Operating Committee continues to believe that the proposed use of market share and message traffic satisfies the requirements of the Exchange Act and the funding principles set forth in the CAT NMS Plan. Accordingly, the proposed funding model continues to charge Execution Venues based on market share and Industry Members (other than Execution Venue ATSs) based on message traffic.

In drafting the Plan and the Original Proposal, the Operating Committee expressed the view that the correlation between message traffic and size does not apply to Execution Venues, which they described as producing similar amounts of message traffic regardless of size. The Operating Committee believed that charging Execution Venues based on message traffic would result in both large and small Execution Venues paying comparable fees, which would be inequitable, so the Operating Committee determined that it would be

more appropriate to treat Execution Venues differently from Industry Members in the funding model. Upon a more detailed analysis of available data, however, the Operating Committee noted that Execution Venues have varying levels of message traffic. Nevertheless, the Operating Committee continues to believe that a bifurcated funding model—where Industry Members (other than Execution Venue ATSs) are charged fees based on message traffic and Execution Venues are charged based on market share—complies with the Plan and meets the standards of the Exchange Act for the reasons set forth below.

Charging Industry Members based on message traffic is the most equitable means for establishing fees for Industry Members (other than Execution Venue ATSs). This approach will assess fees to Industry Members that create larger volumes of message traffic that are relatively higher than those fees charged to Industry Members that create smaller volumes of message traffic. Since message traffic, along with fixed costs of the Plan Processor, is a key component of the costs of operating the CAT, message traffic is an appropriate criterion for placing Industry Members in a particular fee tier.

The Operating Committee also believes that it is appropriate to charge Execution Venues CAT Fees based on their market share. In contrast to Industry Members (other than Execution Venue ATSs), which determine the degree to which they produce the message traffic that constitutes CAT Reportable Events, the CAT Reportable Events of Execution Venues are largely derivative of quotations and orders received from Industry Members that the Execution Venues are required to display. The business model for Execution Venues, however, is focused on executions in their markets. As a result, the Operating Committee believes that it is more equitable to charge Execution Venues based on their market share rather than their message traffic.

Similarly, focusing on message traffic would make it more difficult to draw distinctions between large and small exchanges, including options exchanges in particular. For instance, the Operating Committee analyzed the message traffic of Execution Venues and Industry Members for the period of April 2017 to June 2017 and placed all CAT Reporters into a nine-tier framework (*i.e.*, a single tier may include both Execution Venues and Industry Members). The Operating Committee's analysis found that the majority of exchanges (15 total) were

<sup>75</sup> Securities Exchange Act Rel. No. 67457 (Jul 18, 2012), 77 FR 45722, 45726 (Aug. 1, 2012) ("Rule 613 Adopting Release").

<sup>76</sup> Suspension Order at 31663; FIA Principal Traders Group Letter at 2.

grouped in Tiers 1 and 2. Moreover, virtually all of the options exchanges were in Tiers 1 and 2.<sup>77</sup> Given the concentration of options exchanges in Tiers 1 and 2, the Operating Committee believes that using a funding model based purely on message traffic would make it more difficult to distinguish between large and small options exchanges, as compared to the proposed bifurcated fee approach.

In addition, the Operating Committee also believes that it is appropriate to treat ATSS as Execution Venues under the proposed funding model since ATSS have business models that are similar to those of exchanges, and ATSS also compete with exchanges. For these reasons, the Operating Committee believes that charging Execution Venues based on market share is more appropriate and equitable than charging Execution Venues based on message traffic.

#### (E) Time Limit

In the Original Proposal, the Operating Committee did not impose any time limit on the application of the proposed CAT Fees. As discussed above, the Operating Committee developed the proposed funding model by analyzing currently available historical data. Such historical data, however, is not as comprehensive as data that will be submitted to the CAT. Accordingly, the Operating Committee believes that it will be appropriate to revisit the funding model once CAT Reporters have actual experience with the funding model. Accordingly, the Operating Committee proposes to include a sunset provision in the proposed fee model. The proposed CAT Fees will sunset two years after the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. Specifically, SRO proposes to add paragraph (d) of the proposed fee schedule to include this sunset provision. Such a provision will provide the Operating Committee and other market participants with the opportunity to reevaluate the performance of the proposed funding model.

#### (F) Tier Structure/Decreasing Cost per Unit

In the Original Proposal, the Operating Committee determined to use a tiered fee structure. The Commission and commenters questioned whether the decreasing cost per additional unit (of message traffic in the case of

Industry Members, or of share volume in the case of Execution Venues) in the proposed fee schedules burdens competition by disadvantaging small Industry Members and Execution Venues and/or by creating barriers to entry in the market for trading services and/or the market for broker-dealer services.<sup>78</sup>

The Operating Committee does not believe that decreasing cost per additional unit in the proposed fee schedules places an unfair competitive burden on Small Industry Members and Execution Venues. While the cost per unit of message traffic or share volume necessarily will decrease as volume increases in any tiered fee model using fixed fee percentages and, as a result, Small Industry Members and small Execution Venues may pay a larger fee per message or share, this comment fails to take account of the substantial differences in the absolute fees paid by Small Industry Members and small Execution Venues as opposed to large Industry Members and large Execution Venues. For example, under the fee proposals, Tier 7 Industry Members would pay a quarterly fee of \$105, while Tier 1 Industry Members would pay a quarterly fee of \$81,483. Similarly, a Tier 4 Equity Execution Venue would pay a quarterly fee of \$129, while a Tier 1 Equity Execution Venue would pay a quarterly fee of \$81,048. Thus, Small Industry Members and small Execution Venues are not disadvantaged in terms of the total fees that they actually pay. In contrast to a tiered model using fixed fee percentages, the Operating Committee believes that strictly variable or metered funding models based on message traffic or share volume would be more likely to affect market behavior and may present administrative challenges (e.g., the costs to calculate and monitor fees may exceed the fees charged to the smallest CAT Reporters).

#### (G) Other Alternatives Considered

In addition to the various funding model alternatives discussed above regarding discounts, number of tiers and allocation percentages, the Operating Committee also discussed other possible funding models. For example, the Operating Committee considered allocating the total CAT costs equally among each of the Participants, and then permitting each Participant to charge its own members as it deems appropriate.<sup>79</sup> The Operating Committee determined that such an approach raised a variety of issues, including the

likely inconsistency of the ensuing charges, potential for lack of transparency, and the impracticality of multiple SROs submitting invoices for CAT charges. The Operating Committee therefore determined that the proposed funding model was preferable to this alternative.

#### (H) Industry Member Input

Commenters expressed concern regarding the level of Industry Member input into the development of the proposed funding model, and certain commenters have recommended a greater role in the governance of the CAT.<sup>80</sup> The Participants previously addressed this concern in its letters responding to comments on the Plan and the CAT Fees.<sup>81</sup> As discussed in those letters, the Participants discussed the funding model with the Development Advisory Group (“DAG”), the advisory group formed to assist in the development of the Plan, during its original development.<sup>82</sup> Moreover, Industry Members currently have a voice in the affairs of the Operating Committee and operation of the CAT generally through the Advisory Committee established pursuant to Rule 613(b)(7) and Section 4.13 of the Plan. The Advisory Committee attends all meetings of the Operating Committee, as well as meetings of various subcommittees and working groups, and provides valuable and critical input for the Participants’ and Operating Committee’s consideration. The Operating Committee continues to believe that that Industry Members have an appropriate voice regarding the funding of the Company.

#### (I) Conflicts of Interest

Commenters also raised concerns regarding Participant conflicts of interest in setting the CAT Fees.<sup>83</sup> The Participants previously responded to this concern in both the Plan Response Letter and the Fee Rule Response Letter.<sup>84</sup> As discussed in those letters, the Plan, as approved by the SEC, adopts various measures to protect against the potential conflicts issues raised by the Participants’ fee-setting authority. Such measures include the

<sup>77</sup> See Suspension Order at 31662; MFA Letter at 1–2.

<sup>78</sup> Letter from Participants to Brent J. Fields, Secretary, SEC (Sept. 23, 2016) (“Plan Response Letter”); Letter from CAT NMS Plan Participants to Brent J. Fields, Secretary, SEC (June 29, 2017) (“Fee Rule Response Letter”).

<sup>79</sup> Fee Rule Response Letter at 2; Plan Response Letter at 18.

<sup>80</sup> See Suspension Order at 31662; FIA Principal Traders Group at 3.

<sup>81</sup> See Plan Response Letter at 16, 17; Fee Rule Response Letter at 10–12.

<sup>77</sup> The Participants note that this analysis did not place MIAx PEARL in Tier 1 or Tier 2 since the exchange commenced trading on February 6, 2017.

<sup>78</sup> Suspension Order at 31667.

<sup>79</sup> See FIA Principal Traders Group Letter at 2; Belvedere Letter at 4.

operation of the Company as a not for profit business league and on a break-even basis, and the requirement that the Participants file all CAT Fees under Section 19(b) of the Exchange Act. The Operating Committee continues to believe that these measures adequately protect against concerns regarding conflicts of interest in setting fees, and that additional measures, such as an independent third party to evaluate an appropriate CAT Fee, are unnecessary.

#### (J) Fee Transparency

Commenters also argued that they could not adequately assess whether the CAT Fees were fair and equitable because the Operating Committee has not provided details as to what the Participants are receiving in return for the CAT Fees.<sup>85</sup> The Operating Committee provided a detailed discussion of the proposed funding model in the Plan, including the expenses to be covered by the CAT Fees. In addition, the agreement between the Company and the Plan Processor sets forth a comprehensive set of services to be provided to the Company with regard to the CAT. Such services include, without limitation: user support services (e.g., a help desk); tools to allow each CAT Reporter to monitor and correct their submissions; a comprehensive compliance program to monitor CAT Reporters' adherence to Rule 613; publication of detailed Technical Specifications for Industry Members and Participants; performing data linkage functions; creating comprehensive data security and confidentiality safeguards; creating query functionality for regulatory users (i.e., the Participants, and the SEC and SEC staff); and performing billing and collection functions. The Operating Committee further notes that the services provided by the Plan Processor and the costs related thereto were subject to a bidding process.

#### (K) Funding Authority

Commenters also questioned the authority of the Operating Committee to impose CAT Fees on Industry Members.<sup>86</sup> The Participants previously responded to this same comment in the Plan Response Letter and the Fee Rule Response Letter.<sup>87</sup> As the Participants previously noted, SEC Rule 613 specifically contemplates broker-dealers contributing to the funding of the CAT. In addition, as noted by the SEC, the

CAT "substantially enhance[s] the ability of the SROs and the Commission to oversee today's securities markets,"<sup>88</sup> thereby benefitting all market participants. Therefore, the Operating Committee continues to believe that it is equitable for both Participants and Industry Members to contribute to funding the cost of the CAT.

#### 2. Statutory Basis

SRO believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act<sup>89</sup>, which require, among other things, that the SRO 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 dealer, and Section 6(b)(4) of the Act<sup>90</sup>, which requires that SRO rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using its facilities. As discussed above, the SEC approved the bifurcated, tiered, fixed fee funding model in the CAT NMS Plan, finding it was reasonable and that it equitably allocated fees among Participants and Industry Members. SRO believes that the proposed tiered fees adopted pursuant to the funding model approved by the SEC in the CAT NMS Plan are reasonable, equitably allocated and not unfairly discriminatory.

SRO believes that this proposal is consistent with the Act because it implements, interprets or clarifies the provisions of the Plan, and is designed to assist SRO and its Industry Members 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."<sup>91</sup> To the extent that this proposal implements, interprets or clarifies the Plan and applies specific requirements to Industry Members, SRO believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

SRO believes that the proposed tiered fees are reasonable. First, the total CAT

Fees to be collected would be directly associated with the costs of establishing and maintaining the CAT, where such costs include Plan Processor costs and costs related to insurance, third party services and the operational reserve. The CAT Fees would not cover Participant services unrelated to the CAT. In addition, any surplus CAT Fees cannot be distributed to the individual Participants; such surpluses must be used as a reserve to offset future fees. Given the direct relationship between the fees and the CAT costs, SRO believes that the total level of the CAT Fees is reasonable.

In addition, SRO believes that the proposed CAT Fees are reasonably designed to allocate the total costs of the CAT equitably between and among the Participants and Industry Members, and are therefore not unfairly discriminatory. As discussed in detail above, the proposed tiered fees impose comparable fees on similarly situated CAT Reporters. For example, those with a larger impact on the CAT (measured via message traffic or market share) pay higher fees, whereas CAT Reporters with a smaller impact pay lower fees. Correspondingly, the tiered structure lessens the impact on smaller CAT Reporters by imposing smaller fees on those CAT Reporters with less market share or message traffic. In addition, the fee structure takes into consideration distinctions in securities trading operations of CAT Reporters, including ATSS trading OTC Equity Securities, and equity and options market makers.

Moreover, SRO believes that the division of the total CAT costs between Industry Members and Execution Venues, and the division of the Execution Venue portion of total costs between Equity and Options Execution Venues, is reasonably designed to allocate CAT costs among CAT Reporters. The 75%/25% division between Industry Members (other than Execution Venue ATSS) and Execution Venues maintains the greatest level of comparability across the funding model. For example, the cost allocation establishes fees for the largest Industry Members (i.e., those Industry Members in Tiers 1) that are comparable to the largest Equity Execution Venues and Options Execution Venues (i.e., those Execution Venues in Tier 1). Furthermore, the allocation of total CAT cost recovery recognizes the difference in the number of CAT Reporters that are Industry Members (other than Execution Venue ATSS) versus CAT Reporters that are Execution Venues. Similarly, the 67%/33% allocation between Equity and Options Execution Venues also

<sup>85</sup> See FIA Principal Traders Group at 3; SIFMA Letter at 3.

<sup>86</sup> See Suspension Order at 31661-2; SIFMA Letter at 2.

<sup>87</sup> See Plan Response Letter at 9-10; Fee Rule Response Letter at 3-4.

<sup>88</sup> Rule 613 Adopting Release at 45726.

<sup>89</sup> 15 U.S.C. 78f(b)(5).

<sup>90</sup> 15 U.S.C. 78f(b)(4).

<sup>91</sup> Approval Order at 84697.



helps to provide fee comparability for the largest CAT Reporters.

Finally, SRO 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 fixed fee. Such factors are crucial to estimating a reliable revenue stream for the Company and for permitting CAT Reporters 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 Act<sup>92</sup> require that SRO rules not impose any burden on competition that is not necessary or appropriate. SRO 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. SRO notes that the proposed rule change implements provisions of the CAT NMS Plan approved by the Commission, and is designed to assist SRO in meeting its regulatory obligations pursuant to the Plan. Similarly, all national securities exchanges and FINRA are proposing this proposed fee schedule 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 exchanges and FINRA.

Moreover, as previously described, SRO believes that the proposed rule change fairly and equitably allocates costs among CAT Reporters. In particular, the proposed fee schedule is structured to impose comparable fees on similarly situated CAT Reporters, and lessen the impact on smaller CAT Reporters. CAT Reporters with similar levels of CAT activity will pay similar fees. For example, Industry Members (other than Execution Venue ATSS) with higher levels of message traffic will pay higher fees, and those with lower levels of message traffic will pay lower fees. Similarly, Execution Venue ATSS and other Execution Venues with larger market share will pay higher fees, and those with lower levels of market share will pay lower fees. Therefore, given that there is generally a relationship between message traffic and/or market share to the CAT Reporter's size, smaller CAT Reporters generally pay less than larger CAT Reporters. Accordingly, SRO does not believe that the CAT Fees would have a disproportionate effect on smaller or larger CAT Reporters. In addition, ATSS and exchanges will pay

the same fees based on market share. Therefore, SRO does not believe that the fees will impose any burden on the competition between ATSS and exchanges. Accordingly, SRO believes that the proposed fees will minimize the potential for adverse effects on competition between CAT Reporters in the market.

Furthermore, the tiered, fixed fee funding model limits the disincentives to providing liquidity to the market. Therefore, the proposed fees are structured to limit burdens on competitive quoting and other liquidity provision in the market.

In addition, the Operating Committee believes that the proposed changes to the Original Proposal, as discussed above in detail, address certain competitive concerns raised by commenters, including concerns related to, among other things, smaller ATSS, ATSS trading OTC Equity Securities, market making quoting and fee comparability. As discussed above, the Operating Committee believes that the proposals address the competitive concerns raised by commenters.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

SRO has set forth responses to comments received regarding the Original Proposal in Section 3(a)(4) above.

**III. Solicitation of Comments on Amendment No. 1**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 is consistent with the Act. In particular, the Commission seeks comment on the following:

**Allocation of Costs**

(1) Commenters' views as to whether the allocation of CAT costs is consistent with the funding principle expressed in the CAT NMS Plan that requires the Operating Committee to "avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality."<sup>93</sup>

(2) Commenters' views as to whether the allocation of 25% of CAT costs to the Execution Venues (including all the Participants) and 75% to Industry Members, will incentivize or disincentivize the Participants to effectively and efficiently manage the CAT costs incurred by the Participants

since they will only bear 25% of such costs.

(3) Commenters' views on the determination to allocate 75% of all costs incurred by the Participants from November 21, 2016 to November 21, 2017 to Industry Members (other than Execution Venue ATSS), when such costs are development and build costs and when Industry Member reporting is scheduled to commence a year later, including views on whether such "fees, costs and expenses . . . [are] fairly and reasonably shared among the Participants and Industry Members" in accordance with the CAT NMS Plan.<sup>94</sup>

(4) Commenters' views on whether an analysis of the ratio of the expected Industry Member-reported CAT messages to the expected SRO-reported CAT messages should be the basis for determining the allocation of costs between Industry Members and Execution Venues.<sup>95</sup>

(5) Any additional data analysis on the allocation of CAT costs, including any existing supporting evidence.

**Comparability**

(6) Commenters' views on the shift in the standard used to assess the comparability of CAT Fees, with the emphasis now on comparability of individual entities instead of affiliated entities, including views as to whether this shift is consistent with the funding principle expressed in the CAT NMS Plan that requires the Operating Committee to establish a fee structure in which the fees charged to "CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venues and/or Industry Members)."<sup>96</sup>

(7) Commenters' views as to whether the reduction in the number of tiers for Industry Members (other than Execution Venue ATSS) from nine to seven, the revised allocation of CAT costs between Equity Execution Venues and Options Execution Venues from a 75%/25% split to a 67%/33% split, and the adjustment of all tier percentages and recovery allocations achieves

<sup>94</sup> Section 11.1(c) of the CAT NMS Plan.

<sup>95</sup> The Notice for the CAT NMS Plan did not provide a comprehensive count of audit trail message traffic from different regulatory data sources, but the Commission did estimate the ratio of all SRO audit trail messages to OATS audit trail messages to be 1.9431. See Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30613, 30721 n.919 and accompanying text (May 17, 2016).

<sup>96</sup> Section 11.2(c) of the CAT NMS Plan.

<sup>92</sup> 15 U.S.C. 78f(b)(8)

<sup>93</sup> Section 11.2(e) of the CAT NMS Plan.



comparability across individual entities, and whether these changes should have resulted in a change to the allocation of 75% of total CAT costs to Industry Members (other than Execution Venue ATs) and 25% of such costs to Execution Venues.

#### Discounts

(8) Commenters' views as to whether the discounts for options market-makers, equities market-makers, and Equity ATs trading OTC Equity Securities are clear, reasonable, and consistent with the funding principle expressed in the CAT NMS Plan that requires the Operating Committee to "avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality,"<sup>97</sup> including views as to whether the discounts for market-makers limit any potential disincentives to act as a market-maker and/or to provide liquidity due to CAT fees.

#### Calculation of Costs and Imposition of CAT Fees

(9) Commenters' views as to whether the amendment provides sufficient information regarding the amount of costs incurred from November 21, 2016 to November 21, 2017, particularly, how those costs were calculated, how those costs relate to the proposed CAT Fees, and how costs incurred after November 21, 2017 will be assessed upon Industry Members and Execution Venues;

(10) Commenters' views as to whether the timing of the imposition and collection of CAT Fees on Execution Venues and Industry Members is reasonably related to the timing of when the Company expects to incur such development and implementation costs.<sup>98</sup>

(11) Commenters' views on dividing CAT costs equally among each of the Participants, and then each Participant charging its own members as it deems appropriate, taking into consideration the possibility of inconsistency in charges, the potential for lack of transparency, and the impracticality of multiple SROs submitting invoices for CAT charges.

#### Burden on Competition and Barriers to Entry

(12) Commenters' views as to whether the allocation of 75% of CAT costs to Industry Members (other than Execution Venue ATs) imposes any burdens on competition to Industry Members, including views on what baseline competitive landscape the Commission

should consider when analyzing the proposed allocation of CAT costs.

(13) Commenters' views on the burdens on competition, including the relevant markets and services and the impact of such burdens on the baseline competitive landscape in those relevant markets and services.

(14) Commenters' views on any potential burdens imposed by the fees on competition between and among CAT Reporters, including views on which baseline markets and services the fees could have competitive effects on and whether the fees are designed to minimize such effects.

(15) Commenters' general views on the impact of the proposed fees on economies of scale and barriers to entry.

(16) Commenters' views on the baseline economies of scale and barriers to entry for Industry Members and Execution Venues and the relevant markets and services over which these economies of scale and barriers to entry exist.

(17) Commenters' views as to whether a tiered fee structure necessarily results in less active tiers paying more per unit than those in more active tiers, thus creating economies of scale, with supporting information if possible.

(18) Commenters' views as to how the level of the fees for the least active tiers would or would not affect barriers to entry.

(19) Commenters' views on whether the difference between the cost per unit (messages or market share) in less active tiers compared to the cost per unit in more active tiers creates regulatory economies of scale that favor larger competitors and, if so:

(a) How those economies of scale compare to operational economies of scale; and

(b) Whether those economies of scale reduce or increase the current advantages enjoyed by larger competitors or otherwise alter the competitive landscape.

(20) Commenters' views on whether the fees could affect competition between and among national securities exchanges and FINRA, in light of the fact that implementation of the fees does not require the unanimous consent of all such entities, and, specifically:

(a) Whether any of the national securities exchanges or FINRA are disadvantaged by the fees; and

(b) If so, whether any such disadvantages would be of a magnitude that would alter the competitive landscape.

(21) Commenters' views on any potential burden imposed by the fees on competitive quoting and other liquidity

provision in the market, including, specifically:

(a) Commenters' views on the kinds of disincentives that discourage liquidity provision and/or disincentives that the Commission should consider in its analysis;

(b) Commenters' views as to whether the fees could disincentivize the provision of liquidity; and

(c) Commenters' views as to whether the fees limit any disincentives to provide liquidity.

(22) Commenters' views as to whether the amendment adequately responds to and/or addresses comments received on related filings.

#### Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BatsBZX-2017-38 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-BatsBZX-2017-38. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File

<sup>97</sup> Section 11.2(e) of the CAT NMS Plan.

<sup>98</sup> Section 11.1(c) of the CAT NMS Plan.

Number SR-BatsBZX-2017-38, and should be submitted on or before January 5, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>99</sup>

**Robert W. Errett,**  
Deputy Secretary.

[FR Doc. 2017-27003 Filed 12-14-17; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82276; File No. SR-BatsEDGX-2017-22]

### Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing of Amendment No. 1 to a Proposed Rule Change To Establish the Fees for Industry Members Related to the National Market System Plan Governing the Consolidated Audit Trail

December 11, 2017.

On May 23, 2017, Bats EDGX Exchange, Inc., n/k/a Cboe EDGX Exchange, Inc., (“Exchange” or “SRO”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) <sup>1</sup> and Rule 19b-4 thereunder, <sup>2</sup> a proposed rule change to adopt a fee schedule to establish the fees for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail (“CAT NMS Plan”). The proposed rule change was published in the **Federal Register** for comment on June 6, 2017. <sup>3</sup> The Commission received seven comment letters on the proposed rule change, <sup>4</sup> and a response to comments

from the Participants. <sup>5</sup> On June 30, 2017, the Commission temporarily suspended and initiated proceedings to determine whether to approve or disapprove the proposed rule change. <sup>6</sup> The Commission thereafter received seven comment letters, <sup>7</sup> and a response to comments from the Participants. <sup>8</sup> On November 3, 2017, the Exchange filed Amendment No. 1 to the proposed rule

Commission (dated June 13, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-1801717-153703.pdf>; Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission (dated June 22, 2017), available at: <https://www.sec.gov/comments/sr-cboe-2017-040/cboe2017040-1819670-154195.pdf>; Letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, Commission (dated June 23, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-1822454-154283.pdf>; and Letter from Suzanne H. Shatto, Investor, to Commission (dated June 27, 2017), available at: <https://www.sec.gov/comments/sr-batsedgx-2017-22/batsedgx201722-154443.pdf>. The Commission also received a comment letter which is not pertinent to these proposed rule changes. See Letter from Christina Crouch, Smart Ltd., to Brent J. Fields, Secretary, Commission (dated June 5, 2017), available at: <https://www.sec.gov/comments/sr-batsbzx-2017-38/batsbzx201738-1785545-153152.htm>.

<sup>5</sup> See Letter from CAT NMS Plan Participants to Brent J. Fields, Secretary, Commission (dated June 29, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-1832632-154584.pdf>.

<sup>6</sup> See Securities Exchange Act Release No. 81067 (June 30, 2017), 82 FR 31656 (July 7, 2017).

<sup>7</sup> See Letter from W. Hardy Callcott, Partner, Sidley Austin LLP, to Brent J. Fields, Secretary, Commission (dated July 27, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2148338-157737.pdf>; Letter from Kevin Coleman, General Counsel and Chief Compliance Officer, Belvedere Trading LLC, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2148360-157740.pdf>; Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2151228-157745.pdf>; Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2150977-157744.pdf>; Letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2150818-157743.pdf>; Letter from John Kinahan, Chief Executive Officer, Group One Trading, L.P., to Brent J. Fields, Secretary, Commission (dated August 10, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-2214568-160619.pdf>; Letter from Joseph Molluso, Executive Vice President and CFO, Virtu Financial, to Brent J. Fields, Secretary, Commission (dated August 18, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-2238648-160830.pdf>.

<sup>8</sup> See Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Brent J. Fields, Secretary, Commission (dated November 2, 2017), available at <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2674608-161412.pdf>.

change, as described in Items I and II below, which Items have been prepared by the Exchange. <sup>9</sup> On November 9, 2017, the Commission extended the time period within which to approve the proposed rule change or disapprove the proposed rule change to January 14, 2018. <sup>10</sup> The Commission is publishing this notice to solicit comments from interested persons on Amendment No. 1. <sup>11</sup>

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

The Exchange proposed rule change SR-BatsEDGX-2017-22 (the “Original Proposal”), pursuant to which SRO proposed to amend fees for its Equities Platform (“Cboe EDGX U.S. Equities Fee Schedule”) and to amend fees for its Options Platform (“Cboe EDGX Options Fee Schedule”) to establish the fees for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”). <sup>12</sup> SRO files this proposed rule change (the “Amendment”) to amend the Original Proposal. This Amendment replaces the Original Proposal in its entirety, and also describes the changes from the Original Proposal.

The text of the proposed rule change is available at the Exchange's website at [www.markets.cboe.com](http://www.markets.cboe.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for

<sup>99</sup> Amendment No. 1 to the proposed rule change replaces and supersedes the Original Proposal in its entirety.

<sup>10</sup> See Securities Exchange Act Release No. 82049 (November 9, 2017), 82 FR 53549 (November 16, 2017).

<sup>11</sup> The Commission notes that on December 7, 2017, the Exchange filed Amendment No. 2 to the proposed rule change. Amendment No. 2 is a partial amendment to the proposed rule change, as amended by Amendment No. 1. Amendment No. 2 proposes to change the parenthetical regarding the OTC Equity Securities discount in paragraph (b)(2) of the proposed fee schedule from “with a discount for Equity ATSS exclusively trading OTC Equity Securities based on the average shares per trade ratio between NMS Stocks and OTC Equity Securities” to “with a discount for OTC Equity Securities market share of Equity ATSS trading OTC Equity Securities based on the average shares per trade ratio between NMS Stocks and OTC Equity Securities.” See Securities Exchange Act Release No. 82277 (December 11, 2017).

<sup>12</sup> Unless otherwise specified, capitalized terms used in this fee filing are defined as set forth herein, the CAT Compliance Rule Series, in the CAT NMS Plan, or the Original Proposal.

<sup>99</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 80821 (May 31, 2017), 82 FR 26177 (June 6, 2017) (“Original Proposal”).

<sup>4</sup> Since the CAT NMS Plan Participants' proposed rule changes to adopt fees to be charged to Industry Members to fund the consolidated audit trail are substantively identical, the Commission is considering all comments received on the proposed rule changes regardless of the comment file to which they were submitted. See text accompanying notes 13-16 *infra*, for a list of the CAT NMS Plan Participants. See Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Brent J. Fields, Secretary, Commission (dated June 6, 2017), available at: <https://www.sec.gov/comments/sr-batsbzx-2017-38/batsbzx201738-1788188-153228.pdf>; Letter from Patricia L. Cerny and Steven O'Malley, Compliance Consultants, to Brent J. Fields, Secretary, Commission (dated June 12, 2017), available at: <https://www.sec.gov/comments/sr-cboe-2017-040/cboe2017040-1799253-153675.pdf>; Letter from Daniel Zinn, General Counsel, OTC Markets Group Inc., to Eduardo A. Aleman, Assistant Secretary,

the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

BOX Options Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc.,<sup>13</sup> Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc. ("FINRA"), Investors' Exchange LLC, Miami International Securities Exchange, LLC, MIAX PEARL, LLC, NASDAQ BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC,<sup>14</sup> NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC,<sup>15</sup> NYSE Arca, Inc. and NYSE National, Inc.<sup>16</sup> (collectively, the "Participants") filed with the Commission, pursuant to Section 11A of the Exchange Act<sup>17</sup> and Rule 608 of Regulation NMS thereunder,<sup>18</sup> the CAT NMS Plan.<sup>19</sup> The Participants filed the Plan to comply with Rule 613 of

<sup>13</sup> Note that Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., LLC, C2 Options Exchange, Incorporated, and Chicago Board Options Exchange, Incorporated, have been renamed Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., respectively.

<sup>14</sup> ISE Gemini, LLC, ISE Mercury, LLC and International Securities Exchange, LLC have been renamed Nasdaq GEMX, LLC, Nasdaq MRX, LLC, and Nasdaq ISE, LLC, respectively. See Securities Exchange Act Rel. No. 80248 (Mar. 15, 2017), 82 FR 14547 (Mar. 21, 2017); Securities Exchange Act Rel. No. 80326 (Mar. 29, 2017), 82 FR 16460 (Apr. 4, 2017); and Securities Exchange Act Rel. No. 80325 (Mar. 29, 2017), 82 FR 16445 (Apr. 4, 2017).

<sup>15</sup> NYSE MKT LLC has been renamed NYSE American LLC. See Securities Exchange Act Rel. No. 80283 (Mar. 21, 2017), 82 FR 15244 (Mar. 27, 2017).

<sup>16</sup> National Stock Exchange, Inc. has been renamed NYSE National, Inc. See Securities Exchange Act Rel. No. 79902 (Jan. 30, 2017), 82 FR 9258 (Feb. 3, 2017).

<sup>17</sup> 15 U.S.C. 78k-1.

<sup>18</sup> 17 CFR 242.608.

<sup>19</sup> See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. See Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.

Regulation NMS under the Exchange Act. The Plan was published for comment in the **Federal Register** on May 17, 2016,<sup>20</sup> and approved by the Commission, as modified, on November 15, 2016.<sup>21</sup> The Plan is designed to create, implement and maintain a consolidated audit trail ("CAT") that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. The Plan accomplishes this by creating CAT NMS, LLC (the "Company"), of which each Participant is a member, to operate the CAT.<sup>22</sup> Under the CAT NMS Plan, the Operating Committee of the Company ("Operating Committee") has discretion to establish funding for the Company to operate the CAT, including establishing fees that the Participants will pay, and establishing fees for Industry Members that will be implemented by the Participants ("CAT Fees").<sup>23</sup> The Participants are required to file with the SEC under Section 19(b) of the Exchange Act any such CAT Fees applicable to Industry Members that the Operating Committee approves.<sup>24</sup> Accordingly, SRO submitted the Original Proposal to propose the Consolidated Audit Trail Funding Fees, which would require Industry Members that are SRO members to pay the CAT Fees determined by the Operating Committee.

The Commission published the Original Proposal for public comment in the **Federal Register** on June 6, 2017,<sup>25</sup> and received comments in response to the Original Proposal or similar fee filings by other Participants.<sup>26</sup> On June 30, 2017, the Commission suspended, and instituted proceedings to determine whether to approve or disapprove, the Original Proposal.<sup>27</sup> The Commission received seven comment letters in response to those proceedings.<sup>28</sup>

<sup>20</sup> Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

<sup>21</sup> Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) ("Approval Order").

<sup>22</sup> The Plan also serves as the limited liability company agreement for the Company.

<sup>23</sup> Section 11.1(b) of the CAT NMS Plan.

<sup>24</sup> *Id.*

<sup>25</sup> Securities Exchange Act Rel. No. 80821 (May 31, 2017), 82 FR 26177 (June 6, 2017) (SR-BatsEDGX-2017-22).

<sup>26</sup> For a summary of comments, see generally Securities Exchange Act Rel. No. 81067 (June 30, 2017), 82 FR 31656 (July 7, 2017) ("Suspension Order").

<sup>27</sup> Suspension Order.

<sup>28</sup> See Letter from Stuart J. Kaswell, Executive Vice President, Managing Director and General Counsel, Managed Funds Association, to Brent J.

In response to the comments on the Original Proposal, the Operating Committee determined to make the following changes to the funding model: (1) Adds two additional CAT Fee tiers for Equity Execution Venues; (2) discounts the market share of Execution Venue ATSs exclusively trading OTC Equity Securities as well as the market share of the FINRA over-the-counter reporting facility ("ORF") by the average shares per trade ratio between NMS Stocks and OTC Equity Securities (calculated as 0.17% based on available data from the second quarter of 2017) when calculating the market share of Execution Venue ATS exclusively trading OTC Equity Securities and FINRA; (3) discounts the Options Market Maker quotes by the trade to quote ratio for options (calculated as 0.01% based on available data for June 2016 through June 2017) when calculating message traffic for Options Market Makers; (4) discounts equity market maker quotes by the trade to quote ratio for equities (calculated as 5.43% based on available data for June 2016 through June 2017) when calculating message traffic for equity market makers; (5) decreases the number of tiers for Industry Members (other than the Execution Venue ATSs) from nine to seven; (6) changes the allocation of CAT costs between Equity Execution Venues and Options Execution Venues from 75%/25% to 67%/33%; (7) adjusts tier percentages and recovery allocations for Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATSs); (8) focuses the comparability of CAT Fees on the individual entity level, rather than primarily on the comparability of affiliated entities; (9) commences invoicing of CAT Reporters as promptly as possible following the latest of the operative date of the Consolidated Audit Trail Funding Fees for each of the Participants and the operative date of the CAT NMS Plan amendment

Fields, Secretary, SEC (July 28, 2017) ("MFA Letter"); Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Brent J. Fields, Secretary, SEC (July 28, 2017) ("SIFMA Letter"); Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, SEC (July 28, 2017) ("FIA Principal Traders Group Letter"); Letter from Kevin Coleman, General Counsel & Chief Compliance Officer, Belvedere Trading LLC, to Brent J. Fields, Secretary, SEC (July 28, 2017) ("Belvedere Letter"); Letter from W. Hardy Callcott, Sidley Austin LLP, to Brent J. Fields, Secretary, SEC (July 27, 2017) ("Sidley Letter"); Letter from John Kinahan, Chief Executive Officer, Group One Trading, L.P., to Brent J. Fields, Secretary, SEC (Aug. 10, 2017) ("Group One Letter"); and Letter from Joseph Molluso, Executive Vice President, Virtu Financial, to Brent J. Fields, Secretary, SEC (Aug. 18, 2017) ("Virtu Financial Letter").

adopting CAT Fees for Participants; and (10) requires the proposed fees to automatically expire two years from the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. As discussed in detail below, SRO proposes to amend the Original Proposal to reflect these changes.

#### (1) Executive Summary

The following provides an executive summary of the CAT funding model approved by the Operating Committee, as well as Industry Members' rights and obligations related to the payment of CAT Fees calculated pursuant to the CAT funding model, as amended by this Amendment. A detailed description of the CAT funding model and the CAT Fees, as amended by this Amendment, as well as the changes made to the Original Proposal follows this executive summary.

#### (A) CAT Funding Model

- *CAT Costs.* The CAT funding model is designed to establish CAT-specific fees to collectively recover the costs of building and operating the CAT from all CAT Reporters, including Industry Members and Participants. The overall CAT costs used in calculating the CAT Fees in this fee filing are comprised of Plan Processor CAT costs and non-Plan Processor CAT costs incurred, and estimated to be incurred, from November 21, 2016 through November 21, 2017. Although the CAT costs from November 21, 2016 through November 21, 2017 were used in calculating the CAT Fees, the CAT Fees set forth in this fee filing would be in effect until the automatic sunset date, as discussed below. (See Section 3(a)(2)(E) below)

- *Bifurcated Funding Model.* The CAT NMS Plan requires a bifurcated funding model, where costs associated with building and operating the CAT would be borne by (1) Participants and Industry Members that are Execution Venues for Eligible Securities through fixed tier fees based on market share, and (2) Industry Members (other than alternative trading systems ("ATs")) that execute transactions in Eligible Securities ("Execution Venue ATs") through fixed tier fees based on message traffic for Eligible Securities. (See Section 3(a)(2) below)

- *Industry Member Fees.* Each Industry Member (other than Execution Venue ATs) will be placed into one of seven tiers of fixed fees, based on "message traffic" in Eligible Securities for a defined period (as discussed below). Prior to the start of CAT reporting, "message traffic" will be comprised of historical equity and

equity options orders, cancels, quotes and executions provided by each exchange and FINRA over the previous three months. After an Industry Member begins reporting to the CAT, "message traffic" will be calculated based on the Industry Member's Reportable Events reported to the CAT. Industry Members with lower levels of message traffic will pay a lower fee and Industry Members with higher levels of message traffic will pay a higher fee. To avoid disincentives to quoting behavior, Options Market Maker and equity market maker quotes will be discounted when calculating message traffic. (See Section 3(a)(2)(B) below)

- *Execution Venue Fees.* Each Equity Execution Venue will be placed in one of four tiers of fixed fees based on market share, and each Options Execution Venue will be placed in one of two tiers of fixed fees based on market share. Equity Execution Venue market share will be determined by calculating each Equity Execution Venue's proportion of the total volume of NMS Stock and OTC Equity shares reported by all Equity Execution Venues during the relevant time period. For purposes of calculating market share, the market share of Execution Venue ATs exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF will be discounted. Similarly, market share for Options Execution Venues will be determined by calculating each Options Execution Venue's proportion of the total volume of Listed Options contracts reported by all Options Execution Venues during the relevant time period. Equity Execution Venues with a larger market share will pay a larger CAT Fee than Equity Execution Venues with a smaller market share. Similarly, Options Execution Venues with a larger market share will pay a larger CAT Fee than Options Execution Venues with a smaller market share. (See Section 3(a)(2)(C) below)

- *Cost Allocation.* For the reasons discussed below, in designing the model, the Operating Committee determined that 75 percent of total costs recovered would be allocated to Industry Members (other than Execution Venue ATs) and 25 percent would be allocated to Execution Venues. In addition, the Operating Committee determined to allocate 67 percent of Execution Venue costs recovered to Equity Execution Venues and 33 percent to Options Execution Venues. (See Section 3(a)(2)(D) below)

- *Comparability of Fees.* The CAT funding model charges CAT Reporters with the most CAT-related activity (measured by market share and/or

message traffic, as applicable) comparable CAT Fees. (See Section 3(a)(2)(F) below)

#### (B) CAT Fees for Industry Members

- *Fee Schedule.* The quarterly CAT Fees for each tier for Industry Members are set forth in the two fee schedules in the Consolidated Audit Trail Funding Fees, one for Equity ATs and one for Industry Members other than Equity ATs. (See Section 3(a)(3)(B) below)

- *Quarterly Invoices.* Industry Members will be billed quarterly for CAT Fees, with the invoices payable within 30 days. The quarterly invoices will identify within which tier the Industry Member falls. (See Section 3(a)(3)(C) below)

- *Centralized Payment.* Each Industry Member will receive from the Company one invoice for its applicable CAT Fees, not separate invoices from each Participant of which it is a member. Each Industry Member will pay its CAT Fees to the Company via the centralized system for the collection of CAT Fees established by the Operating Committee. (See Section 3(a)(3)(C) below)

- *Billing Commencement.* Industry Members will begin to receive invoices for CAT Fees as promptly as possible following the latest of the operative date of the Consolidated Audit Trail Funding Fees for each of the Participants and the operative date of the Plan amendment adopting CAT Fees for Participants. (See Section 3(a)(2)(G) below)

- *Sunset Provision.* The Consolidated Audit Trail Funding Fees will sunset automatically two years from the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. (See Section 3(a)(2)(J) below)

#### (2) Description of the CAT Funding Model

Article XI of the CAT NMS Plan requires the Operating Committee to approve the operating budget, including projected costs of developing and operating the CAT for the upcoming year. In addition to a budget, Article XI of the CAT NMS Plan provides that the Operating Committee has discretion to establish funding for the Company, consistent with a bifurcated funding model, where costs associated with building and operating the Central Repository would be borne by (1) Participants and Industry Members that are Execution Venues through fixed tier fees based on market share, and (2) Industry Members (other than Execution Venue ATs) through fixed tier fees based on message traffic. In its order approving the CAT NMS Plan, the Commission determined that the

proposed funding model was “reasonable”<sup>29</sup> and “reflects a reasonable exercise of the Participants’ funding authority to recover the Participants’ costs related to the CAT.”<sup>30</sup>

More specifically, the Commission stated in approving the CAT NMS Plan that “[t]he Commission believes that the proposed funding model is reasonably designed to allocate the costs of the CAT between the Participants and Industry Members.”<sup>31</sup> The Commission further noted the following:

The Commission believes that the proposed funding model reflects a reasonable exercise of the Participants’ funding authority to recover the Participants’ costs related to the CAT. The CAT is a regulatory facility jointly owned by the Participants and . . . the Exchange Act specifically permits the Participants to charge their members fees to fund their self-regulatory obligations. The Commission further believes that the proposed funding model is designed to impose fees reasonably related to the Participants’ self-regulatory obligations because the fees would be directly associated with the costs of establishing and maintaining the CAT, and not unrelated SRO services.<sup>32</sup>

Accordingly, the funding model approved by the Operating Committee imposes fees on both Participants and Industry Members.

As discussed in Appendix C of the CAT NMS Plan, in developing and approving the approved funding model, the Operating Committee considered the advantages and disadvantages of a variety of alternative funding and cost allocation models before selecting the proposed model.<sup>33</sup> After analyzing the various alternatives, the Operating Committee determined that the proposed tiered, fixed fee funding model provides a variety of advantages in comparison to the alternatives.

In particular, the fixed fee model, as opposed to a variable fee model, provides transparency, ease of calculation, ease of billing and other administrative functions, and predictability of a fixed fee. Such factors are crucial to estimating a reliable revenue stream for the Company and for permitting CAT Reporters to reasonably predict their payment obligations for budgeting purposes. Additionally, a strictly variable or metered funding model based on message volume would be far more likely to affect market behavior and place an inappropriate burden on competition.

In addition, reviews from varying time periods of current broker-dealer order and trading data submitted under existing reporting requirements showed a wide range in activity among broker-dealers, with a number of broker-dealers submitting fewer than 1,000 orders per month and other broker-dealers submitting millions and even billions of orders in the same period. Accordingly, the CAT NMS Plan includes a tiered approach to fees. The tiered approach helps ensure that fees are equitably allocated among similarly situated CAT Reporters and furthers the goal of lessening the impact on smaller firms.<sup>34</sup> In addition, in choosing a tiered fee structure, the Operating Committee concluded that the variety of benefits offered by a tiered fee structure, discussed above, outweighed the fact that CAT Reporters in any particular tier would pay different rates per message traffic order event or per market share (e.g., an Industry Member with the largest amount of message traffic in one tier would pay a smaller amount per order event than an Industry Member in the same tier with the least amount of message traffic). Such variation is the natural result of a tiered fee structure.<sup>35</sup> The Operating Committee considered several approaches to developing a tiered model, including defining fee tiers based on such factors as size of firm, message traffic or trading dollar volume. After analyzing the alternatives, it was concluded that the tiering should be based on message traffic which will reflect the relative impact of CAT Reporters on the CAT System.

Accordingly, the CAT NMS Plan contemplates that costs will be allocated across the CAT Reporters on a tiered basis in order to allocate higher costs to those CAT Reporters that contribute more to the costs of creating, implementing and maintaining the CAT and lower costs to those that contribute less.<sup>36</sup> The fees to be assessed at each tier are calculated so as to recoup a proportion of costs appropriate to the message traffic or market share (as applicable) from CAT Reporters in each tier. Therefore, Industry Members generating the most message traffic will be in the higher tiers, and will be charged a higher fee. Industry Members with lower levels of message traffic will be in lower tiers and will be assessed a

smaller fee for the CAT.<sup>37</sup> Correspondingly, Execution Venues with the highest market shares will be in the top tier, and will be charged higher fees. Execution Venues with the lowest market shares will be in the lowest tier and will be assessed smaller fees for the CAT.<sup>38</sup>

The CAT NMS Plan states that Industry Members (other than Execution Venue ATs) will be charged based on message traffic, and that Execution Venues will be charged based on market share.<sup>39</sup> While there are multiple factors that contribute to the cost of building, maintaining and using the CAT, processing and storage of incoming message traffic is one of the most significant cost drivers for the CAT.<sup>40</sup> Thus, the CAT NMS Plan provides that the fees payable by Industry Members (other than Execution Venue ATs) will be based on the message traffic generated by such Industry Member.<sup>41</sup>

In contrast to Industry Members, which determine the degree to which they produce message traffic that constitute CAT Reportable Events, the CAT Reportable Events of the Execution Venues are largely derivative of quotations and orders received from Industry Members that they are required to display. The business model for Execution Venues (other than FINRA), however, is focused on executions in their markets. As a result, the Operating Committee believes that it is more equitable to charge Execution Venues based on their market share rather than their message traffic.

Focusing on message traffic would make it more difficult to draw distinctions between large and small Execution Venues and, in particular, between large and small options exchanges. For instance, the Operating Committee analyzed the message traffic of Execution Venues and Industry Members for the period of April 2017 to June 2017 and placed all CAT Reporters into a nine-tier framework (i.e., a single tier may include both Execution Venues and Industry Members). The Operating Committee’s analysis found that the majority of exchanges (15 total) were grouped in Tiers 1 and 2. Moreover, virtually all of the options exchanges were in Tiers 1 and 2.<sup>42</sup> Given the resulting concentration of options

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> Section 11.3(a) and (b) of the CAT NMS Plan.

<sup>40</sup> Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85005.

<sup>41</sup> Section 11.3(b) of the CAT NMS Plan.

<sup>42</sup> The Operating Committee notes that this analysis did not place MIAx PEARL in Tier 1 or Tier 2 since the exchange commenced trading on February 6, 2017.

<sup>29</sup> Approval Order at 84796.

<sup>30</sup> *Id.* at 84794.

<sup>31</sup> *Id.* at 84795.

<sup>32</sup> *Id.* at 84794.

<sup>33</sup> Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85006.

<sup>34</sup> Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85006.

<sup>35</sup> Moreover, as the SEC noted in approving the CAT NMS Plan, “[t]he Participants also have offered a reasonable basis for establishing a funding model based on broad tiers, in that it may be easier to implement.” Approval Order at 84796.

<sup>36</sup> Approval Order at 85005.

exchanges in Tiers 1 and 2 under this approach, the analysis shows that a funding model for Execution Venues based on message traffic would make it more difficult to distinguish between large and small options exchanges, as compared to the proposed fee approach that bases fees for Execution Venues on market share.

The CAT NMS Plan's funding model also is structured to avoid a "reduction in market quality."<sup>43</sup> The tiered, fixed fee funding model is designed to limit the disincentives to providing liquidity to the market. For example, the Operating Committee expects that a firm that has a large volume of quotes would likely be categorized in one of the upper tiers, and would not be assessed a fee for this traffic directly as they would under a more directly metered model. In contrast, strictly variable or metered funding models based on message volume are far more likely to affect market behavior. In approving the CAT NMS Plan, the SEC stated that "[t]he Participants also offered a reasonable basis for establishing a funding model based on broad tiers, in that it may be . . . less likely to have an incremental deterrent effect on liquidity provision."<sup>44</sup>

The funding model also is structured to avoid a reduction market quality because it discounts Options Market Maker and equity market maker quotes when calculating message traffic for Options Market Makers and equity market makers, respectively. As discussed in more detail below, the Operating Committee determined to discount the Options Market Maker quotes by the trade to quote ratio for options when calculating message traffic for Options Market Makers. Similarly, to avoid disincentives to quoting behavior on the equities side as well, the Operating Committee determined to discount equity market maker quotes by the trade to quote ratio for equities when calculating message traffic for equity market makers. The proposed discounts recognize the value of the market makers' quoting activity to the market as a whole.

The CAT NMS Plan is further structured to avoid potential conflicts raised by the Operating Committee determining fees applicable to its own members—the Participants. First, the Company will operate on a "break-even" basis, with fees imposed to cover costs and an appropriate reserve. Any surpluses will be treated as an operational reserve to offset future fees and will not be distributed to the

Participants as profits.<sup>45</sup> To ensure that the Participants' operation of the CAT will not contribute to the funding of their other operations, Section 11.1(c) of the CAT NMS Plan specifically states that "[a]ny surplus of the Company's revenues over its expenses shall be treated as an operational reserve to offset future fees." In addition, as set forth in Article VIII of the CAT NMS Plan, the Company "intends to operate in a manner such that it qualifies as a 'business league' within the meaning of Section 501(c)(6) of the [Internal Revenue] Code." To qualify as a business league, an organization must "not [be] organized for profit and no part of the net earnings of [the organization can] inure[ ] to the benefit of any private shareholder or individual."<sup>46</sup> As the SEC stated when approving the CAT NMS Plan, "the Commission believes that the Company's application for Section 501(c)(6) business league status addresses issues raised by commenters about the Plan's proposed allocation of profit and loss by mitigating concerns that the Company's earnings could be used to benefit individual Participants."<sup>47</sup> The Internal Revenue Service recently has determined that the Company is exempt from federal income tax under Section 501(c)(6) of the Internal Revenue Code.

The funding model also is structured to take into account distinctions in the securities trading operations of Participants and Industry Members. For example, the Operating Committee designed the model to address the different trading characteristics in the OTC Equity Securities market. Specifically, the Operating Committee proposes to discount the market share of Execution Venue ATSS exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF by the average shares per trade ratio between NMS Stocks and OTC Equity Securities to adjust for the greater number of shares being traded in the OTC Equity Securities market, which is generally a function of a lower per share price for OTC Equity Securities when compared to NMS Stocks. In addition, the Operating Committee also proposes to discount Options Market Maker and equity market maker message traffic in recognition of their role in the securities markets. Furthermore, the funding model creates separate tiers for Equity and Options Execution Venues due to the different trading characteristics of those markets.

<sup>45</sup> *Id.* at 84792.

<sup>46</sup> 26 U.S.C. 501(c)(6).

<sup>47</sup> Approval Order at 84793.

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

A full description of the funding model is set forth below. This description includes the framework for the funding model as set forth in the CAT NMS Plan, as well as the details as to how the funding model will be applied in practice, including the number of fee tiers and the applicable fees for each tier. The complete funding model is described below, including those fees that are to be paid by the Participants. The proposed Consolidated Audit Trail Funding Fees, however, do not apply to the Participants; the proposed Consolidated Audit Trail Funding Fees only apply to Industry Members. The CAT Fees for Participants will be imposed separately by the Operating Committee pursuant to the CAT NMS Plan.

#### (A) Funding Principles

Section 11.2 of the CAT NMS Plan sets forth the principles that the Operating Committee applied in establishing the funding for the Company. The Operating Committee has considered these funding principles as well as the other funding requirements set forth in the CAT NMS Plan and in Rule 613 in developing the proposed funding model. The following are the funding principles in Section 11.2 of the CAT NMS Plan:

- To create transparent, predictable revenue streams for the Company that are aligned with the anticipated costs to build, operate and administer the CAT and other costs of the Company;
- To establish an allocation of the Company's related costs among Participants and Industry Members that is consistent with the Exchange Act, taking into account the timeline for implementation of the CAT and distinctions in the securities trading operations of Participants and Industry Members and their relative impact upon the Company's resources and operations;
- To establish a tiered fee structure in which the fees charged to: (i) CAT Reporters that are Execution Venues, including ATSS, are based upon the level of market share; (ii) Industry Members' non-ATS activities are based upon message traffic; (iii) the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are

<sup>43</sup> Section 11.2(e) of the CAT NMS Plan.

<sup>44</sup> Approval Order at 84796.

generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venue and/or Industry Members);

- To provide for ease of billing and other administrative functions;
- To avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality; and
- To build financial stability to support the Company as a going concern.

#### (B) Industry Member Tiering

Under Section 11.3(b) of the CAT NMS Plan, the Operating Committee is required to establish fixed fees to be payable by Industry Members, based on message traffic generated by such Industry Member, with the Operating Committee establishing at least five and no more than nine tiers.

The CAT NMS Plan clarifies that the fixed fees payable by Industry Members pursuant to Section 11.3(b) shall, in addition to any other applicable message traffic, include message traffic generated by: (i) An ATS that does not execute orders that is sponsored by such Industry Member; and (ii) routing orders to and from any ATS sponsored by such Industry Member. In addition, the Industry Member fees will apply to Industry Members that act as routing broker-dealers for exchanges. The Industry Member fees will not be applicable, however, to an ATS that qualifies as an Execution Venue, as discussed in more detail in the section on Execution Venue tiering.

In accordance with Section 11.3(b), the Operating Committee approved a tiered fee structure for Industry Members (other than Execution Venue ATSs) as described in this section. In determining the tiers, the Operating Committee considered the funding principles set forth in Section 11.2 of the CAT NMS Plan, seeking to create funding tiers that take into account the relative impact on CAT System resources of different Industry Members, and that establish comparable fees among the CAT Reporters with the most Reportable Events. The Operating Committee has determined that establishing seven tiers results in an allocation of fees that distinguishes between Industry Members with differing levels of message traffic. Thus, each such Industry Member will be placed into one of seven tiers of fixed fees, based on "message traffic" for a defined period (as discussed below).

A seven tier structure was selected to provide a wide range of levels for tiering Industry Members such that Industry Members submitting significantly less message traffic to the CAT would be adequately differentiated from Industry Members submitting substantially more message traffic. The Operating Committee considered historical message traffic from multiple time periods, generated by Industry Members across all exchanges and as submitted to FINRA's Order Audit Trail System ("OATS"), and considered the distribution of firms with similar levels of message traffic, grouping together firms with similar levels of message traffic. Based on this, the Operating Committee determined that seven tiers would group firms with similar levels of message traffic, charging those firms with higher impact on the CAT more, while lowering the burden on Industry Members that have less CAT-related activity. Furthermore, the selection of seven tiers establishes comparable fees among the largest CAT Reporters.

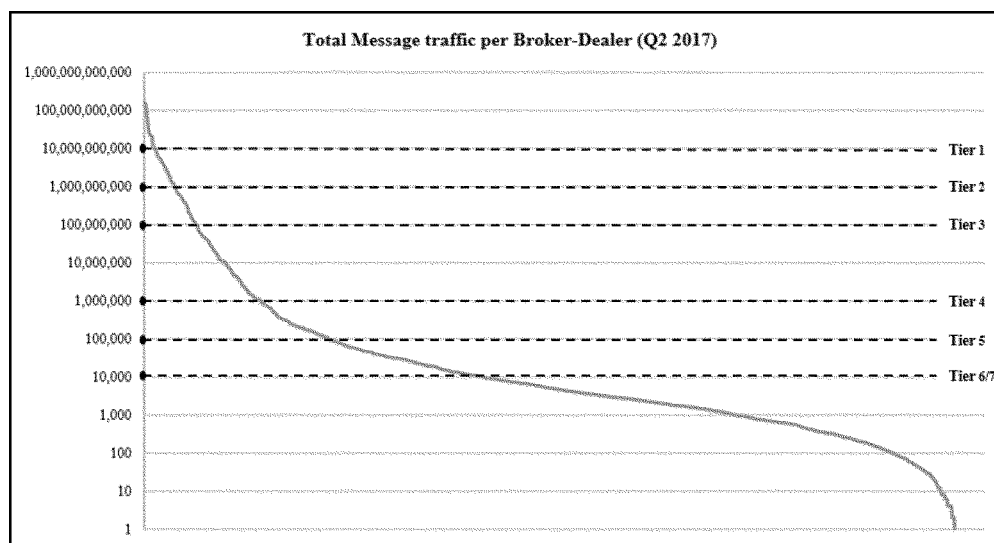
Each Industry Member (other than Execution Venue ATSs) will be ranked by message traffic and tiered by predefined Industry Member percentages (the "Industry Member Percentages"). The Operating Committee determined to use predefined percentages rather than fixed volume thresholds to ensure that the total CAT Fees collected recover the expected CAT costs regardless of changes in the total level of message traffic. To determine the fixed percentage of Industry Members in each tier, the Operating Committee analyzed historical message traffic generated by Industry Members across all exchanges and as submitted to OATS, and considered the distribution of firms with similar levels of message traffic, grouping together firms with similar levels of message traffic. Based on this, the Operating Committee identified seven tiers that would group firms with similar levels of message traffic.

The percentage of costs recovered by each Industry Member tier will be determined by predefined percentage allocations (the "Industry Member Recovery Allocation"). In determining the fixed percentage allocation of costs recovered for each tier, the Operating Committee considered the impact of CAT Reporter message traffic on the CAT System as well as the distribution of total message volume across Industry Members while seeking to maintain comparable fees among the largest CAT Reporters. Accordingly, following the

determination of the percentage of Industry Members in each tier, the Operating Committee identified the percentage of total market volume for each tier based on the historical message traffic upon which Industry Members had been initially ranked. Taking this into account along with the resulting percentage of total recovery, the percentage allocation of costs recovered for each tier were assigned, allocating higher percentages of recovery to tiers with higher levels of message traffic while avoiding any inappropriate burden on competition. Furthermore, by using percentages of Industry Members and costs recovered per tier, the Operating Committee sought to include elasticity within the funding model, allowing the funding model to respond to changes in either the total number of Industry Members or the total level of message traffic.

The following chart illustrates the breakdown of seven Industry Member tiers across the monthly average of total equity and equity options orders, cancels, quotes and executions in the second quarter of 2017 as well as message traffic thresholds between the largest of Industry Member message traffic gaps. The Operating Committee referenced similar distribution illustrations to determine the appropriate division of Industry Member percentages in each tier by considering the grouping of firms with similar levels of message traffic and seeking to identify relative breakpoints in the message traffic between such groupings. In reviewing the chart and its corresponding table, note that while these distribution illustrations were referenced to help differentiate between Industry Member tiers, the proposed funding model is driven by fixed percentages of Industry Members across tiers to account for fluctuating levels of message traffic over time. This approach also provides financial stability for the CAT by ensuring that the funding model will recover the required amounts regardless of changes in the number of Industry Members or the amount of message traffic. Actual messages in any tier will vary based on the actual traffic in a given measurement period, as well as the number of firms included in the measurement period. The Industry Member Percentages and Industry Member Recovery Allocation for each tier will remain fixed with each Industry Member's tier to be reassigned periodically, as described below in Section 3(a)(2)(I).





Industry Member tier	Approximate message traffic per Industry Member (Q2 2017) (orders, quotes, cancels and executions)
Tier 1	>10,000,000,000
Tier 2	1,000,000,000–10,000,000,000
Tier 3	100,000,000–1,000,000,000
Tier 4	1,000,000–100,000,000
Tier 5	100,000–1,000,000
Tier 6	10,000–100,000
Tier 7	<10,000

Based on the above analysis, the Operating Committee approved the following Industry Member Percentages and Industry Member Recovery Allocations:

Industry Member tier	Percentage of Industry Members	Percentage of Industry Member Recovery	Percentage of total recovery
Tier 1	0.900	12.00	9.00
Tier 2	2.150	20.50	15.38
Tier 3	2.800	18.50	13.88
Tier 4	7.750	32.00	24.00
Tier 5	8.300	10.00	7.50
Tier 6	18.800	6.00	4.50
Tier 7	59.300	1.00	0.75
<b>Total</b>	<b>100</b>	<b>100</b>	<b>75</b>

For the purposes of creating these tiers based on message traffic, the Operating Committee determined to define the term “message traffic” separately for the period before the commencement of CAT reporting and for the period after the start of CAT reporting. The different definition for message traffic is necessary as there will be no Reportable Events as defined in the Plan, prior to the commencement of CAT reporting. Accordingly, prior to the start of CAT reporting, “message traffic” will be comprised of historical equity

and equity options orders, cancels, quotes and executions provided by each exchange and FINRA over the previous three months. Prior to the start of CAT reporting, orders would be comprised of the total number of equity and equity options orders received and originated by a member of an exchange or FINRA over the previous three-month period, including principal orders, cancel/replace orders, market maker orders originated by a member of an exchange, and reserve (iceberg) orders as well as executions originated by a member of

FINRA, and excluding order rejects, system-modified orders, order routes and implied orders.<sup>48</sup> In addition, prior to the start of CAT reporting, cancels would be comprised of the total number of equity and equity option cancels received and originated by a member of an exchange or FINRA over a three-month period, excluding order

<sup>48</sup>Consequently, firms that do not have “message traffic” reported to an exchange or OATS before they are reporting to the CAT would not be subject to a fee until they begin to report information to CAT.



modifications (e.g., order updates, order splits, partial cancels) and multiple cancels of a complex order. Furthermore, prior to the start of CAT reporting, quotes would be comprised of information readily available to the exchanges and FINRA, such as the total number of historical equity and equity options quotes received and originated by a member of an exchange or FINRA over the prior three-month period. Additionally, prior to the start of CAT reporting, executions would be comprised of the total number of equity and equity option executions received or originated by a member of an exchange or FINRA over a three-month period.

After an Industry Member begins reporting to the CAT, “message traffic” will be calculated based on the Industry Member’s Reportable Events reported to the CAT as will be defined in the Technical Specifications.<sup>49</sup>

Quotes of Options Market Makers and equity market makers will be included in the calculation of total message traffic for those market makers for purposes of tiering under the CAT funding model both prior to CAT reporting and once CAT reporting commences.<sup>50</sup> To address potential concerns regarding burdens on competition or market quality of including quotes in the calculation of message traffic, however, the Operating Committee determined to discount the Options Market Maker quotes by the trade to quote ratio for options when calculating message traffic for Options Market Makers. Based on available data for June 2016 through June 2017, the trade to quote ratio for options is 0.01%. Similarly, to avoid disincentives to quoting behavior on the equities side, the Operating Committee determined to discount equity market maker quotes by the trade to quote ratio for equities. Based on available data for June 2016 through June 2017, the trade

to quote ratio for equities is 5.43%.<sup>51</sup> The trade to quote ratio for options and the trade to quote ratio for equities will be calculated every three months when tiers are recalculated (as discussed below).

The Operating Committee has determined to calculate fee tiers every three months, on a calendar quarter basis, based on message traffic from the prior three months. Based on its analysis of historical data, the Operating Committee believes that calculating tiers based on three months of data will provide the best balance between reflecting changes in activity by Industry Members while still providing predictability in the tiering for Industry Members. Because fee tiers will be calculated based on message traffic from the prior three months, the Operating Committee will begin calculating message traffic based on an Industry Member’s Reportable Events reported to the CAT once the Industry Member has been reporting to the CAT for three months. Prior to that, fee tiers will be calculated as discussed above with regard to the period prior to CAT reporting.

#### (C) Execution Venue Tiering

Under Section 11.3(a) of the CAT NMS Plan, the Operating Committee is required to establish fixed fees payable by Execution Venues. Section 1.1 of the CAT NMS Plan defines an Execution Venue as “a Participant or an alternative trading system (“ATS”) (as defined in Rule 300 of Regulation ATS) that operates pursuant to Rule 301 of Regulation ATS (excluding any such ATS that does not execute orders).”<sup>52</sup>

The Operating Committee determined that ATSs should be included within the definition of Execution Venue. The Operating Committee believes that it is appropriate to treat ATSs as Execution Venues under the proposed funding model since ATSs have business models that are similar to those of exchanges, and ATSs also compete with exchanges.

Given the differences between Execution Venues that trade NMS Stocks and/or OTC Equity Securities and Execution Venues that trade Listed Options, Section 11.3(a) addresses Execution Venues that trade NMS Stocks and/or OTC Equity Securities separately from Execution Venues that

trade Listed Options. Equity and Options Execution Venues are treated separately for two reasons. First, the differing quoting behavior of Equity and Options Execution Venues makes comparison of activity between such Execution Venues difficult. Second, Execution Venue tiers are calculated based on market share of share volume, and it is therefore difficult to compare market share between asset classes (i.e., equity shares versus options contracts). Discussed below is how the funding model treats the two types of Execution Venues.

#### (I) NMS Stocks and OTC Equity Securities

Section 11.3(a)(i) of the CAT NMS Plan states that each Execution Venue that (i) executes transactions or, (ii) in the case of a national securities association, has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange, in NMS Stocks or OTC Equity Securities will pay a fixed fee depending on the market share of that Execution Venue in NMS Stocks and OTC Equity Securities, with the Operating Committee establishing at least two and not more than five tiers of fixed fees, based on an Execution Venue’s NMS Stocks and OTC Equity Securities market share. For these purposes, market share for Execution Venues that execute transactions will be calculated by share volume, and market share for a national securities association that has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange in NMS Stocks or OTC Equity Securities will be calculated based on share volume of trades reported, provided, however, that the share volume reported to such national securities association by an Execution Venue shall not be included in the calculation of such national security association’s market share.

In accordance with Section 11.3(a)(i) of the CAT NMS Plan, the Operating Committee approved a tiered fee structure for Equity Execution Venues and Option Execution Venues. In determining the Equity Execution Venue Tiers, the Operating Committee considered the funding principles set forth in Section 11.2 of the CAT NMS Plan, seeking to create funding tiers that take into account the relative impact on system resources of different Equity Execution Venues, and that establish comparable fees among the CAT Reporters with the most Reportable Events. Each Equity Execution Venue will be placed into one of four tiers of

<sup>49</sup> If an Industry Member (other than an Execution Venue ATS) has no orders, cancels, quotes and executions prior to the commencement of CAT Reporting, or no Reportable Events after CAT reporting commences, then the Industry Member would not have a CAT Fee obligation.

<sup>50</sup> The SEC approved exemptive relief permitting Options Market Maker quotes to be reported to the Central Repository by the relevant Options Exchange in lieu of requiring that such reporting be done by both the Options Exchange and the Options Market Maker, as required by Rule 613 of Regulation NMS. See Securities Exchange Act Rel. No. 77265 (Mar. 1, 2017, 81 FR 11856 (Mar. 7, 2016)). This exemption applies to Options Market Maker quotes for CAT reporting purposes only. Therefore, notwithstanding the reporting exemption provided for Options Market Maker quotes, Options Market Maker quotes will be included in the calculation of total message traffic for Options Market Makers for purposes of tiering under the CAT funding model both prior to CAT reporting and once CAT reporting commences.

<sup>51</sup> The trade to quote ratios were calculated based on the inverse of the average of the monthly equity SIP and OPRA quote to trade ratios from June 2016–June 2017 that were compiled by the Financial Information Forum using data from NASDAQ and SIAC.

<sup>52</sup> Although FINRA does not operate an execution venue, because it is a Participant, it is considered an “Execution Venue” under the Plan for purposes of determining fees.

fixed fees, based on the Execution Venue's NMS Stocks and OTC Equity Securities market share. In choosing four tiers, the Operating Committee performed an analysis similar to that discussed above with regard to the non-Execution Venue Industry Members to determine the number of tiers for Equity Execution Venues. The Operating Committee determined to establish four tiers for Equity Execution Venues, rather than a larger number of tiers as established for non-Execution Venue Industry Members, because the four tiers were sufficient to distinguish between the smaller number of Equity Execution Venues based on market share. Furthermore, the selection of four tiers serves to help establish comparability among the largest CAT Reporters.

Each Equity Execution Venue will be ranked by market share and tiered by predefined Execution Venue percentages, (the "Equity Execution Venue Percentages"). In determining the fixed percentage of Equity Execution Venues in each tier, the Operating Committee reviewed historical market share of share volume for Execution Venues. Equity Execution Venue market shares of share volume were sourced from market statistics made publicly-available by Bats Global Markets, Inc. ("Bats"). ATS market shares of share volume was sourced from market statistics made publicly-available by FINRA. FINRA trade reporting facility ("TRF") and ORF market share of share volume was sourced from market statistics made publicly available by FINRA. Based on data from FINRA and otcmarkets.com, ATSs accounted for 39.12% of the share volume across the TRFs and ORFs during the recent tiering period. A 39.12/60.88 split was applied to the ATS and non-ATS breakdown of

FINRA market share, with FINRA tiered based only on the non-ATS portion of its market share of share volume.

The Operating Committee determined to discount the market share of Execution Venue ATSs exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF in recognition of the different trading characteristics of the OTC Equity Securities market as compared to the market in NMS Stocks. Many OTC Equity Securities are priced at less than one dollar—and a significant number at less than one penny—per share and low-priced shares tend to trade in larger quantities. Accordingly, a disproportionately large number of shares are involved in transactions involving OTC Equity Securities versus NMS Stocks. Because the proposed fee tiers are based on market share calculated by share volume, Execution Venue ATSs exclusively trading OTC Equity Securities and FINRA would likely be subject to higher tiers than their operations may warrant. To address this potential concern, the Operating Committee determined to discount the market share of Execution Venue ATSs exclusively trading OTC Equity Securities and the market share of the FINRA ORF by multiplying such market share by the average shares per trade ratio between NMS Stocks and OTC Equity Securities in order to adjust for the greater number of shares being traded in the OTC Equity Securities market. Based on available data for the second quarter of 2017, the average shares per trade ratio between NMS Stocks and OTC Equity Securities is 0.17%.<sup>53</sup> The average shares per trade ratio between NMS Stocks and OTC Equity Securities will be recalculated every three months when tiers are recalculated.

Based on this, the Operating Committee considered the distribution of Execution Venues, and grouped together Execution Venues with similar levels of market share. The percentage of costs recovered by each Equity Execution Venue tier will be determined by predefined percentage allocations (the "Equity Execution Venue Recovery Allocation"). In determining the fixed percentage allocation of costs to be recovered from each tier, the Operating Committee considered the impact of CAT Reporter market share activity on the CAT System as well as the distribution of total market volume across Equity Execution Venues while seeking to maintain comparable fees among the largest CAT Reporters. Accordingly, following the determination of the percentage of Execution Venues in each tier, the Operating Committee identified the percentage of total market volume for each tier based on the historical market share upon which Execution Venues had been initially ranked. Taking this into account along with the resulting percentage of total recovery, the percentage allocation of cost recovery for each tier were assigned, allocating higher percentages of recovery to the tier with a higher level of market share while avoiding any inappropriate burden on competition. Furthermore, by using percentages of Equity Execution Venues and cost recovery per tier, the Operating Committee sought to include elasticity within the funding model, allowing the funding model to respond to changes in either the total number of Equity Execution Venues or changes in market share.

Based on this analysis, the Operating Committee approved the following Equity Execution Venue Percentages and Recovery Allocations:

Equity Execution Venue tier	Percentage of Equity Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1 .....	25.00	33.25	8.31
Tier 2 .....	42.00	25.73	6.43
Tier 3 .....	23.00	8.00	2.00
Tier 4 .....	10.00	0.02	0.01
Total .....	100	67	16.75

(II) Listed Options

Section 11.3(a)(ii) of the CAT NMS Plan states that each Execution Venue that executes transactions in Listed

Options will pay a fixed fee depending on the Listed Options market share of that Execution Venue, with the Operating Committee establishing at

least two and no more than five tiers of fixed fees, based on an Execution Venue's Listed Options market share.

<sup>53</sup> The average shares per trade ratio for both NMS Stocks and OTC Equity Securities from the second quarter of 2017 was calculated using publicly

available market volume data from Bats and OTC Markets Group, and the totals were divided to

determine the average number of shares per trade between NMS Stocks and OTC Equity Securities.

For these purposes, market share will be calculated by contract volume.

In accordance with Section 11.3(a)(ii) of the CAT NMS Plan, the Operating Committee approved a tiered fee structure for Options Execution Venues. In determining the tiers, the Operating Committee considered the funding principles set forth in Section 11.2 of the CAT NMS Plan, seeking to create funding tiers that take into account the relative impact on system resources of different Options Execution Venues, and that establish comparable fees among the CAT Reporters with the most Reportable Events. Each Options Execution Venue will be placed into one of two tiers of fixed fees, based on the Execution Venue's Listed Options market share. In choosing two tiers, the Operating Committee performed an analysis similar to that discussed above with regard to Industry Members (other than Execution Venue ATs) to determine the number of tiers for Options Execution Venues. The Operating Committee determined to establish two tiers for Options Execution Venues, rather than a larger number, because the two tiers were sufficient to distinguish between the smaller number of Options Execution

Venues based on market share. Furthermore, due to the smaller number of Options Execution Venues, the incorporation of additional Options Execution Venue tiers would result in significantly higher fees for Tier 1 Options Execution Venues and reduce comparability between Execution Venues and Industry Members. Furthermore, the selection of two tiers served to establish comparable fees among the largest CAT Reporters.

Each Options Execution Venue will be ranked by market share and tiered by predefined Execution Venue percentages, (the "Options Execution Venue Percentages"). To determine the fixed percentage of Options Execution Venues in each tier, the Operating Committee analyzed the historical and publicly available market share of Options Execution Venues to group Options Execution Venues with similar market shares across the tiers. Options Execution Venue market share of share volume were sourced from market statistics made publicly-available by Bats. The process for developing the Options Execution Venue Percentages was the same as discussed above with regard to Equity Execution Venues.

The percentage of costs to be recovered from each Options Execution Venue tier will be determined by predefined percentage allocations (the "Options Execution Venue Recovery Allocation"). In determining the fixed percentage allocation of cost recovery for each tier, the Operating Committee considered the impact of CAT Reporter market share activity on the CAT System as well as the distribution of total market volume across Options Execution Venues while seeking to maintain comparable fees among the largest CAT Reporters. Furthermore, by using percentages of Options Execution Venues and cost recovery per tier, the Operating Committee sought to include elasticity within the funding model, allowing the funding model to respond to changes in either the total number of Options Execution Venues or changes in market share. The process for developing the Options Execution Venue Recovery Allocation was the same as discussed above with regard to Equity Execution Venues.

Based on this analysis, the Operating Committee approved the following Options Execution Venue Percentages and Recovery Allocations:

Options Execution Venue tier	Percentage of Options Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1 .....	75.00	28.25	7.06
Tier 2 .....	25.00	4.75	1.19
Total .....	100	33	8.25

(III) Market Share/Tier Assignments

The Operating Committee determined that, prior to the start of CAT reporting, market share for Execution Venues would be sourced from publicly-available market data. Options and equity volumes for Participants will be sourced from market data made publicly available by Bats while Execution Venue ATs volumes will be sourced from market data made publicly available by FINRA and OTC Markets. Set forth in the Appendix are two charts, one listing the current Equity Execution Venues, each with its rank and tier, and one listing the current Options Execution Venues, each with its rank and tier.

After the commencement of CAT reporting, market share for Execution Venues will be sourced from data reported to the CAT. Equity Execution Venue market share will be determined by calculating each Equity Execution Venue's proportion of the total volume

of NMS Stock and OTC Equity shares reported by all Equity Execution Venues during the relevant time period (with the discounting of market share of Execution Venue ATs exclusively trading OTC Equity Securities, as described above). Similarly, market share for Options Execution Venues will be determined by calculating each Options Execution Venue's proportion of the total volume of Listed Options contracts reported by all Options Execution Venues during the relevant time period.

The Operating Committee has determined to calculate fee tiers for Execution Venues every three months based on market share from the prior three months. Based on its analysis of historical data, the Operating Committee believes calculating tiers based on three months of data will provide the best balance between reflecting changes in activity by Execution Venues while still

providing predictability in the tiering for Execution Venues.

(D) Allocation of Costs

In addition to the funding principles discussed above, including comparability of fees, Section 11.1(c) of the CAT NMS Plan also requires expenses to be fairly and reasonably shared among the Participants and Industry Members. Accordingly, in developing the proposed fee schedules pursuant to the funding model, the Operating Committee calculated how the CAT costs would be allocated between Industry Members and Execution Venues, and how the portion of CAT costs allocated to Execution Venues would be allocated between Equity Execution Venues and Options Execution Venues. These determinations are described below.

(I) Allocation Between Industry Members and Execution Venues

In determining the cost allocation between Industry Members (other than Execution Venue ATSS) and Execution Venues, the Operating Committee analyzed a range of possible splits for revenue recovery from such Industry Members and Execution Venues, including 80%/20%, 75%/25%, 70%/30% and 65%/35% allocations. Based on this analysis, the Operating Committee determined that 75 percent of total costs recovered would be allocated to Industry Members (other than Execution Venue ATSS) and 25 percent would be allocated to Execution Venues. The Operating Committee determined that this 75%/25% division maintained the greatest level of comparability across the funding model. For example, the cost allocation establishes fees for the largest Industry Members (*i.e.*, those Industry Members in Tiers 1) that are comparable to the largest Equity Execution Venues and Options Execution Venues (*i.e.*, those Execution Venues in Tier 1).

Furthermore, the allocation of total CAT cost recovery recognizes the difference in the number of CAT Reporters that are Industry Members versus CAT Reporters that are Execution Venues. Specifically, the cost allocation takes into consideration that there are approximately 23 times more Industry Members expected to report to the CAT than Execution Venues (*e.g.*, an estimated 1541 Industry Members versus 67 Execution Venues as of June 2017).

(II) Allocation Between Equity Execution Venues and Options Execution Venues

The Operating Committee also analyzed how the portion of CAT costs allocated to Execution Venues would be allocated between Equity Execution Venues and Options Execution Venues. In considering this allocation of costs, the Operating Committee analyzed a

range of alternative splits for revenue recovered between Equity and Options Execution Venues, including a 70%/30%, 67%/33%, 65%/35%, 50%/50% and 25%/75% split. Based on this analysis, the Operating Committee determined to allocate 67 percent of Execution Venue costs recovered to Equity Execution Venues and 33 percent to Options Execution Venues. The Operating Committee determined that a 67%/33% allocation between Equity and Options Execution Venues maintained the greatest level of fee equitability and comparability based on the current number of Equity and Options Execution Venues. For example, the allocation establishes fees for the larger Equity Execution Venues that are comparable to the larger Options Execution Venues. Specifically, Tier 1 Equity Execution Venues would pay a quarterly fee of \$81,047 and Tier 1 Options Execution Venues would pay a quarterly fee of \$81,379. In addition to fee comparability between Equity Execution Venues and Options Execution Venues, the allocation also establishes equitability between larger (Tier 1) and smaller (Tier 2) Execution Venues based upon the level of market share. Furthermore, the allocation is intended to reflect the relative levels of current equity and options order events.

(E) Fee Levels

The Operating Committee determined to establish a CAT-specific fee to collectively recover the costs of building and operating the CAT. Accordingly, under the funding model, the sum of the CAT Fees is designed to recover the total cost of the CAT. The Operating Committee has determined overall CAT costs to be comprised of Plan Processor costs and non-Plan Processor costs, which are estimated to be \$50,700,000 in total for the year beginning November 21, 2016.<sup>54</sup>

The Plan Processor costs relate to costs incurred and to be incurred through November 21, 2017 by the Plan

Processor and consist of the Plan Processor's current estimates of average yearly ongoing costs, including development costs, which total \$37,500,000. This amount is based upon the fees due to the Plan Processor pursuant to the Company's agreement with the Plan Processor.

The non-Plan Processor estimated costs incurred and to be incurred by the Company through November 21, 2017 consist of three categories of costs. The first category of such costs are third party support costs, which include legal fees, consulting fees and audit fees from November 21, 2016 until the date of filing as well as estimated third party support costs for the rest of the year. These amount to an estimated \$5,200,000. The second category of non-Plan Processor costs are estimated cyber-insurance costs for the year. Based on discussions with potential cyber-insurance providers, assuming \$2–5 million cyber-insurance premium on \$100 million coverage, the Company has estimated \$3,000,000 for the annual cost. The final cost figures will be determined following receipt of final underwriter quotes. The third category of non-Plan Processor costs is the CAT operational reserve, which is comprised of three months of ongoing Plan Processor costs (\$9,375,000), third party support costs (\$1,300,000) and cyber-insurance costs (\$750,000). The Operating Committee aims to accumulate the necessary funds to establish the three-month operating reserve for the Company through the CAT Fees charged to CAT Reporters for the year. On an ongoing basis, the Operating Committee will account for any potential need to replenish the operating reserve or other changes to total cost during its annual budgeting process. The following table summarizes the Plan Processor and non-Plan Processor cost components which comprise the total estimated CAT costs of \$50,700,000 for the covered period.

Cost category	Cost component	Amount
Plan Processor .....	Operational Costs .....	\$37,500,000
Non-Plan Processor .....	Third Party Support Costs .....	5,200,000
	Operational Reserve .....	<sup>55</sup> 5,000,000
	Cyber-insurance Costs .....	3,000,000
Estimated Total .....		50,700,000

Based on these estimated costs and the calculations for the funding model

described above, the Operating

Committee determined to impose the following fees:<sup>56</sup>

<sup>54</sup> It is anticipated that CAT-related costs incurred prior to November 21, 2016 will be addressed via a separate filing.

<sup>55</sup> This \$5,000,000 represents the gradual accumulation of the funds for a target operating reserve of \$11,425,000.

<sup>56</sup> Note that all monthly, quarterly and annual CAT Fees have been rounded to the nearest dollar.

For Industry Members (other than Execution Venue ATs):

Tier	Percentage of Industry Members	Quarterly CAT Fee
1 .....	0.900	\$81,483
2 .....	2.150	59,055
3 .....	2.800	40,899
4 .....	7.750	25,566
5 .....	8.300	7,428
6 .....	18.800	1,968
7 .....	59.300	105

For Execution Venues for NMS Stocks and OTC Equity Securities:

Tier	Percentage of Equity Execution Venues	Quarterly CAT Fee
1 .....	25.00	\$81,048
2 .....	42.00	37,062
3 .....	23.00	21,126
4 .....	10.00	129

For Execution Venues for Listed Options:

Tier	Percentage of Options Execution Venues	Quarterly CAT Fee
1 .....	75.00	\$81,381

Tier	Percentage of Options Execution Venues	Quarterly CAT Fee
2 .....	25.00	37,629

The Operating Committee has calculated the schedule of effective fees for Industry Members (other than Execution Venue ATs) and Execution Venues in the following manner. Note that the calculation of CAT Fees assumes 52 Equity Execution Venues, 15 Options Execution Venues and 1,541 Industry Members (other than Execution Venue ATs) as of June 2017.

CALCULATION OF ANNUAL TIER FEES FOR INDUSTRY MEMBERS (“IM”)

Industry Member tier	Percentage of Industry Members	Percentage of Industry Member Recovery	Percentage of Total recovery
Tier 1 .....	0.900	12.00	9.00
Tier 2 .....	2.150	20.50	15.38
Tier 3 .....	2.800	18.50	13.88
Tier 4 .....	7.750	32.00	24.00
Tier 5 .....	8.300	10.00	7.50
Tier 6 .....	18.800	6.00	4.50
Tier 7 .....	59.300	1.00	0.75
<b>Total .....</b>	<b>100</b>	<b>100</b>	<b>75</b>

Industry Member tier	Estimated number of Industry Members
Tier 1 .....	14
Tier 2 .....	33
Tier 3 .....	43
Tier 4 .....	119
Tier 5 .....	128
Tier 6 .....	290
Tier 7 .....	914
<b>Total .....</b>	<b>1,541</b>

**Calculation 1.1 (Calculation of a Tier 1 Industry Member Monthly Fee)**

$$1,541 \text{ [Estimated Tot. IMs]} \times 0.9\% \text{ [% of Tier 1 IMs]} = 14 \text{ [Estimated Tier 1 IMs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 75\% \text{ [IM \% of Tot. Ann. CAT Costs]} \times 12\% \text{ [% of Tier 1 IM Recovery]}}{14 \text{ [Estimated Tier 1 IMs]}} \right) \div 12 \text{ [Months per year]} = \$27,161$$

**Calculation 1.2 (Calculation of a Tier 2 Industry Member Monthly Fee)**

$$1,541 \text{ [Estimated Tot. IMs]} \times 2.15\% \text{ [% of Tier 2 IMs]} = 33 \text{ [Estimated Tier 2 IMs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 75\% \text{ [IM \% of Tot. Ann. CAT Costs]} \times 20.5\% \text{ [% of Tier 2 IM Recovery]}}{33 \text{ [Estimated Tier 2 IMs]}} \right) \div 12 \text{ [Months per year]} = \$19,685$$

**Calculation 1.3 (Calculation of a Tier 3 Industry Member Monthly Fee)**

$$1,541 \text{ [Estimated Tot. IMs]} \times 2.125\% \text{ [% of Tier 3 IMs]} = 43 \text{ [Estimated Tier 3 IMs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 75\% \text{ [IM \% of Tot. Ann. CAT Costs]} \times 18.5\% \text{ [% of Tier 3 IM Recovery]}}{43 \text{ [Estimated Tier 3 IMs]}} \right) \div 12 \text{ [Months per year]} = \$13,633$$

**Calculation 1.4 (Calculation of a Tier 4 Industry Member Monthly Fee)**

$$1,541 \text{ [Estimated Tot. IMs]} \times 7.75\% \text{ [% of Tier 4 IMs]} = 119 \text{ [Estimated Tier 4 IMs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 75\% \text{ [IM \% of Tot. Ann. CAT Costs]} \times 32\% \text{ [% of Tier 4 IM Recovery]}}{119 \text{ [Estimated Tier 4 IMs]}} \right) \div 12 \text{ [Months per year]} = \$8522$$

**Calculation 1.5 (Calculation of a Tier 5 Industry Member Annual Fee)**

$$1,541 \text{ [Estimated Tot. IMs]} \times 8.3\% \text{ [% of Tier 5 IMs]} = 128 \text{ [Estimated Tier 5 IMs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 75\% \text{ [IM \% of Tot. Ann. CAT Costs]} \times 7.75\% \text{ [% of Tier 5 IM Recovery]}}{128 \text{ [Estimated Tier 5 IMs]}} \right) \div 12 \text{ [Months per year]} = \$2476$$

**Calculation 1.6 (Calculation of a Tier 6 Industry Member Monthly Fee)**

$$1,541 \text{ [Estimated Tot. IMs]} \times 18.8\% \text{ [% of Tier 6 IMs]} = 290 \text{ [Estimated Tier 6 IMs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 75\% \text{ [IM \% of Tot. Ann. CAT Costs]} \times 6\% \text{ [% of Tier 6 IM Recovery]}}{290 \text{ [Estimated Tier 6 IMs]}} \right) \div 12 \text{ [Months per year]} = \$656$$

**Calculation 1.7 (Calculation of a Tier 7 Industry Member Monthly Fee)**

$$1,541 \text{ [Estimated Tot. IMs]} \times 59.3\% \text{ [% of Tier 7 IMs]} = 914 \text{ [Estimated Tier 7 IMs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 75\% \text{ [IM \% of Tot. Ann. CAT Costs]} \times 1\% \text{ [% of Tier 7 IM Recovery]}}{914 \text{ [Estimated Tier 7 IMs]}} \right) \div 12 \text{ [Months per year]} = \$35$$

**CALCULATION OF ANNUAL TIER FEES FOR EQUITY EXECUTION VENUES (“EV”)**

Equity Execution Venue tier	Percentage of Equity Execution Venues	Percentage of Execution Venue Recovery	Percentage of Total recovery
Tier 1 .....	25.00	33.25	8.31
Tier 2 .....	42.00	25.73	6.43
Tier 3 .....	23.00	8.00	2.00
Tier 4 .....	10.00	49.00	0.01
<b>Total .....</b>	<b>100</b>	<b>67</b>	<b>16.75</b>

Equity Execution Venue tier	Estimated number of Equity Execution Venues
Tier 1 .....	13
Tier 2 .....	22
Tier 3 .....	12
Tier 4 .....	5
<b>Total .....</b>	<b>52</b>

**Calculation 2.1 (Calculation of a Tier 1 Equity Execution Venue Monthly Fee)**

$$52 \text{ [Estimated Tot. Equity EVs]} \times 25\% \text{ [% of Tier 1 Equity EVs]} = 13 \text{ [Estimated Tier 1 Equity EVs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann.CAT Costs]} \times 33.25\% \text{ [EV \% of Tot. Ann.CAT Costs]} \times 26\% \text{ [% of Tier 1 Equity EV Recovery]}}{13 \text{ [Estimated Tier 1 Equity EVs]}} \right) \div 12 \text{ [Months per year]} = \$27,016$$

**Calculation 2.2 (Calculation of a Tier 2 Equity Execution Venue Monthly Fee)**

$$52 \text{ [Estimated Tot. Equity EVs]} \times 42\% \text{ [% of Tier 2 Equity EVs]} = 22 \text{ [Estimated Tier 2 Equity EVs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann.CAT Costs]} \times 25\% \text{ [EV \% of Tot. Ann.CAT Costs]} \times 25.73\% \text{ [% of Tier 2 Equity EV Recovery]}}{22 \text{ [Estimated Tier 2 Equity EVs]}} \right) \div 12 \text{ [Months per year]} = \$12,353$$

**Calculation 2.3 (Calculation of a Tier 3 Equity Execution Venue Monthly Fee)**

$$52 \text{ [Estimated Tot. Equity EVs]} \times 23\% \text{ [% of Tier 2 Equity EVs]} = 12 \text{ [Estimated Tier 2 Equity EVs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann.CAT Costs]} \times 25\% \text{ [EV \% of Tot. Ann.CAT Costs]} \times 8\% \text{ [% of Tier 2 Equity EV Recovery]}}{12 \text{ [Estimated Tier 2 Equity EVs]}} \right) \div 12 \text{ [Months per year]} = \$7,042$$

**Calculation 2.4 (Calculation of a Tier 4 Equity Execution Venue Monthly Fee)**

$$52 \text{ [Estimated Tot. Equity EVs]} \times 10\% \text{ [% of Tier 2 Equity EVs]} = 5 \text{ [Estimated Tier 2 Equity EVs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann.CAT Costs]} \times 25\% \text{ [EV \% of Tot. Ann.CAT Costs]} \times 0.02\% \text{ [% of Tier 2 Equity EV Recovery]}}{5 \text{ [Estimated Tier 2 Equity EVs]}} \right) \div 12 \text{ [Months per year]} = \$42$$

**CALCULATION OF ANNUAL TIER FEES FOR OPTIONS EXECUTION VENUES (“EV”)**

Options Execution Venue tier	Percentage of Options Execution Venues	Percentage of Execution Venue Recovery	Percentage of Total recovery
Tier 1 .....	75.00	28.25	7.06
Tier 2 .....	25.00	4.75	1.19
Total .....	100	33	8.25

Options Execution Venue tier	Estimated number of Options Execution Venues
Tier 1 .....	11
Tier 2 .....	4
Total .....	15

**Calculation 3.1 (Calculation of a Tier 1 Options Execution Venue Monthly Fee)**

$$15 \text{ [Estimated Tot. Options EVs]} \times 75\% \text{ [% of Tier 1 Options EVs]} = 11 \text{ [Estimated Tier 1 Options EVs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann.CAT Costs]} \times 25\% \text{ [EV \% of Tot. Ann.CAT Costs]} \times 28.25\% \text{ [% of Tier 1 Options EV Recovery]}}{11 \text{ [Estimated Tier 1 Options EVs]}} \right) \div 12 \text{ [Months per year]} = \$27,127$$

**Calculation 3.2 (Calculation of a Tier 2 Options Execution Venue Annual Fee)**

$$15 \text{ [Estimated Tot. Options EVs]} \times 25\% \text{ [% of Tier 2 Options EVs]} = 4 \text{ [Estimated Tier 2 Options EVs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann.CAT Costs]} \times 25\% \text{ [EV \% of Tot. Ann.CAT Costs]} \times 4.75\% \text{ [% of Tier 2 Options EV Recovery]}}{4 \text{ [Estimated Tier 2 Options EVs]}} \right) \div 12 \text{ [Months per year]} = \$12,543$$

**TRACEABILITY OF TOTAL CAT FEES**

Type	Industry Member tier	Estimated number of members	CAT Fees paid annually	Total recovery
Industry Members .....	Tier 1 .....	14	\$325,932	\$4,563,048
	Tier 2 .....	33	236,220	7,795,260
	Tier 3 .....	43	163,596	7,034,628
	Tier 4 .....	119	102,264	12,169,416
	Tier 5 .....	128	29,712	3,803,136
	Tier 6 .....	290	7,872	2,282,880

## TRACEABILITY OF TOTAL CAT FEES—Continued

Type	Industry Member tier	Estimated number of members	CAT Fees paid annually	Total recovery
	Tier 7 .....	914	420	383,880
Total .....		1,541	.....	38,032,248
Equity Execution Venues .....	Tier 1 .....	13	324,192	4,214,496
	Tier 2 .....	22	148,248	3,261,456
	Tier 3 .....	12	84,504	1,014,048
	Tier 4 .....	5	516	2,580
Total .....		52	.....	8,492,580
Options Execution Venues .....	Tier 1 .....	11	325,524	3,580,764
	Tier 2 .....	4	150,516	602,064
Total .....		15	.....	4,182,828
Total .....				50,700,000
Excess <sup>57</sup> .....				7,656

## (F) Comparability of Fees

The funding principles require a funding model in which the fees charged to the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venue and/or Industry Members). Accordingly, in creating the model, the Operating Committee sought to establish comparable fees for the top tier of Industry Members (other than Execution Venue ATSS), Equity Execution Venues and Options Execution Venues. Specifically, each Tier 1 CAT Reporter would be required to pay a quarterly fee of approximately \$81,000.

## (G) Billing Onset

Under Section 11.1(c) of the CAT NMS Plan, to fund the development and implementation of the CAT, the Company shall time the imposition and collection of all fees on Participants and Industry Members in a manner reasonably related to the timing when the Company expects to incur such development and implementation costs. The Company is currently incurring such development and implementation costs and will continue to do so prior to the commencement of CAT reporting and thereafter. In accordance with the CAT NMS Plan, all CAT Reporters, including both Industry Members and

Execution Venues (including Participants), will be invoiced as promptly as possible following the latest of the operative date of the Consolidated Audit Trail Funding Fees for each of the Participants and the operative date of the Plan amendment adopting CAT Fees for Participants.

## (H) Changes to Fee Levels and Tiers

Section 11.3(d) of the CAT NMS Plan states that “[t]he Operating Committee shall review such fee schedule on at least an annual basis and shall make any changes to such fee schedule that it deems appropriate. The Operating Committee is authorized to review such fee schedule on a more regular basis, but shall not make any changes on more than a semi-annual basis unless, pursuant to a Supermajority Vote, the Operating Committee concludes that such change is necessary for the adequate funding of the Company.” With such reviews, the Operating Committee will review the distribution of Industry Members and Execution Venues across tiers, and make any updates to the percentage of CAT Reporters allocated to each tier as may be necessary. In addition, the reviews will evaluate the estimated ongoing CAT costs and the level of the operating reserve. To the extent that the total CAT costs decrease, the fees would be adjusted downward, and to the extent that the total CAT costs increase, the fees would be adjusted upward.<sup>58</sup>

<sup>58</sup> The CAT Fees are designed to recover the costs associated with the CAT. Accordingly, CAT Fees would not be affected by increases or decreases in other non-CAT expenses incurred by the Participants, such as any changes in costs related

Furthermore, any surplus of the Company’s revenues over its expenses is to be included within the operational reserve to offset future fees. The limitations on more frequent changes to the fee, however, are intended to provide budgeting certainty for the CAT Reporters and the Company.<sup>59</sup> To the extent that the Operating Committee approves changes to the number of tiers in the funding model or the fees assigned to each tier, then the Operating Committee will file such changes with the SEC pursuant to Rule 608 of the Exchange Act, and the Participants will file such changes with the SEC pursuant to Section 19(b) of the Exchange Act and Rule 19b-4 thereunder, and any such changes will become effective in accordance with the requirements of those provisions.

## (I) Initial and Periodic Tier Reassignments

The Operating Committee has determined to calculate fee tiers every three months based on market share or message traffic, as applicable, from the prior three months. For the initial tier assignments, the Company will calculate the relevant tier for each CAT Reporter using the three months of data prior to the commencement date. As with the initial tier assignment, for the tri-monthly reassignments, the Company will calculate the relevant tier using the three months of data prior to the relevant tri-monthly date. Any movement of CAT Reporters between tiers will not change the criteria for each

to the retirement of existing regulatory systems, such as OATS.

<sup>59</sup> Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85006.

<sup>57</sup> The amount in excess of the total CAT costs will contribute to the gradual accumulation of the target operating reserve of \$11.425 million.



tier or the fee amount corresponding to each tier.

In performing the tri-monthly reassessments, the assignment of CAT Reporters in each assigned tier is relative. Therefore, a CAT Reporter's assigned tier will depend, not only on its own message traffic or market share, but also on the message traffic/market share across all CAT Reporters. For example, the percentage of Industry Members (other than Execution Venue ATSS) in each tier is relative such that such Industry Member's assigned tier will depend on message traffic generated across all CAT Reporters as

well as the total number of CAT Reporters. The Operating Committee will inform CAT Reporters of their assigned tier every three months following the periodic tiering process, as the funding model will compare an individual CAT Reporter's activity to that of other CAT Reporters in the marketplace.

The following demonstrates a tier reassignment. In accordance with the funding model, the top 75% of Options Execution Venues in market share are categorized as Tier 1 while the bottom 25% of Options Execution Venues in market share are categorized as Tier 2.

In the sample scenario below, Options Execution Venue L is initially categorized as a Tier 2 Options Execution Venue in Period A due to its market share. When market share is recalculated for Period B, the market share of Execution Venue L increases, and it is therefore subsequently reranked and reassigned to Tier 1 in Period B. Correspondingly, Options Execution Venue K, initially a Tier 1 Options Execution Venue in Period A, is reassigned to Tier 2 in Period B due to decreases in its market share.

Period A			Period B		
Options Execution Venue	Market share rank	Tier	Options Execution Venue	Market share rank	Tier
Options Execution Venue A	1	1	Options Execution Venue A	1	1
Options Execution Venue B	2	1	Options Execution Venue B	2	1
Options Execution Venue C	3	1	Options Execution Venue C	3	1
Options Execution Venue D	4	1	Options Execution Venue D	4	1
Options Execution Venue E	5	1	Options Execution Venue E	5	1
Options Execution Venue F	6	1	Options Execution Venue F	6	1
Options Execution Venue G	7	1	Options Execution Venue I	7	1
Options Execution Venue H	8	1	Options Execution Venue H	8	1
Options Execution Venue I	9	1	Options Execution Venue G	9	1
Options Execution Venue J	10	1	Options Execution Venue J	10	1
Options Execution Venue K	11	1	Options Execution Venue L	11	1
Options Execution Venue L	12	2	Options Execution Venue K	12	2
Options Execution Venue M	13	2	Options Execution Venue N	13	2
Options Execution Venue N	14	2	Options Execution Venue M	14	2
Options Execution Venue O	15	2	Options Execution Venue O	15	2

For each periodic tier reassignment, the Operating Committee will review the new tier assignments, particularly those assignments for CAT Reporters that shift from the lowest tier to a higher tier. This review is intended to evaluate whether potential changes to the market or CAT Reporters (e.g., dissolution of a large CAT Reporter) adversely affect the tier reassignments.

(J) Sunset Provision

The Operating Committee developed the proposed funding model by analyzing currently available historical data. Such historical data, however, is not as comprehensive as data that will be submitted to the CAT. Accordingly, the Operating Committee believes that it will be appropriate to revisit the funding model once CAT Reporters have actual experience with the funding model. Accordingly, the Operating Committee determined to include an automatic sunset provision for the proposed fees. Specifically, the Operating Committee determined that the CAT Fees should automatically expire two years after the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. The

Operating Committee intends to monitor the operation of the funding model during this two year period and to evaluate its effectiveness during that period. Such a process will inform the Operating Committee's approach to funding the CAT after the two year period.

(3) Proposed CAT Fee Schedule

SRO proposes the Consolidated Audit Trail Funding Fees to impose the CAT Fees determined by the Operating Committee on SRO's members. The proposed fee schedule has four sections, covering definitions, the fee schedule for CAT Fees, the timing and manner of payments, and the automatic sunset of the CAT Fees. Each of these sections is discussed in detail below.

(A) Definitions

Paragraph (a) of the proposed fee schedule sets forth the definitions for the proposed fee schedule. Paragraph (a)(1) states that, for purposes of the Consolidated Audit Trail Funding Fees, the terms "CAT", "CAT NMS Plan," "Industry Member," "NMS Stock," "OTC Equity Security", "Options Market Maker", and "Participant" are

defined as set forth in Rule 4.5 (Consolidated Audit Trail—Definitions).

The proposed fee schedule imposes different fees on Equity ATSS and Industry Members that are not Equity ATSS. Accordingly, the proposed fee schedule defines the term "Equity ATS." First, paragraph (a)(2) defines an "ATS" to mean an alternative trading system as defined in Rule 300(a) of Regulation ATS under the Securities Exchange Act of 1934, as amended, that operates pursuant to Rule 301 of Regulation ATS. This is the same definition of an ATS as set forth in Section 1.1 of the CAT NMS Plan in the definition of an "Execution Venue." Then, paragraph (a)(4) defines an "Equity ATS" as an ATS that executes transactions in NMS Stocks and/or OTC Equity Securities.

Paragraph (a)(3) of the proposed fee schedule defines the term "CAT Fee" to mean the Consolidated Audit Trail Funding Fee(s) to be paid by Industry Members as set forth in paragraph (b) in the proposed fee schedule.

Finally, Paragraph (a)(6) defines an "Execution Venue" as a Participant or an ATS (excluding any such ATS that does not execute orders). This definition is the same substantive definition as set

forth in Section 1.1 of the CAT NMS Plan. Paragraph (a)(5) defines an “Equity Execution Venue” as an Execution Venue that trades NMS Stocks and/or OTC Equity Securities.

(B) Fee Schedule

SRO proposes to impose the CAT Fees applicable to its Industry Members through paragraph (b) of the proposed fee schedule. Paragraph (b)(1) of the proposed fee schedule sets forth the CAT Fees applicable to Industry Members other than Equity ATSS. Specifically, paragraph (b)(1) states that the Company will assign each Industry Member (other than an Equity ATS) to a fee tier once every quarter, where such tier assignment is calculated by ranking each Industry Member based on its total message traffic (with discounts for equity market maker quotes and Options Market Maker quotes based on the trade to quote ratio for equities and options, respectively) for the three months prior to the quarterly tier calculation day and assigning each Industry Member to a tier based on that ranking and predefined Industry Member percentages. The Industry Members with the highest total quarterly message traffic will be ranked in Tier 1, and the Industry Members with lowest quarterly message traffic will be ranked in Tier 7. Each quarter, each Industry Member (other than an Equity ATS) shall pay the following CAT Fee corresponding to the tier assigned by the Company for such Industry Member for that quarter:

Tier	Percentage of Industry Members	Quarterly CAT Fee
1 .....	0.900	\$81,483
2 .....	2.150	59,055
3 .....	2.800	40,899
4 .....	7.750	25,566
5 .....	8.300	7,428
6 .....	18.800	1,968
7 .....	59.300	105

Paragraph (b)(2) of the proposed fee schedule sets forth the CAT Fees applicable to Equity ATSS.<sup>60</sup> These are the same fees that Participants that trade NMS Stocks and/or OTC Equity Securities will pay. Specifically, paragraph (b)(2) states that the Company will assign each Equity ATS to a fee tier once every quarter, where such tier assignment is calculated by ranking each Equity Execution Venue based on its total market share of NMS Stocks and OTC Equity Securities (with a discount

<sup>60</sup> Note that no fee schedule is provided for Execution Venue ATSS that execute transactions in Listed Options, as no such Execution Venue ATSS currently exist due to trading restrictions related to Listed Options.

for Equity ATSS exclusively trading OTC Equity Securities based on the average shares per trade ratio between NMS Stocks and OTC Equity Securities) for the three months prior to the quarterly tier calculation day and assigning each Equity ATS to a tier based on that ranking and predefined Equity Execution Venue percentages. The Equity ATSS with the higher total quarterly market share will be ranked in Tier 1, and the Equity ATSS with the lowest quarterly market share will be ranked in Tier 4. Specifically, paragraph (b)(2) states that, each quarter, each Equity ATS shall pay the following CAT Fee corresponding to the tier assigned by the Company for such Equity ATS for that quarter:

Tier	Percentage of Equity Execution Venues	Quarterly CAT Fee
1 .....	25.00	\$81,048
2 .....	42.00	37,062
3 .....	23.00	21,126
4 .....	10.00	129

(C) Timing and Manner of Payment

Section 11.4 of the CAT NMS Plan states that the Operating Committee shall establish a system for the collection of fees authorized under the CAT NMS Plan. The Operating Committee may include such collection responsibility as a function of the Plan Processor or another administrator. To implement the payment process to be adopted by the Operating Committee, paragraph (c)(1) of the proposed fee schedule states that the Company will provide each Industry Member with one invoice each quarter for its CAT Fees as determined pursuant to paragraph (b) of the proposed fee schedule, regardless of whether the Industry Member is a member of multiple self-regulatory organizations. Paragraph (c)(1) further states that each Industry Member will pay its CAT Fees to the Company via the centralized system for the collection of CAT Fees established by the Company in the manner prescribed by the Company. SRO will provide Industry Members with details regarding the manner of payment of CAT Fees by Regulatory Circular.

All CAT fees will be billed and collected centrally through the Company via the Plan Processor. Although each Participant will adopt its own fee schedule regarding CAT Fees, no CAT Fees or portion thereof will be collected by the individual Participants. Each Industry Member will receive from the Company one invoice for its applicable CAT fees, not separate

invoices from each Participant of which it is a member. The Industry Members will pay the CAT Fees to the Company via the centralized system for the collection of CAT fees established by the Company.<sup>61</sup>

Section 11.4 of the CAT NMS Plan also states that Participants shall require each Industry Member to pay all applicable authorized CAT Fees within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). Section 11.4 further states that, if an Industry Member fails to pay any such fee when due, such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (i) The Prime Rate plus 300 basis points; or (ii) the maximum rate permitted by applicable law. Therefore, in accordance with Section 11.4 of the CAT NMS Plan, SRO proposed to adopt paragraph (c)(2) of the proposed fee schedule. Paragraph (c)(2) of the proposed fee schedule states that each Industry Member shall pay CAT Fees within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If an Industry Member fails to pay any such fee when due, such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (i) the Prime Rate plus 300 basis points; or (ii) the maximum rate permitted by applicable law.

(D) Sunset Provision

The Operating Committee has determined to require that the CAT Fees automatically sunset two years from the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. Accordingly, SRO proposes paragraph (d) of the fee schedule, which states that “[t]hese Consolidated Audit Trailing Funding Fees will automatically expire two years after the operative date of the amendment of the CAT NMS Plan that adopts CAT fees for the Participants.”

(4) Changes to Prior CAT Fee Plan Amendment

The proposed funding model set forth in this Amendment is a revised version of the Original Proposal. The Commission received a number of comment letters in response to the

<sup>61</sup> Section 11.4 of the CAT NMS Plan.

Original Proposal.<sup>62</sup> The SEC suspended the Original Proposal and instituted proceedings to determine whether to approve or disapprove it.<sup>63</sup> Pursuant to those proceedings, additional comment letters were submitted regarding the proposed funding model.<sup>64</sup> In developing this Amendment, the Operating Committee carefully considered these comments and made a number of changes to the Original Proposal to address these comments where appropriate.

This Amendment makes the following changes to the Original Proposal: (1) Adds two additional CAT Fee tiers for Equity Execution Venues; (2) discounts the market share of Execution Venue ATSS exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF by the average shares per trade ratio between NMS Stocks and OTC Equity Securities (calculated as 0.17% based on available data from the second quarter of 2017) when calculating the market share of Execution Venue ATSS exclusively trading OTC Equity Securities and FINRA; (3) discounts the Options Market Maker quotes by the trade to quote ratio for options (calculated as 0.01% based on available data for June 2016 through June 2017) when calculating message traffic for Options Market Makers; (4) discounts equity market maker quotes by the trade to quote ratio for equities (calculated as 5.43% based on available data for June 2016 through June 2017) when calculating message traffic for equity market makers; (5) decreases the number of tiers for Industry Members (other than the Execution Venue ATSS) from nine to seven; (6) changes the allocation of CAT costs between Equity Execution Venues and Options Execution Venues from 75%/25% to 67%/33%; (7) adjusts tier percentages and recovery allocations for Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATSS); (8) focuses the comparability of CAT Fees on the individual entity level, rather than primarily on the comparability of affiliated entities; (9) commences invoicing of CAT Reporters as promptly as possible following the latest of the operative date of the Consolidated Audit Trail Funding Fees for each of the Participants and the operative date of the CAT NMS Plan amendment

<sup>62</sup> For a description of the comments submitted in response to the Original Proposal, see Suspension Order.

<sup>63</sup> Suspension Order.

<sup>64</sup> See MFA Letter; SIFMA Letter; FIA Principal Traders Group Letter; Belvedere Letter; Sidley Letter; Group One Letter; and Virtu Financial Letter.

adopting CAT Fees for Participants; and (10) requires the proposed fees to automatically expire two years from the operative date of the CAT NMS Plan amendment adopting CAT Fees for the Participants.

#### (A) Equity Execution Venues

##### (i) Small Equity Execution Venues

In the Original Proposal, the Operating Committee proposed to establish two fee tiers for Equity Execution Venues. The Commission and commenters raised the concern that, by establishing only two tiers, smaller Equity Execution Venues (e.g., those Equity ATSS representing less than 1% of NMS market share) would be placed in the same fee tier as larger Equity Execution Venues, thereby imposing an undue or inappropriate burden on competition.<sup>65</sup> To address this concern, the Operating Committee proposes to add two additional tiers for Equity Execution Venues, a third tier for smaller Equity Execution Venues and a fourth tier for the smallest Equity Execution Venues.

Specifically, the Original Proposal had two tiers of Equity Execution Venues. Tier 1 required the largest Equity Execution Venues to pay a quarterly fee of \$63,375. Based on available data, these largest Equity Execution Venues were those that had equity market share of share volume greater than or equal to 1%.<sup>66</sup> Tier 2 required the remaining smaller Equity Execution Venues to pay a quarterly fee of \$38,820.

To address concerns about the potential for the \$38,820 quarterly fee to impose an undue burden on smaller Equity Execution Venues, the Operating Committee determined to move to a four tier structure for Equity Execution Venues. Tier 1 would continue to include the largest Equity Execution Venues by share volume (that is, based on currently available data, those with market share of equity share volume greater than or equal to one percent), and these Equity Execution Venues would be required to pay a quarterly fee of \$81,048. The Operating Committee determined to divide the original Tier 2

<sup>65</sup> See Suspension Order at 31664; SIFMA Letter at 3.

<sup>66</sup> Note that while these equity market share thresholds were referenced as data points to help differentiate between Equity Execution Venue tiers, the proposed funding model is directly driven not by market share thresholds, but rather by fixed percentages of Equity Execution Venues across tiers to account for fluctuating levels of market share across time. Actual market share in any tier will vary based on the actual market activity in a given measurement period, as well as the number of Equity Execution Venues included in the measurement period.

into three tiers. The new Tier 2 Equity Execution Venues, which would include the next largest Equity Execution Venues by equity share volume, would be required to pay a quarterly fee of \$37,062. The new Tier 3 Equity Execution Venues would be required to pay a quarterly fee of \$21,126. The new Tier 4 Equity Execution Venues, which would include the smallest Equity Execution Venues by share volume, would be required to pay a quarterly fee of \$129.

In developing the proposed four tier structure, the Operating Committee considered keeping the existing two tiers, as well as shifting to three, four or five Equity Execution Venue tiers (the maximum number of tiers permitted under the Plan), to address the concerns regarding small Equity Execution Venues. For each of the two, three, four and five tier alternatives, the Operating Committee considered the assignment of various percentages of Equity Execution Venues to each tier as well as various percentage of Equity Execution Venue recovery allocations for each alternative. As discussed below in more detail, each of these options was considered in the context of the full model, as changes in each variable in the model affect other variables in the model when allocating the total CAT costs among CAT Reporters. The Operating Committee determined that the four tier alternative addressed the spectrum of different Equity Execution Venues. The Operating Committee determined that neither a two tier structure nor a three tier structure sufficiently accounted for the range of market shares of smaller Equity Execution Venues. The Operating Committee also determined that, given the limited number of Equity Execution Venues, that a fifth tier was unnecessary to address the range of market shares of the Equity Execution Venues.

By increasing the number of tiers for Equity Execution Venues and reducing the proposed CAT Fees for the smaller Equity Execution Venues, the Operating Committee believes that the proposed fees for Equity Execution Venues would not impose an undue or inappropriate burden on competition under Section 6 or Section 15A of the Exchange Act. Moreover, the Operating Committee believes that the proposed fees appropriately take into account the distinctions in the securities trading operations of different Equity Execution Venues, as required under the funding principles of the CAT NMS Plan.<sup>67</sup> The larger number of tiers more closely tracks the variety of sizes of equity share

<sup>67</sup> Section 11.2(b) of the CAT NMS Plan.

volume of Equity Execution Venues. In addition, the reduction in the fees for the smaller Equity Execution Venues recognizes the potential burden of larger fees on smaller entities. In particular, the very small quarterly fee of \$129 for Tier 4 Equity Execution Venues reflects the fact that certain Equity Execution Venues have a very small share volume due to their typically more focused business models.

Accordingly, with this Amendment, SRO proposes to amend paragraph (b)(2) of the proposed fee schedule to add the two additional tiers for Equity Execution Venues, to establish the percentages and fees for Tiers 3 and 4 as described, and to revise the percentages and fees for Tiers 1 and 2 as described.

(ii) Execution Venues for OTC Equity Securities

In the Original Proposal, the Operating Committee proposed to group Execution Venues for OTC Equity Securities and Execution Venues for NMS Stocks in the same tier structure. The Commission and commenters raised concerns as to whether this determination to place Execution Venues for OTC Equity Securities in the same tier structure as Execution Venues for NMS Stocks would result in an undue or inappropriate burden on competition, recognizing that the application of share volume may lead to different outcomes as applied to OTC Equity Securities and NMS Stocks.<sup>68</sup> To address this concern, the Operating Committee proposes to discount the market share of Execution Venue ATSS exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF by the average shares per trade ratio between NMS Stocks and OTC Equity Securities (0.17% for the second quarter of 2017) in order to adjust for the greater number of shares being traded in the OTC Equity Securities market, which is generally a function of a lower per share price for OTC Equity Securities when compared to NMS Stocks.

As commenters noted, many OTC Equity Securities are priced at less than one dollar—and a significant number at less than one penny—and low-priced shares tend to trade in larger quantities. Accordingly, a disproportionately large number of shares are involved in transactions involving OTC Equity Securities versus NMS Stocks, which has the effect of overstating an Execution Venue's true market share when the Execution Venue is involved in the trading of OTC Equity Securities.

Because the proposed fee tiers are based on market share calculated by share volume, Execution Venue ATSS trading OTC Equity Securities and FINRA may be subject to higher tiers than their operations may warrant.<sup>69</sup> The Operating Committee proposes to address this concern in two ways. First, the Operating Committee proposes to increase the number of Equity Execution Venue tiers, as discussed above. Second, the Operating Committee determined to discount the market share of Execution Venue ATSS exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF when calculating their tier placement. Because the disparity in share volume between Execution Venues trading in OTC Equity Securities and NMS Stocks is based on the different number of shares per trade for OTC Equity Securities and NMS Stocks, the Operating Committee believes that discounting the share volume of such Execution Venue ATSS as well as the market share of the FINRA ORF would address the difference in shares per trade for OTC Equity Securities and NMS Stocks. Specifically, the Operating Committee proposes to impose a discount based on the objective measure of the average shares per trade ratio between NMS Stocks and OTC Equity Securities. Based on available data from the second quarter of 2017, the average shares per trade ratio between NMS Stocks and OTC Equity Securities is 0.17%.

The practical effect of applying such a discount for trading in OTC Equity Securities is to shift Execution Venue ATSS exclusively trading OTC Equity Securities to tiers for smaller Execution Venues and with lower fees. For example, under the Original Proposal, one Execution Venue ATS exclusively trading OTC Equity Securities was placed in the first CAT Fee tier, which had a quarterly fee of \$63,375. With the imposition of the proposed tier changes and the discount, this ATS would be ranked in Tier 3 and would owe a quarterly fee of \$21,126.

In developing the proposed discount for Equity Execution Venue ATSS exclusively trading OTC Equity Securities and FINRA, the Operating Committee evaluated different alternatives to address the concerns related to OTC Equity Securities, including creating a separate tier structure for Execution Venues trading OTC Equity Securities (like the separate tier for Options Execution Venues) as well as the proposed discounting method for Execution Venue ATSS exclusively trading OTC Equity

Securities and FINRA. For these alternatives, the Operating Committee considered how each alternative would affect the recovery allocations. In addition, each of these options was considered in the context of the full model, as changes in each variable in the model affect other variables in the model when allocating the total CAT costs among CAT Reporters. The Operating Committee did not adopt a separate tier structure for Equity Execution Venues trading OTC Equity Securities as they determined that the proposed discount approach appropriately addresses the concern. The Operating Committee determined to adopt the proposed discount because it directly relates to the concern regarding the trading patterns and operations in the OTC Equity Securities markets, and is an objective discounting method.

By increasing the number of tiers for Equity Execution Venues and imposing a discount on the market share of share volume calculation for trading in OTC Equity Securities, the Operating Committee believes that the proposed fees for Equity Execution Venues would not impose an undue or inappropriate burden on competition under Section 6 or Section 15A of the Exchange Act. Moreover, the Operating Committee believes that the proposed fees appropriately take into account the distinctions in the securities trading operations of different Equity Execution Venues, as required under the funding principles of the CAT NMS Plan.<sup>70</sup> As discussed above, the larger number of tiers more closely tracks the variety of sizes of equity share volume of Equity Execution Venues. In addition, the proposed discount recognizes the different types of trading operations at Equity Execution Venues trading OTC Equity Securities versus those trading NMS Stocks, thereby more closely matching the relative revenue generation by Equity Execution Venues trading OTC Equity Securities to their CAT Fees.

Accordingly, with this Amendment, SRO proposes to amend paragraph (b)(2) of the proposed fee schedule to indicate that the market share for Equity ATSS exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF would be discounted. In addition, as discussed above, to address concerns related to smaller ATSS, including those that exclusively trade OTC Equity Securities, SRO proposes to amend paragraph (b)(2) of the proposed fee schedule to add two additional tiers for Equity Execution Venues, to establish the percentages and fees for

<sup>68</sup> See Suspension Order at 31664–5.

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

<sup>70</sup> Section 11.2(b) of the CAT NMS Plan.

Tiers 3 and 4 as described, and to revise the percentages and fees for Tiers 1 and 2 as described.

#### (B) Market Makers

In the Original Proposal, the Operating Committee proposed to include both Options Market Maker quotes and equities market maker quotes in the calculation of total message traffic for such market makers for purposes of tiering for Industry Members (other than Execution Venue ATSS). The Commission and commenters raised questions as to whether the proposed treatment of Options Market Maker quotes may result in an undue or inappropriate burden on competition or may lead to a reduction in market quality.<sup>71</sup> To address this concern, the Operating Committee determined to discount the Options Market Maker quotes by the trade to quote ratio for options when calculating message traffic for Options Market Makers. Similarly, to avoid disincentives to quoting behavior on the equities side as well, the Operating Committee determined to discount equity market maker quotes by the trade to quote ratio for equities when calculating message traffic for equities market makers.

In the Original Proposal, market maker quotes were treated the same as other message traffic for purposes of tiering for Industry Members (other than Execution Venue ATSS). Commenters noted, however, that charging Industry Members on the basis of message traffic will impact market makers disproportionately because of their continuous quoting obligations. Moreover, in the context of options market makers, message traffic would include bids and offers for every listed options strikes and series, which are not an issue for equities.<sup>72</sup> The Operating Committee proposes to address this concern in two ways. First, the Operating Committee proposes to discount Options Market Maker quotes when calculating the Options Market Makers' tier placement. Specifically, the Operating Committee proposes to impose a discount based on the objective measure of the trade to quote ratio for options. Based on available data from June 2016 through June 2017, the trade to quote ratio for options is 0.01%. Second, the Operating Committee proposes to discount equities market maker quotes when calculating the equities market makers'

tier placement. Specifically, the Operating Committee proposes to impose a discount based on the objective measure of the trade to quote ratio for equities. Based on available data for June 2016 through June 2017, this trade to quote ratio for equities is 5.43%.

The practical effect of applying such discounts for quoting activity is to shift market makers' calculated message traffic lower, leading to the potential shift to tiers for lower message traffic and reduced fees. Such an approach would move sixteen Industry Member CAT Reporters that are market makers to a lower tier than in the Original Proposal. For example, under the Original Proposal, Broker-Dealer Firm ABC was placed in the first CAT Fee tier, which had a quarterly fee of \$101,004. With the imposition of the proposed tier changes and the discount, Broker-Dealer Firm ABC, an options market maker, would be ranked in Tier 3 and would owe a quarterly fee of \$40,899.

In developing the proposed market maker discounts, the Operating Committee considered various discounts for Options Market Makers and equity market makers, including discounts of 50%, 25%, 0.00002%, as well as the 5.43% for option market makers and 0.01% for equity market makers. Each of these options were considered in the context of the full model, as changes in each variable in the model affect other variables in the model when allocating the total CAT costs among CAT Reporters. The Operating Committee determined to adopt the proposed discount because it directly relates to the concern regarding the quoting requirement, is an objective discounting method, and has the desired potential to shift market makers to lower fee tiers.

By imposing a discount on Options Market Makers and equities market makers' quoting traffic for the calculation of message traffic, the Operating Committee believes that the proposed fees for market makers would not impose an undue or inappropriate burden on competition under Section 6 or Section 15A of the Exchange Act. Moreover, the Operating Committee believes that the proposed fees appropriately take into account the distinctions in the securities trading operations of different Industry Members, and avoid disincentives, such as a reduction in market quality, as required under the funding principles of the CAT NMS Plan.<sup>73</sup> The proposed discounts recognize the different types

of trading operations presented by Options Market Makers and equities market makers, as well as the value of the market makers' quoting activity to the market as a whole. Accordingly, the Operating Committee believes that the proposed discounts will not impact the ability of small Options Market Makers or equities market makers to provide liquidity.

Accordingly, with this Amendment, SRO proposes to amend paragraph (b)(1) of the proposed fee schedule to indicate that the message traffic related to equity market maker quotes and Options Market Maker quotes would be discounted. In addition, SRO proposes to define the term "Options Market Maker" in paragraph (a)(1) of the proposed fee schedule.

#### (C) Comparability/Allocation of Costs

Under the Original Proposal, 75% of CAT costs were allocated to Industry Members (other than Execution Venue ATSS) and 25% of CAT costs were allocated to Execution Venues. This cost allocation sought to maintain the greatest level of comparability across the funding model, where comparability considered affiliations among or between CAT Reporters. The Commission and commenters expressed concerns regarding whether the proposed 75%/25% allocation of CAT costs is consistent with the Plan's funding principles and the Exchange Act, including whether the allocation places a burden on competition or reduces market quality. The Commission and commenters also questioned whether the approach of accounting for affiliations among CAT Reporters in setting CAT Fees disadvantages non-affiliated CAT Reporters or otherwise burdens competition in the market for trading services.<sup>74</sup>

In response to these concerns, the Operating Committee determined to revise the proposed funding model to focus the comparability of CAT Fees on the individual entity level, rather than primarily on the comparability of affiliated entities. In light of the interconnected nature of the various aspects of the funding model, the Operating Committee determined to revise various aspects of the model to enhance comparability at the individual entity level. Specifically, to achieve such comparability, the Operating Committee determined to (1) decrease the number of tiers for Industry Members (other than Execution Venue

<sup>71</sup> See Suspension Order at 31663-4; SIFMA Letter at 4-6; FIA Principal Traders Group Letter at 3; Sidley Letter at 2-6; Group One Letter at 2-6; and Belvedere Letter at 2.

<sup>72</sup> Suspension Order at 31664.

<sup>73</sup> Section 11.2(b) of the CAT NMS Plan.

<sup>74</sup> See Suspension Order at 31662-3; SIFMA Letter at 3; Sidley Letter at 6-7; Group One Letter at 2; and Belvedere Letter at 2.

ATs) from nine to seven; (2) change the allocation of CAT costs between Equity Execution Venues and Options Execution Venues from 75%/25% to 67%/33%; and (3) adjust tier percentages and recovery allocations for Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATs). With these changes, the proposed funding model provides fee comparability for the largest individual entities, with the largest Industry Members (other than Execution Venue ATs), Equity Execution Venues and Options Execution Venues each paying a CAT Fee of approximately \$81,000 each quarter.

(i) Number of Industry Member Tiers

In the Original Proposal, the proposed funding model had nine tiers for Industry Members (other than Execution Venue ATs). The Operating Committee determined that reducing the number of tiers from nine tiers to seven tiers (and adjusting the predefined Industry Member Percentages as well) continues to provide a fair allocation of fees among Industry Members and appropriately distinguishes between Industry Members with differing levels of message traffic. In reaching this conclusion, the Operating Committee considered historical message traffic generated by Industry Members across all exchanges and as submitted to FINRA's OATS, and considered the distribution of firms with similar levels of message traffic, grouping together firms with similar levels of message traffic. Based on this, the Operating Committee determined that seven tiers would group firms with similar levels of message traffic, while also achieving greater comparability in the model for the individual CAT Reporters with the greatest market share or message traffic.

In developing the proposed seven tier structure, the Operating Committee considered remaining at nine tiers, as well as reducing the number of tiers down to seven when considering how to address the concerns raised regarding comparability. For each of the alternatives, the Operating Committee considered the assignment of various percentages of Industry Members to each tier as well as various percentages of Industry Member recovery allocations for each alternative. Each of these options was considered in the context of its effects on the full funding model, as changes in each variable in the model affect other variables in the model when allocating the total CAT costs among CAT Reporters. The Operating Committee determined that the seven tier alternative provided the most fee

comparability at the individual entity level for the largest CAT Reporters, while both providing logical breaks in tiering for Industry Members with different levels of message traffic and a sufficient number of tiers to provide for the full spectrum of different levels of message traffic for all Industry Members.

(ii) Allocation of CAT Costs Between Equity and Options Execution Venues

The Operating Committee also determined to adjust the allocation of CAT costs between Equity Execution Venues and Options Execution Venues to enhance comparability at the individual entity level. In the Original Proposal, 75% of Execution Venue CAT costs were allocated to Equity Execution Venues, and 25% of Execution Venue CAT costs were allocated to Options Execution Venues. To achieve the goal of increased comparability at the individual entity level, the Operating Committee analyzed a range of alternative splits for revenue recovery between Equity and Options Execution Venues, along with other changes in the proposed funding model. Based on this analysis, the Operating Committee determined to allocate 67 percent of Execution Venue costs recovered to Equity Execution Venues and 33 percent to Options Execution Venues. The Operating Committee determined that a 67/33 allocation between Equity and Options Execution Venues enhances the level of fee comparability for the largest CAT Reporters. Specifically, the largest Equity and Options Execution Venues would pay a quarterly CAT Fee of approximately \$81,000.

In developing the proposed allocation of CAT costs between Equity and Options Execution Venues, the Operating Committee considered various different options for such allocation, including keeping the original 75%/25% allocation, as well as shifting to a 70%/30%, 67%/33%, or 57.75%/42.25% allocation. For each of the alternatives, the Operating Committee considered the effect each allocation would have on the assignment of various percentages of Equity Execution Venues to each tier as well as various percentages of Equity Execution Venue recovery allocations for each alternative. Moreover, each of these options was considered in the context of the full model, as changes in each variable in the model affect other variables in the model when allocating the total CAT costs among CAT Reporters. The Operating Committee determined that the 67%/33% allocation between Equity and Options Execution Venues provided the greatest

level of fee comparability at the individual entity level for the largest CAT Reporters, while still providing for appropriate fee levels across all tiers for all CAT Reporters.

(iii) Allocation of Costs Between Execution Venues and Industry Members

The Operating Committee determined to allocate 25% of CAT costs to Execution Venues and 75% to Industry Members (other than Execution Venue ATs), as it had in the Original Proposal. The Operating Committee determined that this 75%/25% allocation, along with the other changes proposed above, led to the most comparable fees for the largest Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATs). The largest Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATs) would each pay a quarterly CAT Fee of approximately \$81,000.

As a preliminary matter, the Operating Committee determined that it is appropriate to allocate most of the costs to create, implement and maintain the CAT to Industry Members for several reasons. First, there are many more broker-dealers expected to report to the CAT than Participants (*i.e.*, 1,541 broker-dealer CAT Reporters versus 22 Participants). Second, since most of the costs to process CAT reportable data is generated by Industry Members, Industry Members could be expected to contribute toward such costs. Finally, as noted by the SEC, the CAT "substantially enhance[s] the ability of the SROs and the Commission to oversee today's securities markets,"<sup>75</sup> thereby benefitting all market participants. After making this determination, the Operating Committee analyzed several different cost allocations, as discussed further below, and determined that an allocation where 75% of the CAT costs should be borne by the Industry Members (other than Execution Venue ATs) and 25% should be paid by Execution Venues was most appropriate and led to the greatest comparability of CAT Fees for the largest CAT Reporters.

In developing the proposed allocation of CAT costs between Execution Venues and Industry Members (other than Execution Venue ATs), the Operating Committee considered various different options for such allocation, including keeping the original 75%/25%

<sup>75</sup> Securities Exchange Act Rel. No. 67457 (Jul 18, 2012), 77 FR 45722, 45726 (Aug. 1, 2012) ("Rule 613 Adopting Release").

allocation, as well as shifting to an 80%/20%, 70%/30%, or 65%/35% allocation. Each of these options was considered in the context of the full model, including the effect on each of the changes discussed above, as changes in each variable in the model affect other variables in the model when allocating the total CAT costs among CAT Reporters. In particular, for each of the alternatives, the Operating Committee considered the effect each allocation had on the assignment of various percentages of Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATs) to each relevant tier as well as various percentages of recovery allocations for each tier. The Operating Committee determined that the 75%/25% allocation between Execution Venues and Industry Members (other than Execution Venue ATs) provided the greatest level of fee comparability at the individual entity level for the largest CAT Reporters, while still providing for appropriate fee levels across all tiers for all CAT Reporters.

#### (iv) Affiliations

The funding principles set forth in Section 11.2 of the Plan require that the fees charged to CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venue and/or Industry Members). The proposed funding model satisfies this requirement. As discussed above, under the proposed funding model, the largest Equity Execution Venues, Options Execution Venues, and Industry Members (other than Execution Venue ATs) pay approximately the same fee. Moreover, the Operating Committee believes that the proposed funding model takes into consideration affiliations between or among CAT Reporters as complexes with multiple CAT Reporters will pay the appropriate fee based on the proposed fee schedule for each of the CAT Reporters in the complex. For example, a complex with a Tier 1 Equity Execution Venue and Tier 2 Industry Member will pay the same as another complex with a Tier 1 Equity Execution Venue and Tier 2 Industry Member.

#### (v) Fee Schedule Changes

Accordingly, with this Amendment, SRO proposes to amend paragraphs (b)(1) and (2) of the proposed fee schedule to reflect the changes discussed in this section. Specifically,

SRO proposes to amend paragraph (b)(1) and (2) of the proposed fee schedule to update the number of tiers, and the fees and percentages assigned to each tier to reflect the described changes.

#### (D) Market Share/Message Traffic

In the Original Proposal, the Operating Committee proposed to charge Execution Venues based on market share and Industry Members (other than Execution Venue ATs) based on message traffic. Commenters questioned the use of the two different metrics for calculating CAT Fees.<sup>76</sup> The Operating Committee continues to believe that the proposed use of market share and message traffic satisfies the requirements of the Exchange Act and the funding principles set forth in the CAT NMS Plan. Accordingly, the proposed funding model continues to charge Execution Venues based on market share and Industry Members (other than Execution Venue ATs) based on message traffic.

In drafting the Plan and the Original Proposal, the Operating Committee expressed the view that the correlation between message traffic and size does not apply to Execution Venues, which they described as producing similar amounts of message traffic regardless of size. The Operating Committee believed that charging Execution Venues based on message traffic would result in both large and small Execution Venues paying comparable fees, which would be inequitable, so the Operating Committee determined that it would be more appropriate to treat Execution Venues differently from Industry Members in the funding model. Upon a more detailed analysis of available data, however, the Operating Committee noted that Execution Venues have varying levels of message traffic. Nevertheless, the Operating Committee continues to believe that a bifurcated funding model—where Industry Members (other than Execution Venue ATs) are charged fees based on message traffic and Execution Venues are charged based on market share—complies with the Plan and meets the standards of the Exchange Act for the reasons set forth below.

Charging Industry Members based on message traffic is the most equitable means for establishing fees for Industry Members (other than Execution Venue ATs). This approach will assess fees to Industry Members that create larger volumes of message traffic that are relatively higher than those fees charged to Industry Members that create smaller

volumes of message traffic. Since message traffic, along with fixed costs of the Plan Processor, is a key component of the costs of operating the CAT, message traffic is an appropriate criterion for placing Industry Members in a particular fee tier.

The Operating Committee also believes that it is appropriate to charge Execution Venues CAT Fees based on their market share. In contrast to Industry Members (other than Execution Venue ATs), which determine the degree to which they produce the message traffic that constitutes CAT Reportable Events, the CAT Reportable Events of Execution Venues are largely derivative of quotations and orders received from Industry Members that the Execution Venues are required to display. The business model for Execution Venues, however, is focused on executions in their markets. As a result, the Operating Committee believes that it is more equitable to charge Execution Venues based on their market share rather than their message traffic.

Similarly, focusing on message traffic would make it more difficult to draw distinctions between large and small exchanges, including options exchanges in particular. For instance, the Operating Committee analyzed the message traffic of Execution Venues and Industry Members for the period of April 2017 to June 2017 and placed all CAT Reporters into a nine-tier framework (*i.e.*, a single tier may include both Execution Venues and Industry Members). The Operating Committee's analysis found that the majority of exchanges (15 total) were grouped in Tiers 1 and 2. Moreover, virtually all of the options exchanges were in Tiers 1 and 2.<sup>77</sup> Given the concentration of options exchanges in Tiers 1 and 2, the Operating Committee believes that using a funding model based purely on message traffic would make it more difficult to distinguish between large and small options exchanges, as compared to the proposed bifurcated fee approach.

In addition, the Operating Committee also believes that it is appropriate to treat ATs as Execution Venues under the proposed funding model since ATs have business models that are similar to those of exchanges, and ATs also compete with exchanges. For these reasons, the Operating Committee believes that charging Execution Venues based on market share is more appropriate and equitable than charging

<sup>76</sup> Suspension Order at 31663; FIA Principal Traders Group Letter at 2.

<sup>77</sup> The Participants note that this analysis did not place MIAx PEARL in Tier 1 or Tier 2 since the exchange commenced trading on February 6, 2017.



Execution Venues based on message traffic.

(E) Time Limit

In the Original Proposal, the Operating Committee did not impose any time limit on the application of the proposed CAT Fees. As discussed above, the Operating Committee developed the proposed funding model by analyzing currently available historical data. Such historical data, however, is not as comprehensive as data that will be submitted to the CAT. Accordingly, the Operating Committee believes that it will be appropriate to revisit the funding model once CAT Reporters have actual experience with the funding model. Accordingly, the Operating Committee proposes to include a sunset provision in the proposed fee model. The proposed CAT Fees will sunset two years after the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. Specifically, SRO proposes to add paragraph (d) of the proposed fee schedule to include this sunset provision. Such a provision will provide the Operating Committee and other market participants with the opportunity to reevaluate the performance of the proposed funding model.

(F) Tier Structure/Decreasing Cost per Unit

In the Original Proposal, the Operating Committee determined to use a tiered fee structure. The Commission and commenters questioned whether the decreasing cost per additional unit (of message traffic in the case of Industry Members, or of share volume in the case of Execution Venues) in the proposed fee schedules burdens competition by disadvantaging small Industry Members and Execution Venues and/or by creating barriers to entry in the market for trading services and/or the market for broker-dealer services.<sup>78</sup>

The Operating Committee does not believe that decreasing cost per additional unit in the proposed fee schedules places an unfair competitive burden on Small Industry Members and Execution Venues. While the cost per unit of message traffic or share volume necessarily will decrease as volume increases in any tiered fee model using fixed fee percentages and, as a result, Small Industry Members and small Execution Venues may pay a larger fee per message or share, this comment fails to take account of the substantial differences in the absolute fees paid by

Small Industry Members and small Execution Venues as opposed to large Industry Members and large Execution Venues. For example, under the fee proposals, Tier 7 Industry Members would pay a quarterly fee of \$105, while Tier 1 Industry Members would pay a quarterly fee of \$81,483. Similarly, a Tier 4 Equity Execution Venue would pay a quarterly fee of \$129, while a Tier 1 Equity Execution Venue would pay a quarterly fee of \$81,048. Thus, Small Industry Members and small Execution Venues are not disadvantaged in terms of the total fees that they actually pay. In contrast to a tiered model using fixed fee percentages, the Operating Committee believes that strictly variable or metered funding models based on message traffic or share volume would be more likely to affect market behavior and may present administrative challenges (e.g., the costs to calculate and monitor fees may exceed the fees charged to the smallest CAT Reporters).

(G) Other Alternatives Considered

In addition to the various funding model alternatives discussed above regarding discounts, number of tiers and allocation percentages, the Operating Committee also discussed other possible funding models. For example, the Operating Committee considered allocating the total CAT costs equally among each of the Participants, and then permitting each Participant to charge its own members as it deems appropriate.<sup>79</sup> The Operating Committee determined that such an approach raised a variety of issues, including the likely inconsistency of the ensuing charges, potential for lack of transparency, and the impracticality of multiple SROs submitting invoices for CAT charges. The Operating Committee therefore determined that the proposed funding model was preferable to this alternative.

(H) Industry Member Input

Commenters expressed concern regarding the level of Industry Member input into the development of the proposed funding model, and certain commenters have recommended a greater role in the governance of the CAT.<sup>80</sup> The Participants previously addressed this concern in its letters responding to comments on the Plan and the CAT Fees.<sup>81</sup> As discussed in

those letters, the Participants discussed the funding model with the Development Advisory Group (“DAG”), the advisory group formed to assist in the development of the Plan, during its original development.<sup>82</sup> Moreover, Industry Members currently have a voice in the affairs of the Operating Committee and operation of the CAT generally through the Advisory Committee established pursuant to Rule 613(b)(7) and Section 4.13 of the Plan. The Advisory Committee attends all meetings of the Operating Committee, as well as meetings of various subcommittees and working groups, and provides valuable and critical input for the Participants’ and Operating Committee’s consideration. The Operating Committee continues to believe that that Industry Members have an appropriate voice regarding the funding of the Company.

(I) Conflicts of Interest

Commenters also raised concerns regarding Participant conflicts of interest in setting the CAT Fees.<sup>83</sup> The Participants previously responded to this concern in both the Plan Response Letter and the Fee Rule Response Letter.<sup>84</sup> As discussed in those letters, the Plan, as approved by the SEC, adopts various measures to protect against the potential conflicts issues raised by the Participants’ fee-setting authority. Such measures include the operation of the Company as a not for profit business league and on a break-even basis, and the requirement that the Participants file all CAT Fees under Section 19(b) of the Exchange Act. The Operating Committee continues to believe that these measures adequately protect against concerns regarding conflicts of interest in setting fees, and that additional measures, such as an independent third party to evaluate an appropriate CAT Fee, are unnecessary.

(J) Fee Transparency

Commenters also argued that they could not adequately assess whether the CAT Fees were fair and equitable because the Operating Committee has not provided details as to what the Participants are receiving in return for the CAT Fees.<sup>85</sup> The Operating Committee provided a detailed

Brent J. Fields, Secretary, SEC (June 29, 2017) (“Fee Rule Response Letter”).

<sup>82</sup> Fee Rule Response Letter at 2; Plan Response Letter at 18.

<sup>83</sup> See Suspension Order at 31662; FIA Principal Traders Group at 3.

<sup>84</sup> See Plan Response Letter at 16, 17; Fee Rule Response Letter at 10–12.

<sup>85</sup> See FIA Principal Traders Group at 3; SIFMA Letter at 3.

<sup>79</sup> See FIA Principal Traders Group Letter at 2; Belvedere Letter at 4.

<sup>80</sup> See Suspension Order at 31662; MFA Letter at 1–2.

<sup>81</sup> Letter from Participants to Brent J. Fields, Secretary, SEC (Sept. 23, 2016) (“Plan Response Letter”); Letter from CAT NMS Plan Participants to

<sup>78</sup> Suspension Order at 31667.



discussion of the proposed funding model in the Plan, including the expenses to be covered by the CAT Fees. In addition, the agreement between the Company and the Plan Processor sets forth a comprehensive set of services to be provided to the Company with regard to the CAT. Such services include, without limitation: user support services (e.g., a help desk); tools to allow each CAT Reporter to monitor and correct their submissions; a comprehensive compliance program to monitor CAT Reporters' adherence to Rule 613; publication of detailed Technical Specifications for Industry Members and Participants; performing data linkage functions; creating comprehensive data security and confidentiality safeguards; creating query functionality for regulatory users (i.e., the Participants, and the SEC and SEC staff); and performing billing and collection functions. The Operating Committee further notes that the services provided by the Plan Processor and the costs related thereto were subject to a bidding process.

#### (K) Funding Authority

Commenters also questioned the authority of the Operating Committee to impose CAT Fees on Industry Members.<sup>86</sup> The Participants previously responded to this same comment in the Plan Response Letter and the Fee Rule Response Letter.<sup>87</sup> As the Participants previously noted, SEC Rule 613 specifically contemplates broker-dealers contributing to the funding of the CAT. In addition, as noted by the SEC, the CAT "substantially enhance[s] the ability of the SROs and the Commission to oversee today's securities markets,"<sup>88</sup> thereby benefitting all market participants. Therefore, the Operating Committee continues to believe that it is equitable for both Participants and Industry Members to contribute to funding the cost of the CAT.

#### 2. Statutory Basis

SRO believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,<sup>89</sup> which require, among other things, that the SRO 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 dealer, and Section 6(b)(4) of the Act,<sup>90</sup> which requires that SRO rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using its facilities. As discussed above, the SEC approved the bifurcated, tiered, fixed fee funding model in the CAT NMS Plan, finding it was reasonable and that it equitably allocated fees among Participants and Industry Members. SRO believes that the proposed tiered fees adopted pursuant to the funding model approved by the SEC in the CAT NMS Plan are reasonable, equitably allocated and not unfairly discriminatory.

SRO believes that this proposal is consistent with the Act because it implements, interprets or clarifies the provisions of the Plan, and is designed to assist SRO and its Industry Members 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."<sup>91</sup> To the extent that this proposal implements, interprets or clarifies the Plan and applies specific requirements to Industry Members, SRO believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

SRO believes that the proposed tiered fees are reasonable. First, the total CAT Fees to be collected would be directly associated with the costs of establishing and maintaining the CAT, where such costs include Plan Processor costs and costs related to insurance, third party services and the operational reserve. The CAT Fees would not cover Participant services unrelated to the CAT. In addition, any surplus CAT Fees cannot be distributed to the individual Participants; such surpluses must be used as a reserve to offset future fees. Given the direct relationship between the fees and the CAT costs, SRO believes that the total level of the CAT Fees is reasonable.

In addition, SRO believes that the proposed CAT Fees are reasonably designed to allocate the total costs of the CAT equitably between and among the Participants and Industry Members, and are therefore not unfairly discriminatory. As discussed in detail above, the proposed tiered fees impose

comparable fees on similarly situated CAT Reporters. For example, those with a larger impact on the CAT (measured via message traffic or market share) pay higher fees, whereas CAT Reporters with a smaller impact pay lower fees. Correspondingly, the tiered structure lessens the impact on smaller CAT Reporters by imposing smaller fees on those CAT Reporters with less market share or message traffic. In addition, the fee structure takes into consideration distinctions in securities trading operations of CAT Reporters, including ATSs trading OTC Equity Securities, and equity and options market makers.

Moreover, SRO believes that the division of the total CAT costs between Industry Members and Execution Venues, and the division of the Execution Venue portion of total costs between Equity and Options Execution Venues, is reasonably designed to allocate CAT costs among CAT Reporters. The 75%/25% division between Industry Members (other than Execution Venue ATSs) and Execution Venues maintains the greatest level of comparability across the funding model. For example, the cost allocation establishes fees for the largest Industry Members (i.e., those Industry Members in Tiers 1) that are comparable to the largest Equity Execution Venues and Options Execution Venues (i.e., those Execution Venues in Tier 1). Furthermore, the allocation of total CAT cost recovery recognizes the difference in the number of CAT Reporters that are Industry Members (other than Execution Venue ATSs) versus CAT Reporters that are Execution Venues. Similarly, the 67%/33% allocation between Equity and Options Execution Venues also helps to provide fee comparability for the largest CAT Reporters.

Finally, SRO 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 fixed fee. Such factors are crucial to estimating a reliable revenue stream for the Company and for permitting CAT Reporters 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 Act<sup>92</sup> require that SRO rules not impose any burden on competition that is not necessary or appropriate. SRO does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance

<sup>86</sup> See Suspension Order at 31661-2; SIFMA Letter at 2.

<sup>87</sup> See Plan Response Letter at 9-10; Fee Rule Response Letter at 3-4.

<sup>88</sup> Rule 613 Adopting Release at 45726.

<sup>89</sup> 15 U.S.C. 78f(b)(5).

<sup>90</sup> 15 U.S.C. 78f(b)(4).

<sup>91</sup> Approval Order at 84697.

<sup>92</sup> 15 U.S.C. 78f(b)(8).

of the purposes of the Act. SRO notes that the proposed rule change implements provisions of the CAT NMS Plan approved by the Commission, and is designed to assist SRO in meeting its regulatory obligations pursuant to the Plan. Similarly, all national securities exchanges and FINRA are proposing this proposed fee schedule 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 exchanges and FINRA.

Moreover, as previously described, SRO believes that the proposed rule change fairly and equitably allocates costs among CAT Reporters. In particular, the proposed fee schedule is structured to impose comparable fees on similarly situated CAT Reporters, and lessen the impact on smaller CAT Reporters. CAT Reporters with similar levels of CAT activity will pay similar fees. For example, Industry Members (other than Execution Venue ATSs) with higher levels of message traffic will pay higher fees, and those with lower levels of message traffic will pay lower fees. Similarly, Execution Venue ATSs and other Execution Venues with larger market share will pay higher fees, and those with lower levels of market share will pay lower fees. Therefore, given that there is generally a relationship between message traffic and/or market share to the CAT Reporter's size, smaller CAT Reporters generally pay less than larger CAT Reporters. Accordingly, SRO does not believe that the CAT Fees would have a disproportionate effect on smaller or larger CAT Reporters. In addition, ATSs and exchanges will pay the same fees based on market share. Therefore, SRO does not believe that the fees will impose any burden on the competition between ATSs and exchanges. Accordingly, SRO believes that the proposed fees will minimize the potential for adverse effects on competition between CAT Reporters in the market.

Furthermore, the tiered, fixed fee funding model limits the disincentives to providing liquidity to the market. Therefore, the proposed fees are structured to limit burdens on competitive quoting and other liquidity provision in the market.

In addition, the Operating Committee believes that the proposed changes to the Original Proposal, as discussed above in detail, address certain competitive concerns raised by commenters, including concerns related to, among other things, smaller ATSs, ATSs trading OTC Equity Securities, market making quoting and fee

comparability. As discussed above, the Operating Committee believes that the proposals address the competitive concerns raised by commenters.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

SRO has set forth responses to comments received regarding the Original Proposal in Section 3(a)(4) above.

**III. Solicitation of Comments on Amendment No. 1**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 is consistent with the Act. In particular, the Commission seeks comment on the following:

*Allocation of Costs*

(1) Commenters' views as to whether the allocation of CAT costs is consistent with the funding principle expressed in the CAT NMS Plan that requires the Operating Committee to "avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality."<sup>93</sup>

(2) Commenters' views as to whether the allocation of 25% of CAT costs to the Execution Venues (including all the Participants) and 75% to Industry Members, will incentivize or disincentivize the Participants to effectively and efficiently manage the CAT costs incurred by the Participants since they will only bear 25% of such costs.

(3) Commenters' views on the determination to allocate 75% of all costs incurred by the Participants from November 21, 2016 to November 21, 2017 to Industry Members (other than Execution Venue ATSs), when such costs are development and build costs and when Industry Member reporting is scheduled to commence a year later, including views on whether such "fees, costs and expenses . . . [are] fairly and reasonably shared among the Participants and Industry Members" in accordance with the CAT NMS Plan.<sup>94</sup>

(4) Commenters' views on whether an analysis of the ratio of the expected Industry Member-reported CAT messages to the expected SRO-reported CAT messages should be the basis for determining the allocation of costs between Industry Members and Execution Venues.<sup>95</sup>

(5) Any additional data analysis on the allocation of CAT costs, including any existing supporting evidence.

*Comparability*

(6) Commenters' views on the shift in the standard used to assess the comparability of CAT Fees, with the emphasis now on comparability of individual entities instead of affiliated entities, including views as to whether this shift is consistent with the funding principle expressed in the CAT NMS Plan that requires the Operating Committee to establish a fee structure in which the fees charged to "CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venues and/or Industry Members)."<sup>96</sup>

(7) Commenters' views as to whether the reduction in the number of tiers for Industry Members (other than Execution Venue ATSs) from nine to seven, the revised allocation of CAT costs between Equity Execution Venues and Options Execution Venues from a 75%/25% split to a 67%/33% split, and the adjustment of all tier percentages and recovery allocations achieves comparability across individual entities, and whether these changes should have resulted in a change to the allocation of 75% of total CAT costs to Industry Members (other than Execution Venue ATSs) and 25% of such costs to Execution Venues.

*Discounts*

(8) Commenters' views as to whether the discounts for options market-makers, equities market-makers, and Equity ATSs trading OTC Equity Securities are clear, reasonable, and consistent with the funding principle expressed in the CAT NMS Plan that requires the Operating Committee to "avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality,"<sup>97</sup> including views as to whether the discounts for market-makers limit any potential disincentives to act as a market-maker and/or to provide liquidity due to CAT fees.

message traffic from different regulatory data sources, but the Commission did estimate the ratio of all SRO audit trail messages to OATS audit trail messages to be 1.9431. See Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30613, 30721 n.919 and accompanying text (May 17, 2016).

<sup>96</sup> Section 11.2(c) of the CAT NMS Plan.

<sup>97</sup> Section 11.2(e) of the CAT NMS Plan.

<sup>93</sup> Section 11.2(e) of the CAT NMS Plan.

<sup>94</sup> Section 11.1(c) of the CAT NMS Plan.

<sup>95</sup> The Notice for the CAT NMS Plan did not provide a comprehensive count of audit trail

### *Calculation of Costs and Imposition of CAT Fees*

(9) Commenters' views as to whether the amendment provides sufficient information regarding the amount of costs incurred from November 21, 2016 to November 21, 2017, particularly, how those costs were calculated, how those costs relate to the proposed CAT Fees, and how costs incurred after November 21, 2017 will be assessed upon Industry Members and Execution Venues;

(10) Commenters' views as to whether the timing of the imposition and collection of CAT Fees on Execution Venues and Industry Members is reasonably related to the timing of when the Company expects to incur such development and implementation costs.<sup>98</sup>

(11) Commenters' views on dividing CAT costs equally among each of the Participants, and then each Participant charging its own members as it deems appropriate, taking into consideration the possibility of inconsistency in charges, the potential for lack of transparency, and the impracticality of multiple SROs submitting invoices for CAT charges.

### *Burdens on Competition and Barriers to Entry*

(12) Commenters' views as to whether the allocation of 75% of CAT costs to Industry Members (other than Execution Venue ATs) imposes any burdens on competition to Industry Members, including views on what baseline competitive landscape the Commission should consider when analyzing the proposed allocation of CAT costs.

(13) Commenters' views on the burdens on competition, including the relevant markets and services and the impact of such burdens on the baseline competitive landscape in those relevant markets and services.

(14) Commenters' views on any potential burdens imposed by the fees on competition between and among CAT Reporters, including views on which baseline markets and services the fees could have competitive effects on and whether the fees are designed to minimize such effects.

(15) Commenters' general views on the impact of the proposed fees on economies of scale and barriers to entry.

(16) Commenters' views on the baseline economies of scale and barriers to entry for Industry Members and Execution Venues and the relevant markets and services over which these economies of scale and barriers to entry exist.

(17) Commenters' views as to whether a tiered fee structure necessarily results in less active tiers paying more per unit than those in more active tiers, thus creating economies of scale, with supporting information if possible.

(18) Commenters' views as to how the level of the fees for the least active tiers would or would not affect barriers to entry.

(19) Commenters' views on whether the difference between the cost per unit (messages or market share) in less active tiers compared to the cost per unit in more active tiers creates regulatory economies of scale that favor larger competitors and, if so:

(a) How those economies of scale compare to operational economies of scale; and

(b) Whether those economies of scale reduce or increase the current advantages enjoyed by larger competitors or otherwise alter the competitive landscape.

(20) Commenters' views on whether the fees could affect competition between and among national securities exchanges and FINRA, in light of the fact that implementation of the fees does not require the unanimous consent of all such entities, and, specifically:

(a) Whether any of the national securities exchanges or FINRA are disadvantaged by the fees; and

(b) If so, whether any such disadvantages would be of a magnitude that would alter the competitive landscape.

(21) Commenters' views on any potential burden imposed by the fees on competitive quoting and other liquidity provision in the market, including, specifically:

(a) Commenters' views on the kinds of disincentives that discourage liquidity provision and/or disincentives that the Commission should consider in its analysis;

(b) Commenters' views as to whether the fees could disincentivize the provision of liquidity; and

(c) Commenters' views as to whether the fees limit any disincentives to provide liquidity.

(22) Commenters' views as to whether the amendment adequately responds to and/or addresses comments received on related filings.

### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BatsEDGX-2017-22 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-BatsEDGX-2017-22. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BatsEDGX-2017-22, and should be submitted on or before January 5, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>99</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

[FR Doc. 2017-27001 Filed 12-14-17; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>98</sup> Section 11.1(c) of the CAT NMS Plan.

<sup>99</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82266; File No. SR–BOX–2017–16]

### Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing of Amendment No. 1 to a Proposed Rule Change To Establish the Fees for Industry Members Related to the National Market System Plan Governing the Consolidated Audit Trail

December 11, 2017.

On May 15, 2017, BOX Options Exchange LLC (“Exchange” or “SRO”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) <sup>1</sup> and Rule 19b–4 thereunder, <sup>2</sup> a proposed rule change to adopt a fee schedule to establish the fees for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail (“CAT NMS Plan”). The proposed rule change was published in the **Federal Register** for comment on May 24, 2017. <sup>3</sup> The Commission received seven comment letters on the proposed rule change, <sup>4</sup> and a response to

comments from the Participants. <sup>5</sup> On June 30, 2017, the Commission temporarily suspended and initiated proceedings to determine whether to approve or disapprove the proposed rule change. <sup>6</sup> The Commission thereafter received seven comment letters, <sup>7</sup> and a response to comments from the Participants. <sup>8</sup> On November 7, 2017, the Exchange filed Amendment No. 1 to the proposed rule change, as described in Items I and II below, which Items have been prepared by the Exchange. <sup>9</sup> On November 9, 2017, the Commission extended the time period within which to approve the proposed rule change or disapprove the proposed rule change to January 14, 2018. <sup>10</sup> The

comment letter which is not pertinent to these proposed rule changes. See Letter from Christina Crouch, Smart Ltd., to Brent J. Fields, Secretary, Commission (dated June 5, 2017), available at: <https://www.sec.gov/comments/sr-batsbx-2017-38/batsbx201738-178545-153152.htm>.

<sup>5</sup> See Letter from CAT NMS Plan Participants to Brent J. Fields, Secretary, Commission (dated June 29, 2017), available at: <https://www.sec.gov/comments/sr-batsbx-2017-11/batsbx201711-1832632-154584.pdf>.

<sup>6</sup> See Securities Exchange Act Release No. 81067 (June 30, 2017), 82 FR 31656 (July 7, 2017).

<sup>7</sup> See Letter from W. Hardy Callcott, Partner, Sidley Austin LLP, to Brent J. Fields, Secretary, Commission (dated July 27, 2017), available at: <https://www.sec.gov/comments/sr-batsbx-2017-11/batsbx201711-2148338-157737.pdf>; Letter from Kevin Coleman, General Counsel and Chief Compliance Officer, Belvedere Trading LLC, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbx-2017-11/batsbx201711-2148360-157740.pdf>; Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbx-2017-11/batsbx201711-2151228-157745.pdf>; Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbx-2017-11/batsbx201711-2150977-157744.pdf>; Letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbx-2017-11/batsbx201711-2150818-157743.pdf>; Letter from John Kinahan, Chief Executive Officer, Group One Trading, L.P., to Brent J. Fields, Secretary, Commission (dated August 10, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-2214568-160619.pdf>; Letter from Joseph Molluso, Executive Vice President and CFO, Virtu Financial, to Brent J. Fields, Secretary, Commission (dated August 18, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-2238648-160830.pdf>.

<sup>8</sup> See Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Brent J. Fields, Secretary, Commission (dated November 2, 2017), available at <https://www.sec.gov/comments/sr-batsbx-2017-11/batsbx201711-2674608-161412.pdf>.

<sup>9</sup> Amendment No. 1 to the proposed rule change replaces and supersedes the Original Proposal in its entirety.

<sup>10</sup> See Securities Exchange Act Release No. 82049 (November 9, 2017), 82 FR 53549 (November 16, 2017).

Commission is publishing this notice to solicit comments from interested persons on Amendment No. 1. <sup>11</sup>

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

The Exchange is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend the Fee Schedule to establish the fees for Industry Members related to the CAT NMS Plan. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission’s Public Reference Room and also on the Exchange’s internet website at <http://boxoptions.com>.

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

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

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

##### 1. Purpose

BOX Options Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., <sup>12</sup> Chicago Stock Exchange, Inc.,

<sup>11</sup> The Commission notes that on December 7, 2017, the Exchange filed Amendment No. 2 to the proposed rule change. Amendment No. 2 is a partial amendment to the proposed rule change, as amended by Amendment No. 1. Amendment No. 2 proposes to change the parenthetical regarding the OTC Equity Securities discount in paragraph (b)(2) of the proposed fee schedule from “with a discount for Equity ATs exclusively trading OTC Equity Securities based on the average shares per trade ratio between NMS Stocks and OTC Equity Securities” to “with a discount for OTC Equity Securities market share of Equity ATs trading OTC Equity Securities based on the average shares per trade ratio between NMS Stocks and OTC Equity Securities.” Additionally, Amendment No. 2 deletes footnote 43 in Section 3(a) on page 29 of Amendment No. 1 to the proposed rule change as the Exchange represents that the footnote is erroneous and was included inadvertently. See Securities Exchange Act Release No. 82267 (December 11, 2017).

<sup>12</sup> Note that Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Bats

Continued

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> See Securities Exchange Act Release Nos. 80721 (May 18, 2017), 82 FR 23864 (May 24, 2017) (“Original Proposal”).

<sup>4</sup> Since the CAT NMS Plan Participants’ proposed rule changes to adopt fees to be charged to Industry Members to fund the consolidated audit trail are substantively identical, the Commission is considering all comments received on the proposed rule changes regardless of the comment file to which they were submitted. See text accompanying notes 12–15 *infra*, for a list of the CAT NMS Plan Participants. See Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Brent J. Fields, Secretary, Commission (dated June 6, 2017), available at: <https://www.sec.gov/comments/sr-batsbx-2017-38/batsbx201738-1788188-153228.pdf>; Letter from Patricia L. Cerny and Steven O’Malley, Compliance Consultants, to Brent J. Fields, Secretary, Commission (dated June 12, 2017), available at: <https://www.sec.gov/comments/sr-cboe-2017-040/cboe2017040-1799253-153675.pdf>; Letter from Daniel Zinn, General Counsel, OTC Markets Group Inc., to Eduardo A. Aleman, Assistant Secretary, Commission (dated June 13, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-1801717-153703.pdf>; Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission (dated June 22, 2017), available at: <https://www.sec.gov/comments/sr-cboe-2017-040/cboe2017040-1819670-154195.pdf>; Letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, Commission (dated June 23, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-1822454-154283.pdf>; and Letter from Suzanne H. Shatto, Investor, to Commission (dated June 27, 2017), available at: <https://www.sec.gov/comments/sr-batsedgx-2017-22/batsedgx201722-154443.pdf>. The Commission also received a

Financial Industry Regulatory Authority, Inc. (“FINRA”), Investors’ Exchange LLC, Miami International Securities Exchange, LLC, MIAX PEARL, LLC, NASDAQ BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC,<sup>13</sup> NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC,<sup>14</sup> NYSE Arca, Inc. and NYSE National, Inc.<sup>15</sup> (collectively, the “Participants”) filed with the Commission, pursuant to Section 11A of the Exchange Act<sup>16</sup> and Rule 608 of Regulation NMS thereunder,<sup>17</sup> the CAT NMS Plan.<sup>18</sup> The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act. The Plan was published for comment in the **Federal Register** on May 17, 2016,<sup>19</sup> and approved by the Commission, as modified, on November 15, 2016.<sup>20</sup> The Plan is designed to create, implement and maintain a consolidated audit trail (“CAT”) that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. The Plan accomplishes this by creating CAT NMS, LLC (the “Company”), of which each Participant is a member, to

EDGX Exchange, Inc., LLC, C2 Options Exchange, Incorporated, and Chicago Board Options Exchange, Incorporated, have been renamed Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., respectively.

<sup>13</sup> ISE Gemini, LLC, ISE Mercury, LLC and International Securities Exchange, LLC have been renamed Nasdaq GEMX, LLC, Nasdaq MRX, LLC, and Nasdaq ISE, LLC, respectively. See Securities Exchange Act Rel. No. 80248 (Mar. 15, 2017), 82 FR 14547 (Mar. 21, 2017); Securities Exchange Act Rel. No. 80326 (Mar. 29, 2017), 82 FR 16460 (Apr. 4, 2017); and Securities Exchange Act Rel. No. 80325 (Mar. 29, 2017), 82 FR 16445 (Apr. 4, 2017).

<sup>14</sup> NYSE MKT LLC has been renamed NYSE American LLC. See Securities Exchange Act Rel. No. 80283 (Mar. 21, 2017), 82 FR 15244 (Mar. 27, 2017).

<sup>15</sup> National Stock Exchange, Inc. has been renamed NYSE National, Inc. See Securities Exchange Act Rel. No. 79902 (Jan. 30, 2017), 82 FR 9258 (Feb. 3, 2017).

<sup>16</sup> 15 U.S.C. 78k-1.

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

<sup>18</sup> See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. See Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.

<sup>19</sup> Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

<sup>20</sup> Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (“Approval Order”).

operate the CAT.<sup>21</sup> Under the CAT NMS Plan, the Operating Committee of the Company (“Operating Committee”) has discretion to establish funding for the Company to operate the CAT, including establishing fees that the Participants will pay, and establishing fees for Industry Members that will be implemented by the Participants (“CAT Fees”).<sup>22</sup> The Participants are required to file with the SEC under Section 19(b) of the Exchange Act any such CAT Fees applicable to Industry Members that the Operating Committee approves.<sup>23</sup> Accordingly, SRO submitted the Original Proposal to propose the Consolidated Audit Trail Funding Fees, which would require Industry Members that are SRO members to pay the CAT Fees determined by the Operating Committee.

The Commission published the Original Proposal for public comment in the **Federal Register** on May 24, 2017,<sup>24</sup> and received comments in response to the Original Proposal or similar fee filings by other Participants.<sup>25</sup> On June 30, 2017, the Commission suspended, and instituted proceedings to determine whether to approve or disapprove, the Original Proposal.<sup>26</sup> The Commission received seven comment letters in response to those proceedings.<sup>27</sup>

In response to the comments on the Original Proposal, the Operating Committee determined to make the following changes to the funding model: (1) Adds two additional CAT Fee tiers for Equity Execution Venues; (2)

<sup>21</sup> The Plan also serves as the limited liability company agreement for the Company.

<sup>22</sup> Section 11.1(b) of the CAT NMS Plan.

<sup>23</sup> *Id.*

<sup>24</sup> Securities Exchange Act Rel. No. 80721 (May 18, 2017), 82 FR 23864 (May 24, 2017) (SR-BOX-2017-16).

<sup>25</sup> For a summary of comments, see generally Securities Exchange Act Rel. No. 81067 (June 30, 2017), 82 FR 31656 (July 7, 2017) (“Suspension Order”).

<sup>26</sup> Suspension Order.

<sup>27</sup> See Letter from Stuart J. Kaswell, Executive Vice President, Managing Director and General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, SEC (July 28, 2017) (“MFA Letter”); Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Brent J. Fields, Secretary, SEC (July 28, 2017) (“SIFMA Letter”); Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, SEC (July 28, 2017) (“FIA Principal Traders Group Letter”); Letter from Kevin Coleman, General Counsel & Chief Compliance Officer, Belvedere Trading LLC, to Brent J. Fields, Secretary, SEC (July 28, 2017) (“Belvedere Letter”); Letter from W. Hardy Callcott, Sidley Austin LLP, to Brent J. Fields, Secretary, SEC (July 27, 2017) (“Sidley Letter”); Letter from John Kinahan, Chief Executive Officer, Group One Trading, L.P., to Brent J. Fields, Secretary, SEC (Aug. 10, 2017) (“Group One Letter”); and Letter from Joseph Molluso, Executive Vice President, Virtu Financial, to Brent J. Fields, Secretary, SEC (Aug. 18, 2017) (“Virtu Financial Letter”).

discounts the market share of Execution Venue ATSS exclusively trading OTC Equity Securities as well as the market share of the FINRA over-the-counter reporting facility (“ORF”) by the average shares per trade ratio between NMS Stocks and OTC Equity Securities (calculated as 0.17% based on available data from the second quarter of June 2017) when calculating the market share of Execution Venue ATS exclusively trading OTC Equity Securities and FINRA; (3) discounts the Options Market Maker quotes by the trade to quote ratio for options (calculated as 0.01% based on available data for June 2016 through June 2017) when calculating message traffic for Options Market Makers; (4) discounts equity market maker quotes by the trade to quote ratio for equities (calculated as 5.43% based on available data for June 2016 through June 2017) when calculating message traffic for equity market makers; (5) decreases the number of tiers for Industry Members (other than the Execution Venue ATSS) from nine to seven; (6) changes the allocation of CAT costs between Equity Execution Venues and Options Execution Venues from 75%/25% to 67%/33%; (7) adjusts tier percentages and recovery allocations for Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATSS); (8) focuses the comparability of CAT Fees on the individual entity level, rather than primarily on the comparability of affiliated entities; (9) commences invoicing of CAT Reporters as promptly as possible following the latest of the operative date of the Consolidated Audit Trail Funding Fees for each of the Participants and the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants; and (10) requires the proposed fees to automatically expire two years from the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. As discussed in detail below, SRO proposes to amend the Original Proposal to reflect these changes.

#### (1) Executive Summary

The following provides an executive summary of the CAT funding model approved by the Operating Committee, as well as Industry Members’ rights and obligations related to the payment of CAT Fees calculated pursuant to the CAT funding model, as amended by this Amendment. A detailed description of the CAT funding model and the CAT Fees, as amended by this Amendment, as well as the changes made to the

Original Proposal follows this executive summary.

(A) CAT Funding Model

- *CAT Costs.* The CAT funding model is designed to establish CAT-specific fees to collectively recover the costs of building and operating the CAT from all CAT Reporters, including Industry Members and Participants. The overall CAT costs for the calculation of the CAT Fees in this fee filing are comprised of Plan Processor CAT costs and non-Plan Processor CAT costs incurred, and estimated to be incurred, from November 21, 2016 through November 21, 2017. (See Section 3(a)(2)(E) below)

- *Bifurcated Funding Model.* The CAT NMS Plan requires a bifurcated funding model, where costs associated with building and operating the CAT would be borne by (1) Participants and Industry Members that are Execution Venues for Eligible Securities through fixed tier fees based on market share, and (2) Industry Members (other than alternative trading systems (“ATs”) that execute transactions in Eligible Securities (“Execution Venue ATs”)) through fixed tier fees based on message traffic for Eligible Securities. (See Section 3(a)(2) below)

- *Industry Member Fees.* Each Industry Member (other than Execution Venue ATs) will be placed into one of seven tiers of fixed fees, based on “message traffic” in Eligible Securities for a defined period (as discussed below). Prior to the start of CAT reporting, “message traffic” will be comprised of historical equity and equity options orders, cancels, quotes and executions provided by each exchange and FINRA over the previous three months. After an Industry Member begins reporting to the CAT, “message traffic” will be calculated based on the Industry Member’s Reportable Events reported to the CAT. Industry Members with lower levels of message traffic will pay a lower fee and Industry Members with higher levels of message traffic will pay a higher fee. To avoid disincentives to quoting behavior, Options Market Maker and equity market maker quotes will be discounted when calculating message traffic. (See Section 3(a)(2)(B) below)

- *Execution Venue Fees.* Each Equity Execution Venue will be placed in one of four tiers of fixed fees based on market share, and each Options Execution Venue will be placed in one of two tiers of fixed fees based on market share. Equity Execution Venue market share will be determined by calculating each Equity Execution Venue’s proportion of the total volume of NMS Stock and OTC Equity shares

reported by all Equity Execution Venues during the relevant time period. For purposes of calculating market share, the market share of Execution Venue ATs exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF will be discounted. Similarly, market share for Options Execution Venues will be determined by calculating each Options Execution Venue’s proportion of the total volume of Listed Options contracts reported by all Options Execution Venues during the relevant time period. Equity Execution Venues with a larger market share will pay a larger CAT Fee than Equity Execution Venues with a smaller market share. Similarly, Options Execution Venues with a larger market share will pay a larger CAT Fee than Options Execution Venues with a smaller market share. (See Section 3(a)(2)(C) below)

- *Cost Allocation.* For the reasons discussed below, in designing the model, the Operating Committee determined that 75 percent of total costs recovered would be allocated to Industry Members (other than Execution Venue ATs) and 25 percent would be allocated to Execution Venues. In addition, the Operating Committee determined to allocate 67 percent of Execution Venue costs recovered to Equity Execution Venues and 33 percent to Options Execution Venues. (See Section 3(a)(2)(D) below)

- *Comparability of Fees.* The CAT funding model charges CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) comparable CAT Fees. (See Section 3(a)(2)(F) below)

(B) CAT Fees for Industry Members

- *Fee Schedule.* The quarterly CAT Fees for each tier for Industry Members are set forth in the two fee schedules in the Consolidated Audit Trail Funding Fees, one for Equity ATs and one for Industry Members other than Equity ATs. (See Section 3(a)(3)(B) below)

- *Quarterly Invoices.* Industry Members will be billed quarterly for CAT Fees, with the invoices payable within 30 days. The quarterly invoices will identify within which tier the Industry Member falls. (See Section 3(a)(3)(C) below)

- *Centralized Payment.* Each Industry Member will receive from the Company one invoice for its applicable CAT Fees, not separate invoices from each Participant of which it is a member. Each Industry Member will pay its CAT Fees to the Company via the centralized system for the collection of CAT Fees

established by the Operating Committee. (See Section 3(a)(3)(C) below)

- *Billing Commencement.* Industry Members will begin to receive invoices for CAT Fees as promptly as possible following the latest of the operative date of the Consolidated Audit Trail Funding Fees for each of the Participants and the operative date of the Plan amendment adopting CAT Fees for Participants. (See Section 3(a)(2)(G) below)

- *Sunset Provision.* The Consolidated Audit Trail Funding Fees will sunset automatically two years from the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. (See Section 3(a)(2)(J) below)

(2) Description of the CAT Funding Model

Article XI of the CAT NMS Plan requires the Operating Committee to approve the operating budget, including projected costs of developing and operating the CAT for the upcoming year. In addition to a budget, Article XI of the CAT NMS Plan provides that the Operating Committee has discretion to establish funding for the Company, consistent with a bifurcated funding model, where costs associated with building and operating the Central Repository would be borne by (1) Participants and Industry Members that are Execution Venues through fixed tier fees based on market share, and (2) Industry Members (other than Execution Venue ATs) through fixed tier fees based on message traffic. In its order approving the CAT NMS Plan, the Commission determined that the proposed funding model was “reasonable”<sup>28</sup> and “reflects a reasonable exercise of the Participants’ funding authority to recover the Participants’ costs related to the CAT.”<sup>29</sup>

More specifically, the Commission stated in approving the CAT NMS Plan that “[t]he Commission believes that the proposed funding model is reasonably designed to allocate the costs of the CAT between the Participants and Industry Members.”<sup>30</sup> The Commission further noted the following:

The Commission believes that the proposed funding model reflects a reasonable exercise of the Participants’ funding authority to recover the Participants’ costs related to the CAT. The CAT is a regulatory facility jointly owned by the Participants and . . . the Exchange Act specifically permits the Participants to charge their members fees to fund their self-regulatory obligations. The Commission further believes that the

<sup>28</sup> Approval Order at 84796.

<sup>29</sup> *Id.* at 84794.

<sup>30</sup> *Id.* at 84795.

proposed funding model is designed to impose fees reasonably related to the Participants' self-regulatory obligations because the fees would be directly associated with the costs of establishing and maintaining the CAT, and not unrelated SRO services.<sup>31</sup>

Accordingly, the funding model approved by the Operating Committee imposes fees on both Participants and Industry Members.

As discussed in Appendix C of the CAT NMS Plan, in developing and approving the approved funding model, the Operating Committee considered the advantages and disadvantages of a variety of alternative funding and cost allocation models before selecting the proposed model.<sup>32</sup> After analyzing the various alternatives, the Operating Committee determined that the proposed tiered, fixed fee funding model provides a variety of advantages in comparison to the alternatives.

In particular, the fixed fee model, as opposed to a variable fee model, provides transparency, ease of calculation, ease of billing and other administrative functions, and predictability of a fixed fee. Such factors are crucial to estimating a reliable revenue stream for the Company and for permitting CAT Reporters to reasonably predict their payment obligations for budgeting purposes. Additionally, a strictly variable or metered funding model based on message volume would be far more likely to affect market behavior and place an inappropriate burden on competition.

In addition, reviews from varying time periods of current broker-dealer order and trading data submitted under existing reporting requirements showed a wide range in activity among broker-dealers, with a number of broker-dealers submitting fewer than 1,000 orders per month and other broker-dealers submitting millions and even billions of orders in the same period. Accordingly, the CAT NMS Plan includes a tiered approach to fees. The tiered approach helps ensure that fees are equitably allocated among similarly situated CAT Reporters and furthers the goal of lessening the impact on smaller firms.<sup>33</sup> In addition, in choosing a tiered fee structure, the Operating Committee concluded that the variety of benefits offered by a tiered fee structure, discussed above, outweighed the fact that CAT Reporters in any particular tier would pay different rates per message traffic order event or per market share

(*e.g.*, an Industry Member with the largest amount of message traffic in one tier would pay a smaller amount per order event than an Industry Member in the same tier with the least amount of message traffic). Such variation is the natural result of a tiered fee structure.<sup>34</sup> The Operating Committee considered several approaches to developing a tiered model, including defining fee tiers based on such factors as size of firm, message traffic or trading dollar volume. After analyzing the alternatives, it was concluded that the tiering should be based on message traffic which will reflect the relative impact of CAT Reporters on the CAT System.

Accordingly, the CAT NMS Plan contemplates that costs will be allocated across the CAT Reporters on a tiered basis in order to allocate higher costs to those CAT Reporters that contribute more to the costs of creating, implementing and maintaining the CAT and lower costs to those that contribute less.<sup>35</sup> The fees to be assessed at each tier are calculated so as to recoup a proportion of costs appropriate to the message traffic or market share (as applicable) from CAT Reporters in each tier. Therefore, Industry Members generating the most message traffic will be in the higher tiers, and will be charged a higher fee. Industry Members with lower levels of message traffic will be in lower tiers and will be assessed a smaller fee for the CAT.<sup>36</sup> Correspondingly, Execution Venues with the highest market shares will be in the top tier, and will be charged higher fees. Execution Venues with the lowest market shares will be in the lowest tier and will be assessed smaller fees for the CAT.<sup>37</sup>

The CAT NMS Plan states that Industry Members (other than Execution Venue ATSS) will be charged based on message traffic, and that Execution Venues will be charged based on market share.<sup>38</sup> While there are multiple factors that contribute to the cost of building, maintaining and using the CAT, processing and storage of incoming message traffic is one of the most significant cost drivers for the CAT.<sup>39</sup> Thus, the CAT NMS Plan provides that the fees payable by Industry Members (other than Execution Venue ATSS) will

be based on the message traffic generated by such Industry Member.<sup>40</sup>

In contrast to Industry Members, which determine the degree to which they produce message traffic that constitute CAT Reportable Events, the CAT Reportable Events of the Execution Venues are largely derivative of quotations and orders received from Industry Members that they are required to display. The business model for Execution Venues (other than FINRA), however, is focused on executions in their markets. As a result, the Operating Committee believes that it is more equitable to charge Execution Venues based on their market share rather than their message traffic.

Focusing on message traffic would make it more difficult to draw distinctions between large and small Execution Venues and, in particular, between large and small options exchanges. For instance, the Operating Committee analyzed the message traffic of Execution Venues and Industry Members for the period of April 2017 to June 2017 and placed all CAT Reporters into a nine-tier framework (*i.e.*, a single tier may include both Execution Venues and Industry Members). The Operating Committee's analysis found that the majority of exchanges (15 total) were grouped in Tiers 1 and 2. Moreover, virtually all of the options exchanges were in Tiers 1 and 2.<sup>41</sup> Given the resulting concentration of options exchanges in Tiers 1 and 2 under this approach, the analysis shows that a funding model for Execution Venues based on message traffic would make it more difficult to distinguish between large and small options exchanges, as compared to the proposed fee approach that bases fees for Execution Venues on market share.

The CAT NMS Plan's funding model also is structured to avoid a "reduction in market quality."<sup>42</sup> The tiered, fixed fee funding model is designed to limit the disincentives to providing liquidity to the market. For example, the Operating Committee expects that a firm that has a large volume of quotes would likely be categorized in one of the upper tiers, and would not be assessed a fee for this traffic directly as they would under a more directly metered model. In contrast, strictly variable or metered funding models based on message volume are far more likely to affect market behavior. In approving the CAT NMS Plan, the SEC stated that "[t]he

<sup>34</sup> Moreover, as the SEC noted in approving the CAT NMS Plan, "[t]he Participants also have offered a reasonable basis for establishing a funding model based on broad tiers, in that it may be easier to implement." Approval Order at 84796.

<sup>35</sup> Approval Order at 85005.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Section 11.3(a) and (b) of the CAT NMS Plan.

<sup>39</sup> Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85005.

<sup>40</sup> Section 11.3(b) of the CAT NMS Plan.

<sup>41</sup> The Operating Committee notes that this analysis did not place MIAx PEARL in Tier 1 or Tier 2 since the exchange commenced trading on February 6, 2017.

<sup>42</sup> Section 11.2(e) of the CAT NMS Plan.

<sup>31</sup> *Id.* at 84794.

<sup>32</sup> Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85006.

<sup>33</sup> Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85006.



Participants also offered a reasonable basis for establishing a funding model based on broad tiers, in that it may be . . . less likely to have an incremental deterrent effect on liquidity provision.”<sup>43</sup>

The funding model also is structured to avoid a reduction market quality because it discounts Options Market Maker and equity market maker quotes when calculating message traffic for Options Market Makers and equity market makers, respectively. As discussed in more detail below, the Operating Committee determined to discount the Options Market Maker quotes by the trade to quote ratio for options when calculating message traffic for Options Market Makers. Similarly, to avoid disincentives to quoting behavior on the equities side as well, the Operating Committee determined to discount equity market maker quotes by the trade to quote ratio for equities when calculating message traffic for equity market makers. The proposed discounts recognize the value of the market makers' quoting activity to the market as a whole.

The CAT NMS Plan is further structured to avoid potential conflicts raised by the Operating Committee determining fees applicable to its own members—the Participants. First, the Company will operate on a “break-even” basis, with fees imposed to cover costs and an appropriate reserve. Any surpluses will be treated as an operational reserve to offset future fees and will not be distributed to the Participants as profits.<sup>44</sup> To ensure that the Participants' operation of the CAT will not contribute to the funding of their other operations, Section 11.1(c) of the CAT NMS Plan specifically states that “[a]ny surplus of the Company's revenues over its expenses shall be treated as an operational reserve to offset future fees.” In addition, as set forth in Article VIII of the CAT NMS Plan, the Company “intends to operate in a manner such that it qualifies as a ‘business league’ within the meaning of Section 501(c)(6) of the [Internal Revenue] Code.” To qualify as a business league, an organization must “not [be] organized for profit and no part of the net earnings of [the organization can] inure[] to the benefit of any private shareholder or individual.”<sup>45</sup> As the SEC stated when approving the CAT NMS Plan, “the Commission believes that the Company's application for Section 501(c)(6) business league status

addresses issues raised by commenters about the Plan's proposed allocation of profit and loss by mitigating concerns that the Company's earnings could be used to benefit individual Participants.”<sup>46</sup> The Internal Revenue Service recently has determined that the Company is exempt from federal income tax under Section 501(c)(6) of the Internal Revenue Code.

The funding model also is structured to take into account distinctions in the securities trading operations of Participants and Industry Members. For example, the Operating Committee designed the model to address the different trading characteristics in the OTC Equity Securities market. Specifically, the Operating Committee proposes to discount the market share of Execution Venue ATSS exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF by the average shares per trade ratio between NMS Stocks and OTC Equity Securities to adjust for the greater number of shares being traded in the OTC Equity Securities market, which is generally a function of a lower per share price for OTC Equity Securities when compared to NMS Stocks. In addition, the Operating Committee also proposes to discount Options Market Maker and equity market maker message traffic in recognition of their role in the securities markets. Furthermore, the funding model creates separate tiers for Equity and Options Execution Venues due to the different trading characteristics of those markets.

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

A full description of the funding model is set forth below. This description includes the framework for the funding model as set forth in the CAT NMS Plan, as well as the details as to how the funding model will be applied in practice, including the number of fee tiers and the applicable fees for each tier. The complete funding model is described below, including those fees that are to be paid by the Participants. The proposed Consolidated Audit Trail Funding Fees, however, do not apply to the Participants; the proposed Consolidated Audit Trail Funding Fees only apply to Industry Members. The CAT Fees for Participants will be imposed separately

by the Operating Committee pursuant to the CAT NMS Plan.

#### (A) Funding Principles

Section 11.2 of the CAT NMS Plan sets forth the principles that the Operating Committee applied in establishing the funding for the Company. The Operating Committee has considered these funding principles as well as the other funding requirements set forth in the CAT NMS Plan and in Rule 613 in developing the proposed funding model. The following are the funding principles in Section 11.2 of the CAT NMS Plan:

- To create transparent, predictable revenue streams for the Company that are aligned with the anticipated costs to build, operate and administer the CAT and other costs of the Company;
- To establish an allocation of the Company's related costs among Participants and Industry Members that is consistent with the Exchange Act, taking into account the timeline for implementation of the CAT and distinctions in the securities trading operations of Participants and Industry Members and their relative impact upon the Company's resources and operations;
- To establish a tiered fee structure in which the fees charged to: (i) CAT Reporters that are Execution Venues, including ATSS, are based upon the level of market share; (ii) Industry Members' non-ATS activities are based upon message traffic; (iii) the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venue and/or Industry Members);
- To provide for ease of billing and other administrative functions;
- To avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality; and
- To build financial stability to support the Company as a going concern.

#### (B) Industry Member Tiering

Under Section 11.3(b) of the CAT NMS Plan, the Operating Committee is required to establish fixed fees to be payable by Industry Members, based on message traffic generated by such Industry Member, with the Operating Committee establishing at least five and no more than nine tiers.

The CAT NMS Plan clarifies that the fixed fees payable by Industry Members

<sup>43</sup> Approval Order at 84796.

<sup>44</sup> *Id.* at 84792.

<sup>45</sup> 26 U.S.C. 501(c)(6).

<sup>46</sup> Approval Order at 84793.



pursuant to Section 11.3(b) shall, in addition to any other applicable message traffic, include message traffic generated by: (i) an ATS that does not execute orders that is sponsored by such Industry Member; and (ii) routing orders to and from any ATS sponsored by such Industry Member. In addition, the Industry Member fees will apply to Industry Members that act as routing broker-dealers for exchanges. The Industry Member fees will not be applicable, however, to an ATS that qualifies as an Execution Venue, as discussed in more detail in the section on Execution Venue tiering.

In accordance with Section 11.3(b), the Operating Committee approved a tiered fee structure for Industry Members (other than Execution Venue ATSs) as described in this section. In determining the tiers, the Operating Committee considered the funding principles set forth in Section 11.2 of the CAT NMS Plan, seeking to create funding tiers that take into account the relative impact on CAT System resources of different Industry Members, and that establish comparable fees among the CAT Reporters with the most Reportable Events. The Operating Committee has determined that establishing seven tiers results in an allocation of fees that distinguishes between Industry Members with differing levels of message traffic. Thus, each such Industry Member will be placed into one of seven tiers of fixed fees, based on "message traffic" for a defined period (as discussed below).

A seven tier structure was selected to provide a wide range of levels for tiering Industry Members such that Industry Members submitting significantly less message traffic to the CAT would be adequately differentiated from Industry Members submitting substantially more message traffic. The Operating Committee considered historical message traffic from multiple time periods, generated by Industry Members across all exchanges and as submitted to FINRA's Order Audit Trail System ("OATS"), and considered the distribution of firms with similar levels of message traffic, grouping together firms with similar levels of message

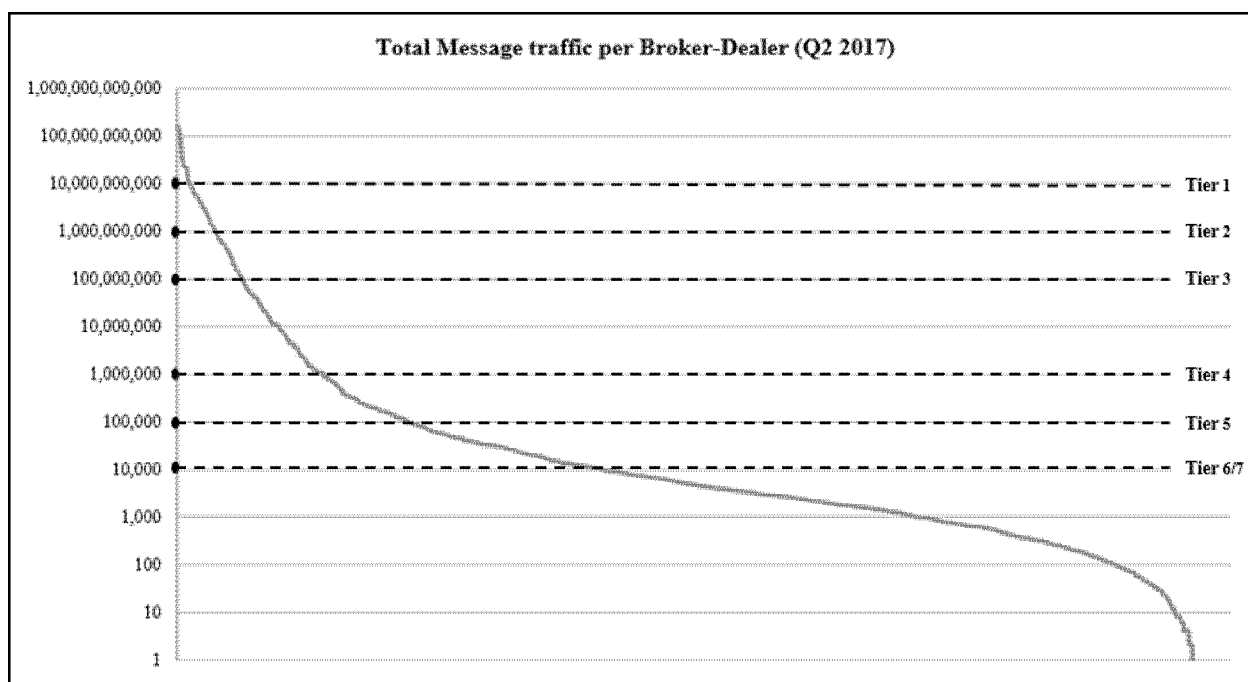
traffic. Based on this, the Operating Committee determined that seven tiers would group firms with similar levels of message traffic, charging those firms with higher impact on the CAT more, while lowering the burden on Industry Members that have less CAT-related activity. Furthermore, the selection of seven tiers establishes comparable fees among the largest CAT Reporters.

Each Industry Member (other than Execution Venue ATSs) will be ranked by message traffic and tiered by predefined Industry Member Percentages (the "Industry Member Percentages"). The Operating Committee determined to use predefined percentages rather than fixed volume thresholds to ensure that the total CAT Fees collected recover the expected CAT costs regardless of changes in the total level of message traffic. To determine the fixed percentage of Industry Members in each tier, the Operating Committee analyzed historical message traffic generated by Industry Members across all exchanges and as submitted to OATS, and considered the distribution of firms with similar levels of message traffic, grouping together firms with similar levels of message traffic. Based on this, the Operating Committee identified seven tiers that would group firms with similar levels of message traffic.

The percentage of costs recovered by each Industry Member tier will be determined by predefined percentage allocations (the "Industry Member Recovery Allocation"). In determining the fixed percentage allocation of costs recovered for each tier, the Operating Committee considered the impact of CAT Reporter message traffic on the CAT System as well as the distribution of total message volume across Industry Members while seeking to maintain comparable fees among the largest CAT Reporters. Accordingly, following the determination of the percentage of Industry Members in each tier, the Operating Committee identified the percentage of total market volume for each tier based on the historical message traffic upon which Industry Members had been initially ranked. Taking this into account along with the resulting

percentage of total recovery, the percentage allocation of costs recovered for each tier were assigned, allocating higher percentages of recovery to tiers with higher levels of message traffic while avoiding any inappropriate burden on competition. Furthermore, by using percentages of Industry Members and costs recovered per tier, the Operating Committee sought to include elasticity within the funding model, allowing the funding model to respond to changes in either the total number of Industry Members or the total level of message traffic.

The following chart illustrates the breakdown of seven Industry Member tiers across the monthly average of total equity and equity options orders, cancels, quotes and executions in the second quarter of 2017 as well as message traffic thresholds between the largest of Industry Member message traffic gaps. The Operating Committee referenced similar distribution illustrations to determine the appropriate division of Industry Member percentages in each tier by considering the grouping of firms with similar levels of message traffic and seeking to identify relative breakpoints in the message traffic between such groupings. In reviewing the chart and its corresponding table, note that while these distribution illustrations were referenced to help differentiate between Industry Member tiers, the proposed funding model is driven by fixed percentages of Industry Members across tiers to account for fluctuating levels of message traffic over time. This approach also provides financial stability for the CAT by ensuring that the funding model will recover the required amounts regardless of changes in the number of Industry Members or the amount of message traffic. Actual messages in any tier will vary based on the actual traffic in a given measurement period, as well as the number of firms included in the measurement period. The Industry Member Percentages and Industry Member Recovery Allocation for each tier will remain fixed with each Industry Member's tier to be reassigned periodically, as described below in Section 3(a)(2)(I).



Industry Member tier	Approximate message traffic per Industry Member (Q2 2017) (orders, quotes, cancels and executions)
Tier 1	>10,000,000,000
Tier 2	1,000,000,000–10,000,000,000
Tier 3	100,000,000–1,000,000,000
Tier 4	1,000,000–100,000,000
Tier 5	100,000–1,000,000
Tier 6	10,000–100,000
Tier 7	<10,000

Based on the above analysis, the Operating Committee approved the following Industry Member Percentages and Industry Member Recovery Allocations:

Industry Member tier	Percentage of Industry Members	Percentage of Industry Member Recovery	Percentage of total recovery
Tier 1	0.900	12.00	9.00
Tier 2	2.150	20.50	15.38
Tier 3	2.800	18.50	13.88
Tier 4	7.750	32.00	24.00
Tier 5	8.300	10.00	7.50
Tier 6	18.800	6.00	4.50
Tier 7	59.300	1.00	0.75
Total	100	100	75

For the purposes of creating these tiers based on message traffic, the Operating Committee determined to define the term “message traffic” separately for the period before the commencement of CAT reporting and for the period after the start of CAT reporting. The different definition for message traffic is necessary as there will

be no Reportable Events as defined in the Plan, prior to the commencement of CAT reporting. Accordingly, prior to the start of CAT reporting, “message traffic” will be comprised of historical equity and equity options orders, cancels, quotes and executions provided by each exchange and FINRA over the previous three months. Prior to the start of CAT

reporting, orders would be comprised of the total number of equity and equity options orders received and originated by a member of an exchange or FINRA over the previous three-month period, including principal orders, cancel/replace orders, market maker orders originated by a member of an exchange, and reserve (iceberg) orders as well as

executions originated by a member of FINRA, and excluding order rejects, system-modified orders, order routes and implied orders.<sup>47</sup> In addition, prior to the start of CAT reporting, cancels would be comprised of the total number of equity and equity option cancels received and originated by a member of an exchange or FINRA over a three-month period, excluding order modifications (e.g., order updates, order splits, partial cancels) and multiple cancels of a complex order. Furthermore, prior to the start of CAT reporting, quotes would be comprised of information readily available to the exchanges and FINRA, such as the total number of historical equity and equity options quotes received and originated by a member of an exchange or FINRA over the prior three-month period. Additionally, prior to the start of CAT reporting, executions would be comprised of the total number of equity and equity option executions received or originated by a member of an exchange or FINRA over a three-month period.

After an Industry Member begins reporting to the CAT, “message traffic” will be calculated based on the Industry Member’s Reportable Events reported to the CAT as will be defined in the Technical Specifications.<sup>48</sup>

Quotes of Options Market Makers and equity market makers will be included in the calculation of total message traffic for those market makers for purposes of tiering under the CAT funding model both prior to CAT reporting and once CAT reporting commences.<sup>49</sup> To address potential concerns regarding burdens on competition or market quality of including quotes in the calculation of message traffic, however,

<sup>47</sup> Consequently, firms that do not have “message traffic” reported to an exchange or OATS before they are reporting to the CAT would not be subject to a fee until they begin to report information to CAT.

<sup>48</sup> If an Industry Member (other than an Execution Venue ATS) has no orders, cancels, quotes and executions prior to the commencement of CAT Reporting, or no Reportable Events after CAT reporting commences, then the Industry Member would not have a CAT Fee obligation.

<sup>49</sup> The SEC approved exemptive relief permitting Options Market Maker quotes to be reported to the Central Repository by the relevant Options Exchange in lieu of requiring that such reporting be done by both the Options Exchange and the Options Market Maker, as required by Rule 613 of Regulation NMS. See Securities Exchange Act Rel. No. 77265 (Mar. 1, 2017), 81 FR 11856 (Mar. 7, 2016). This exemption applies to Options Market Maker quotes for CAT reporting purposes only. Therefore, notwithstanding the reporting exemption provided for Options Market Maker quotes, Options Market Maker quotes will be included in the calculation of total message traffic for Options Market Makers for purposes of tiering under the CAT funding model both prior to CAT reporting and once CAT reporting commences.

the Operating Committee determined to discount the Options Market Maker quotes by the trade to quote ratio for options when calculating message traffic for Options Market Makers. Based on available data for June 2016 through June 2017, the trade to quote ratio for options is 0.01%. Similarly, to avoid disincentives to quoting behavior on the equities side, the Operating Committee determined to discount equity market maker quotes by the trade to quote ratio for equities. Based on available data for June 2016 through June 2017, the trade to quote ratio for equities is 5.43%.<sup>50</sup> The trade to quote ratio for options and the trade to quote ratio for equities will be calculated every three months when tiers are recalculated (as discussed below).

The Operating Committee has determined to calculate fee tiers every three months, on a calendar quarter basis, based on message traffic from the prior three months. Based on its analysis of historical data, the Operating Committee believes that calculating tiers based on three months of data will provide the best balance between reflecting changes in activity by Industry Members while still providing predictability in the tiering for Industry Members. Because fee tiers will be calculated based on message traffic from the prior three months, the Operating Committee will begin calculating message traffic based on an Industry Member’s Reportable Events reported to the CAT once the Industry Member has been reporting to the CAT for three months. Prior to that, fee tiers will be calculated as discussed above with regard to the period prior to CAT reporting.

#### (C) Execution Venue Tiering

Under Section 11.3(a) of the CAT NMS Plan, the Operating Committee is required to establish fixed fees payable by Execution Venues. Section 1.1 of the CAT NMS Plan defines an Execution Venue as “a Participant or an alternative trading system (“ATS”) (as defined in Rule 300 of Regulation ATS) that operates pursuant to Rule 301 of Regulation ATS (excluding any such ATS that does not execute orders).”<sup>51</sup>

The Operating Committee determined that ATSs should be included within the definition of Execution Venue. The

<sup>50</sup> The trade to quote ratios were calculated based on the inverse of the average of the monthly equity SIP and OPRA quote to trade ratios from June 2016–June 2017 that were compiled by the Financial Information Forum using data from NASDAQ and SIAC.

<sup>51</sup> Although FINRA does not operate an execution venue, because it is a Participant, it is considered an “Execution Venue” under the Plan for purposes of determining fees.

Operating Committee believes that it is appropriate to treat ATSs as Execution Venues under the proposed funding model since ATSs have business models that are similar to those of exchanges, and ATSs also compete with exchanges.

Given the differences between Execution Venues that trade NMS Stocks and/or OTC Equity Securities and Execution Venues that trade Listed Options, Section 11.3(a) addresses Execution Venues that trade NMS Stocks and/or OTC Equity Securities separately from Execution Venues that trade Listed Options. Equity and Options Execution Venues are treated separately for two reasons. First, the differing quoting behavior of Equity and Options Execution Venues makes comparison of activity between such Execution Venues difficult. Second, Execution Venue tiers are calculated based on market share of share volume, and it is therefore difficult to compare market share between asset classes (i.e., equity shares versus options contracts). Discussed below is how the funding model treats the two types of Execution Venues.

#### (I) NMS Stocks and OTC Equity Securities

Section 11.3(a)(i) of the CAT NMS Plan states that each Execution Venue that (i) executes transactions or, (ii) in the case of a national securities association, has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange, in NMS Stocks or OTC Equity Securities will pay a fixed fee depending on the market share of that Execution Venue in NMS Stocks and OTC Equity Securities, with the Operating Committee establishing at least two and not more than five tiers of fixed fees, based on an Execution Venue’s NMS Stocks and OTC Equity Securities market share. For these purposes, market share for Execution Venues that execute transactions will be calculated by share volume, and market share for a national securities association that has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange in NMS Stocks or OTC Equity Securities will be calculated based on share volume of trades reported, provided, however, that the share volume reported to such national securities association by an Execution Venue shall not be included in the calculation of such national securities association’s market share.

In accordance with Section 11.3(a)(i) of the CAT NMS Plan, the Operating Committee approved a tiered fee

structure for Equity Execution Venues and Option Execution Venues. In determining the Equity Execution Venue Tiers, the Operating Committee considered the funding principles set forth in Section 11.2 of the CAT NMS Plan, seeking to create funding tiers that take into account the relative impact on system resources of different Equity Execution Venues, and that establish comparable fees among the CAT Reporters with the most Reportable Events. Each Equity Execution Venue will be placed into one of four tiers of fixed fees, based on the Execution Venue's NMS Stocks and OTC Equity Securities market share. In choosing four tiers, the Operating Committee performed an analysis similar to that discussed above with regard to the non-Execution Venue Industry Members to determine the number of tiers for Equity Execution Venues. The Operating Committee determined to establish four tiers for Equity Execution Venues, rather than a larger number of tiers as established for non-Execution Venue Industry Members, because the four tiers were sufficient to distinguish between the smaller number of Equity Execution Venues based on market share. Furthermore, the selection of four tiers serves to help establish comparability among the largest CAT Reporters.

Each Equity Execution Venue will be ranked by market share and tiered by predefined Execution Venue percentages, (the "Equity Execution Venue Percentages"). In determining the fixed percentage of Equity Execution Venues in each tier, the Operating Committee reviewed historical market share of share volume for Execution Venues. Equity Execution Venue market shares of share volume were sourced from market statistics made publicly-available by Bats Global Markets, Inc. ("Bats"). ATS market shares of share volume was sourced from market statistics made publicly-available by FINRA. FINRA trade reporting facility

("TRF") and ORF market share of share volume was sourced from market statistics made publicly available by FINRA. Based on data from FINRA and otcmarkets.com, ATSs accounted for 39.12% of the share volume across the TRFs and ORFs during the recent tiering period. A 39.12/60.88 split was applied to the ATS and non-ATS breakdown of FINRA market share, with FINRA tiered based only on the non-ATS portion of its market share of share volume.

The Operating Committee determined to discount the market share of Execution Venue ATSs exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF in recognition of the different trading characteristics of the OTC Equity Securities market as compared to the market in NMS Stocks. Many OTC Equity Securities are priced at less than one dollar—and a significant number at less than one penny—per share and low-priced shares tend to trade in larger quantities. Accordingly, a disproportionately large number of shares are involved in transactions involving OTC Equity Securities versus NMS Stocks. Because the proposed fee tiers are based on market share calculated by share volume, Execution Venue ATSs exclusively trading OTC Equity Securities and FINRA would likely be subject to higher tiers than their operations may warrant. To address this potential concern, the Operating Committee determined to discount the market share of Execution Venue ATSs exclusively trading OTC Equity Securities and the market share of the FINRA ORF by multiplying such market share by the average shares per trade ratio between NMS Stocks and OTC Equity Securities in order to adjust for the greater number of shares being traded in the OTC Equity Securities market. Based on available data for the second quarter of 2017, the average shares per trade ratio between NMS Stocks and OTC Equity Securities is 0.17%.<sup>52</sup> The average shares per trade

ratio between NMS Stocks and OTC Equity Securities will be recalculated every three months when tiers are recalculated.<sup>53</sup>

Based on this, the Operating Committee considered the distribution of Execution Venues, and grouped together Execution Venues with similar levels of market share. The percentage of costs recovered by each Equity Execution Venue tier will be determined by predefined percentage allocations (the "Equity Execution Venue Recovery Allocation"). In determining the fixed percentage allocation of costs to be recovered from each tier, the Operating Committee considered the impact of CAT Reporter market share activity on the CAT System as well as the distribution of total market volume across Equity Execution Venues while seeking to maintain comparable fees among the largest CAT Reporters. Accordingly, following the determination of the percentage of Execution Venues in each tier, the Operating Committee identified the percentage of total market volume for each tier based on the historical market share upon which Execution Venues had been initially ranked. Taking this into account along with the resulting percentage of total recovery, the percentage allocation of cost recovery for each tier were assigned, allocating higher percentages of recovery to the tier with a higher level of market share while avoiding any inappropriate burden on competition. Furthermore, by using percentages of Equity Execution Venues and cost recovery per tier, the Operating Committee sought to include elasticity within the funding model, allowing the funding model to respond to changes in either the total number of Equity Execution Venues or changes in market share.

Based on this analysis, the Operating Committee approved the following Equity Execution Venue Percentages and Recovery Allocations:

Equity Execution Venue tier	Percentage of Equity Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1 .....	25.00	33.25	8.31
Tier 2 .....	42.00	25.73	6.43
Tier 3 .....	23.00	8.00	2.00
Tier 4 .....	10.00	0.02	0.01
Total .....	100	67	16.75

<sup>52</sup> The average shares per trade ratio for both NMS Stocks and OTC Equity Securities from the second quarter of 2017 was calculated using publicly available market volume data from Bats and OTC Markets Group, and the totals were divided to

determine the average number of shares per trade between NMS Stocks and OTC Equity Securities.

<sup>53</sup> The discount is only applied to the market share of Execution Venue ATSs exclusively trading

OTC Equity Securities. Accordingly, FINRA's market share, which includes market share from the OTC Reporting Facility, is not discounted as a result of its OTC Equity Securities activity.

(II) Listed Options

Section 11.3(a)(ii) of the CAT NMS Plan states that each Execution Venue that executes transactions in Listed Options will pay a fixed fee depending on the Listed Options market share of that Execution Venue, with the Operating Committee establishing at least two and no more than five tiers of fixed fees, based on an Execution Venue's Listed Options market share. For these purposes, market share will be calculated by contract volume.

In accordance with Section 11.3(a)(ii) of the CAT NMS Plan, the Operating Committee approved a tiered fee structure for Options Execution Venues. In determining the tiers, the Operating Committee considered the funding principles set forth in Section 11.2 of the CAT NMS Plan, seeking to create funding tiers that take into account the relative impact on system resources of different Options Execution Venues, and that establish comparable fees among the CAT Reporters with the most Reportable Events. Each Options Execution Venue will be placed into one of two tiers of fixed fees, based on the Execution Venue's Listed Options market share. In choosing two tiers, the Operating Committee performed an analysis similar to that discussed above with regard to Industry Members (other than Execution Venue ATSs) to

determine the number of tiers for Options Execution Venues. The Operating Committee determined to establish two tiers for Options Execution Venues, rather than a larger number, because the two tiers were sufficient to distinguish between the smaller number of Options Execution Venues based on market share. Furthermore, due to the smaller number of Options Execution Venues, the incorporation of additional Options Execution Venue tiers would result in significantly higher fees for Tier 1 Options Execution Venues and reduce comparability between Execution Venues and Industry Members. Furthermore, the selection of two tiers served to establish comparable fees among the largest CAT Reporters.

Each Options Execution Venue will be ranked by market share and tiered by predefined Execution Venue percentages, (the "Options Execution Venue Percentages"). To determine the fixed percentage of Options Execution Venues in each tier, the Operating Committee analyzed the historical and publicly available market share of Options Execution Venues to group Options Execution Venues with similar market shares across the tiers. Options Execution Venue market share of share volume were sourced from market statistics made publicly-available by

Bats. The process for developing the Options Execution Venue Percentages was the same as discussed above with regard to Equity Execution Venues.

The percentage of costs to be recovered from each Options Execution Venue tier will be determined by predefined percentage allocations (the "Options Execution Venue Recovery Allocation"). In determining the fixed percentage allocation of cost recovery for each tier, the Operating Committee considered the impact of CAT Reporter market share activity on the CAT System as well as the distribution of total market volume across Options Execution Venues while seeking to maintain comparable fees among the largest CAT Reporters. Furthermore, by using percentages of Options Execution Venues and cost recovery per tier, the Operating Committee sought to include elasticity within the funding model, allowing the funding model to respond to changes in either the total number of Options Execution Venues or changes in market share. The process for developing the Options Execution Venue Recovery Allocation was the same as discussed above with regard to Equity Execution Venues.

Based on this analysis, the Operating Committee approved the following Options Execution Venue Percentages and Recovery Allocations:

Options Execution Venue tier	Percentage of Options Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1 .....	75.00	28.25	7.06
Tier 2 .....	25.00	4.75	1.19
Total .....	100	33	8.25

(III) Market Share/Tier Assignments

The Operating Committee determined that, prior to the start of CAT reporting, market share for Execution Venues would be sourced from publicly-available market data. Options and equity volumes for Participants will be sourced from market data made publicly available by Bats while Execution Venue ATS volumes will be sourced from market data made publicly available by FINRA and OTC Markets. Set forth in the Appendix are two charts, one listing the current Equity Execution Venues, each with its rank and tier, and one listing the current Options Execution Venues, each with its rank and tier.

After the commencement of CAT reporting, market share for Execution Venues will be sourced from data reported to the CAT. Equity Execution

Venue market share will be determined by calculating each Equity Execution Venue's proportion of the total volume of NMS Stock and OTC Equity shares reported by all Equity Execution Venues during the relevant time period (with the discounting of market share of Execution Venue ATSs exclusively trading OTC Equity Securities, as described above). Similarly, market share for Options Execution Venues will be determined by calculating each Options Execution Venue's proportion of the total volume of Listed Options contracts reported by all Options Execution Venues during the relevant time period.

The Operating Committee has determined to calculate fee tiers for Execution Venues every three months based on market share from the prior three months. Based on its analysis of

historical data, the Operating Committee believes calculating tiers based on three months of data will provide the best balance between reflecting changes in activity by Execution Venues while still providing predictability in the tiering for Execution Venues.

(D) Allocation of Costs

In addition to the funding principles discussed above, including comparability of fees, Section 11.1(c) of the CAT NMS Plan also requires expenses to be fairly and reasonably shared among the Participants and Industry Members. Accordingly, in developing the proposed fee schedules pursuant to the funding model, the Operating Committee calculated how the CAT costs would be allocated between Industry Members and Execution Venues, and how the portion

of CAT costs allocated to Execution Venues would be allocated between Equity Execution Venues and Options Execution Venues. These determinations are described below.

(I) Allocation Between Industry Members and Execution Venues

In determining the cost allocation between Industry Members (other than Execution Venue ATSs) and Execution Venues, the Operating Committee analyzed a range of possible splits for revenue recovery from such Industry Members and Execution Venues, including 80%/20%, 75%/25%, 70%/30% and 65%/35% allocations. Based on this analysis, the Operating Committee determined that 75 percent of total costs recovered would be allocated to Industry Members (other than Execution Venue ATSs) and 25 percent would be allocated to Execution Venues. The Operating Committee determined that this 75%/25% division maintained the greatest level of comparability across the funding model. For example, the cost allocation establishes fees for the largest Industry Members (*i.e.*, those Industry Members in Tiers 1) that are comparable to the largest Equity Execution Venues and Options Execution Venues (*i.e.*, those Execution Venues in Tier 1).

Furthermore, the allocation of total CAT cost recovery recognizes the difference in the number of CAT Reporters that are Industry Members versus CAT Reporters that are Execution Venues. Specifically, the cost allocation takes into consideration that there are approximately 23 times more Industry Members expected to report to the CAT than Execution Venues (*e.g.*, an estimated 1541 Industry Members versus 67 Execution Venues as of June 2017).

(II) Allocation Between Equity Execution Venues and Options Execution Venues

The Operating Committee also analyzed how the portion of CAT costs allocated to Execution Venues would be allocated between Equity Execution

Venues and Options Execution Venues. In considering this allocation of costs, the Operating Committee analyzed a range of alternative splits for revenue recovered between Equity and Options Execution Venues, including a 70%/30%, 67%/33%, 65%/35%, 50%/50% and 25%/75% split. Based on this analysis, the Operating Committee determined to allocate 67 percent of Execution Venue costs recovered to Equity Execution Venues and 33 percent to Options Execution Venues. The Operating Committee determined that a 67%/33% allocation between Equity and Options Execution Venues maintained the greatest level of fee equitability and comparability based on the current number of Equity and Options Execution Venues. For example, the allocation establishes fees for the larger Equity Execution Venues that are comparable to the larger Options Execution Venues. Specifically, Tier 1 Equity Execution Venues would pay a quarterly fee of \$81,047 and Tier 1 Options Execution Venues would pay a quarterly fee of \$81,379. In addition to fee comparability between Equity Execution Venues and Options Execution Venues, the allocation also establishes equitability between larger (Tier 1) and smaller (Tier 2) Execution Venues based upon the level of market share. Furthermore, the allocation is intended to reflect the relative levels of current equity and options order events.

(E) Fee Levels

The Operating Committee determined to establish a CAT-specific fee to collectively recover the costs of building and operating the CAT. Accordingly, under the funding model, the sum of the CAT Fees is designed to recover the total cost of the CAT. The Operating Committee has determined overall CAT costs to be comprised of Plan Processor costs and non-Plan Processor costs, which are estimated to be \$50,700,000 in total for the year beginning November 21, 2016.<sup>54</sup>

<sup>54</sup> It is anticipated that CAT-related costs incurred prior to November 21, 2016 will be addressed via a separate filing.

The Plan Processor costs relate to costs incurred and to be incurred through November 21, 2017 by the Plan Processor and consist of the Plan Processor's current estimates of average yearly ongoing costs, including development costs, which total \$37,500,000. This amount is based upon the fees due to the Plan Processor pursuant to the Company's agreement with the Plan Processor.

The non-Plan Processor estimated costs incurred and to be incurred by the Company through November 21, 2017 consist of three categories of costs. The first category of such costs are third party support costs, which include legal fees, consulting fees and audit fees from November 21, 2016 until the date of filing as well as estimated third party support costs for the rest of the year. These amount to an estimated \$5,200,000. The second category of non-Plan Processor costs are estimated cyber-insurance costs for the year. Based on discussions with potential cyber-insurance providers, assuming \$2–5 million cyber-insurance premium on \$100 million coverage, the Company has estimated \$3,000,000 for the annual cost. The final cost figures will be determined following receipt of final underwriter quotes. The third category of non-Plan Processor costs is the CAT operational reserve, which is comprised of three months of ongoing Plan Processor costs (\$9,375,000), third party support costs (\$1,300,000) and cyber-insurance costs (\$750,000). The Operating Committee aims to accumulate the necessary funds to establish the three-month operating reserve for the Company through the CAT Fees charged to CAT Reporters for the year. On an ongoing basis, the Operating Committee will account for any potential need to replenish the operating reserve or other changes to total cost during its annual budgeting process. The following table summarizes the Plan Processor and non-Plan Processor cost components which comprise the total estimated CAT costs of \$50,700,000 for the covered period.

Cost category	Cost component	Amount
Plan Processor .....	Operational Costs .....	\$37,500,000
Non-Plan Processor .....	Third Party Support Costs .....	5,200,000
	Operational Reserve .....	<sup>55</sup> 5,000,000
	Cyber-insurance Costs .....	3,000,000
Estimated Total .....		50,700,000

Based on these estimated costs and the calculations for the funding model described above, the Operating Committee determined to impose the following fees:<sup>56</sup>

For Industry Members (other than Execution Venue ATSS):

Tier	Percentage of Industry Members	Quarterly CAT fee
1 .....	0.900	\$81,483
2 .....	2.150	59,055
3 .....	2.800	40,899
4 .....	7.750	25,566
5 .....	8.300	7,428
6 .....	18.800	1,968
7 .....	59.300	105

For Execution Venues for NMS Stocks and OTC Equity Securities:

Tier	Percentage of Equity Execution Venues	Quarterly CAT Fee
1 .....	25.00	\$81,048
2 .....	42.00	37,062
3 .....	23.00	21,126
4 .....	10.00	129

Tier	Percentage of Options Execution Venues	Quarterly CAT Fee
1 .....	75.00	\$81,381
2 .....	25.00	37,629

For Execution Venues for Listed Options:

The Operating Committee has calculated the schedule of effective fees for Industry Members (other than Execution Venue ATSS) and Execution Venues in the following manner. Note that the calculation of CAT Fees assumes 52 Equity Execution Venues, 15 Options Execution Venues and 1,541 Industry Members (other than Execution Venue ATSS) as of June 2017.

CALCULATION OF ANNUAL TIER FEES FOR INDUSTRY MEMBERS ("IM")

Industry Member tier	Percentage of Industry Members	Percentage of Industry Member Recovery	Percentage of total recovery
Tier 1 .....	0.900	12.00	9.00
Tier 2 .....	2.150	20.50	15.38
Tier 3 .....	2.800	18.50	13.88
Tier 4 .....	7.750	32.00	24.00
Tier 5 .....	8.300	10.00	7.50
Tier 6 .....	18.800	6.00	4.50
Tier 7 .....	59.300	1.00	0.75
Total .....	100	100	75

Industry Member tier	Estimated Number of Industry Members	Industry Member tier	Estimated Number of Industry Members
Tier 1 .....	14	Tier 4 .....	119
Tier 2 .....	33	Tier 5 .....	128
Tier 3 .....	43	Tier 6 .....	290
		Tier 7 .....	914
		Total .....	1,541

BILLING CODE 8011-01-P

<sup>55</sup> This \$5,000,000 represents the gradual accumulation of the funds for a target operating reserve of \$11,425,000.

<sup>56</sup> Note that all monthly, quarterly and annual CAT Fees have been rounded to the nearest dollar.

**Calculation 1.1 (Calculation of a Tier 1 Industry Member Monthly Fee)**

$$1,541 \text{ [Estimated Tot. IMs]} \times 0.9\% \text{ [% of Tier 1 IMs]} = 14 \text{ [Estimated Tier 1 IMs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 75\% \text{ [IM \% of Tot. Ann. CAT Costs]} \times 12\% \text{ [% of Tier 1 IM Recovery]}}{14 \text{ [Estimated Tier 1 IMs]}} \right) \div 12 \text{ [Months per year]} =$$

**\$27,161**

**Calculation 1.2 (Calculation of a Tier 2 Industry Member Monthly Fee)**

$$1,541 \text{ [Estimated Tot. IMs]} \times 2.15\% \text{ [% of Tier 2 IMs]} = 33 \text{ [Estimated Tier 2 IMs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 75\% \text{ [IM \% of Tot. Ann. CAT Costs]} \times 20.5\% \text{ [% of Tier 2 IM Recovery]}}{33 \text{ [Estimated Tier 2 IMs]}} \right) \div 12 \text{ [Months per year]} =$$

**\$19,685**

**Calculation 1.3 (Calculation of a Tier 3 Industry Member Monthly Fee)**

$$1,541 \text{ [Estimated Tot. IMs]} \times 2.125\% \text{ [% of Tier 3 IMs]} = 43 \text{ [Estimated Tier 3 IMs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 75\% \text{ [IM \% of Tot. Ann. CAT Costs]} \times 18.5\% \text{ [% of Tier 3 IM Recovery]}}{43 \text{ [Estimated Tier 3 IMs]}} \right) \div 12 \text{ [Months per year]} =$$

**\$13,633**

**Calculation 1.4 (Calculation of a Tier 4 Industry Member Monthly Fee)**

$$1,541 \text{ [Estimated Tot. IMs]} \times 7.75\% \text{ [% of Tier 4 IMs]} = 119 \text{ [Estimated Tier 4 IMs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 75\% \text{ [IM \% of Tot. Ann. CAT Costs]} \times 32\% \text{ [% of Tier 4 IM Recovery]}}{119 \text{ [Estimated Tier 4 IMs]}} \right) \div 12 \text{ [Months per year]} = \mathbf{\$8522}$$

**Calculation 1.5 (Calculation of a Tier 5 Industry Member Annual Fee)**

$$1,541 \text{ [Estimated Tot. IMs]} \times 8.3\% \text{ [% of Tier 5 IMs]} = 128 \text{ [Estimated Tier 5 IMs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 75\% \text{ [IM \% of Tot. Ann. CAT Costs]} \times 7.75\% \text{ [% of Tier 5 IM Recovery]}}{128 \text{ [Estimated Tier 5 IMs]}} \right) \div 12 \text{ [Months per year]} = \mathbf{\$2476}$$

**Calculation 1.6 (Calculation of a Tier 6 Industry Member Monthly Fee)**

$$1,541 \text{ [Estimated Tot. IMs]} \times 18.8\% \text{ [% of Tier 6 IMs]} = 290 \text{ [Estimated Tier 6 IMs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 75\% \text{ [IM \% of Tot. Ann. CAT Costs]} \times 6\% \text{ [% of Tier 6 IM Recovery]}}{290 \text{ [Estimated Tier 6 IMs]}} \right) \div 12 \text{ [Months per year]} = \mathbf{\$656}$$

**Calculation 1.7 (Calculation of a Tier 7 Industry Member Monthly Fee)**

$$1,541 \text{ [Estimated Tot. IMs]} \times 59.3\% \text{ [% of Tier 7 IMs]} = 914 \text{ [Estimated Tier 7 IMs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 75\% \text{ [IM \% of Tot. Ann. CAT Costs]} \times 1\% \text{ [% of Tier 7 IM Recovery]}}{914 \text{ [Estimated Tier 7 IMs]}} \right) \div 12 \text{ [Months per year]} = \mathbf{\$35}$$



CALCULATION OF ANNUAL TIER FEES FOR EQUITY EXECUTION VENUES ("EV")

Equity Execution Venue tier	Percentage of Equity Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1 .....	25.00	33.25	8.31
Tier 2 .....	42.00	25.73	6.43
Tier 3 .....	23.00	8.00	2.00
Tier 4 .....	10.00	49.00	0.01
Total .....	100	67	16.75

Equity Execution Venue tier	Estimated number of Equity Execution Venues
Tier 1 .....	13
Tier 2 .....	22
Tier 3 .....	12
Tier 4 .....	5
Total .....	52

**Calculation 2.1 (Calculation of a Tier 1 Equity Execution Venue Monthly Fee)**

$$52 \text{ [Estimated Tot. Equity EVs]} \times 25\% \text{ [% of Tier 1 Equity EVs]} = 13 \text{ [Estimated Tier 1 Equity EVs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann.CAT Costs]} \times 33.25\% \text{ [EV \% of Tot.Ann.CAT Costs]} \times 26\% \text{ [% of Tier 1 Equity EV Recovery]}}{13 \text{ [Estimated Tier 1 Equity EVs]}} \right) \div$$

$$12 \text{ [Months per year]} = \mathbf{\$27,016}$$

**Calculation 2.2 (Calculation of a Tier 2 Equity Execution Venue Monthly Fee)**

$$52 \text{ [Estimated Tot. Equity EVs]} \times 42\% \text{ [% of Tier 2 Equity EVs]} = 22 \text{ [Estimated Tier 2 Equity EVs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann.CAT Costs]} \times 25\% \text{ [EV \% of Tot.Ann.CAT Costs]} \times 25.73\% \text{ [% of Tier 2 Equity EV Recovery]}}{22 \text{ [Estimated Tier 2 Equity EVs]}} \right) \div$$

$$12 \text{ [Months per year]} = \mathbf{\$12,353}$$

**Calculation 2.3 (Calculation of a Tier 3 Equity Execution Venue Monthly Fee)**

$$52 \text{ [Estimated Tot. Equity EVs]} \times 23\% \text{ [% of Tier 2 Equity EVs]} = 12 \text{ [Estimated Tier 2 Equity EVs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann.CAT Costs]} \times 25\% \text{ [EV \% of Tot.Ann.CAT Costs]} \times 8\% \text{ [% of Tier 2 Equity EV Recovery]}}{12 \text{ [Estimated Tier 2 Equity EVs]}} \right) \div$$

$$12 \text{ [Months per year]} = \mathbf{\$7,042}$$

**Calculation 2.4 (Calculation of a Tier 4 Equity Execution Venue Monthly Fee)**

$$52 \text{ [Estimated Tot. Equity EVs]} \times 10\% \text{ [% of Tier 2 Equity EVs]} = 5 \text{ [Estimated Tier 2 Equity EVs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann.CAT Costs]} \times 25\% \text{ [EV \% of Tot.Ann.CAT Costs]} \times 0.02\% \text{ [% of Tier 2 Equity EV Recovery]}}{5 \text{ [Estimated Tier 2 Equity EVs]}} \right) \div$$

$$12 \text{ [Months per year]} = \mathbf{\$42}$$

CALCULATION OF ANNUAL TIER FEES FOR OPTIONS EXECUTION VENUES ("EV")

Options Execution Venue tier	Percentage of Options Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1 .....	75.00	28.25	7.06
Tier 2 .....	25.00	4.75	1.19
Total .....	100	33	8.25

Options Execution Venue Tier	Estimated number of Options Execution Venues
Tier 1 .....	11
Tier 2 .....	4
Total .....	15

**Calculation 3.1 (Calculation of a Tier 1 Options Execution Venue Monthly Fee)**

$$15 \text{ [Estimated Tot. Options EVs]} \times 75\% \text{ [% of Tier 1 Options EVs]} = 11 \text{ [Estimated Tier 1 Options EVs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 25\% \text{ [EV \% of Tot. Ann. CAT Costs]} \times 28.25\% \text{ [% of Tier 1 Options EV Recovery]}}{11 \text{ [Estimated Tier 1 Options EVs]}} \right) \div$$

$$12 \text{ [Months per year]} = \mathbf{\$27,127}$$

**Calculation 3.2 (Calculation of a Tier 2 Options Execution Venue Annual Fee)**

$$15 \text{ [Estimated Tot. Options EVs]} \times 25\% \text{ [% of Tier 2 Options EVs]} = 4 \text{ [Estimated Tier 2 Options EVs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 25\% \text{ [EV \% of Tot. Ann. CAT Costs]} \times 4.75\% \text{ [% of Tier 2 Options EV Recovery]}}{4 \text{ [Estimated Tier 2 Options EVs]}} \right) \div$$

$$12 \text{ [Months per year]} = \mathbf{\$12,543}$$

TRACEABILITY OF TOTAL CAT FEES

Type	Industry Member tier	Estimated number of Members	CAT Fees paid annually (\$)	Total recovery (\$)
Industry Members .....	Tier 1 .....	14	325,932	4,563,048
	Tier 2 .....	33	236,220	7,795,260
	Tier 3 .....	43	163,596	7,034,628
	Tier 4 .....	119	102,264	12,169,416
	Tier 5 .....	128	29,712	3,803,136
	Tier 6 .....	290	7,872	2,282,880
	Tier 7 .....	914	420	383,880
Total .....	.....	1,541	.....	38,032,248
Equity Execution Venues .....	Tier 1 .....	13	324,192	4,214,496
	Tier 2 .....	22	148,248	3,261,456
	Tier 3 .....	12	84,504	1,014,048
	Tier 4 .....	5	516	2,580
Total .....	.....	52	.....	8,492,580
Options Execution Venues .....	Tier 1 .....	11	325,524	3,580,764
	Tier 2 .....	4	150,516	602,064
Total .....	.....	15	.....	4,182,828
Total .....	.....	.....	.....	50,700,000

TRACEABILITY OF TOTAL CAT FEES—Continued

Type	Industry Member tier	Estimated number of Members	CAT Fees paid annually (\$)	Total recovery (\$)
Excess <sup>57</sup> .....	.....	.....	.....	7,656

(F) Comparability of Fees

The funding principles require a funding model in which the fees charged to the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venue and/or Industry Members). Accordingly, in creating the model, the Operating Committee sought to establish comparable fees for the top tier of Industry Members (other than Execution Venue ATs), Equity Execution Venues and Options Execution Venues. Specifically, each Tier 1 CAT Reporter would be required to pay a quarterly fee of approximately \$81,000.

(G) Billing Onset

Under Section 11.1(c) of the CAT NMS Plan, to fund the development and implementation of the CAT, the Company shall time the imposition and collection of all fees on Participants and Industry Members in a manner reasonably related to the timing when the Company expects to incur such development and implementation costs. The Company is currently incurring such development and implementation costs and will continue to do so prior to the commencement of CAT reporting and thereafter. In accordance with the CAT NMS Plan, all CAT Reporters, including both Industry Members and Execution Venues (including Participants), will be invoiced as promptly as possible following the latest of the operative date of the Consolidated Audit Trail Funding Fees for each of the Participants and the operative date of the Plan amendment adopting CAT Fees for Participants.

(H) Changes to Fee Levels and Tiers

Section 11.3(d) of the CAT NMS Plan states that “[t]he Operating Committee shall review such fee schedule on at

least an annual basis and shall make any changes to such fee schedule that it deems appropriate. The Operating Committee is authorized to review such fee schedule on a more regular basis, but shall not make any changes on more than a semi-annual basis unless, pursuant to a Supermajority Vote, the Operating Committee concludes that such change is necessary for the adequate funding of the Company.” With such reviews, the Operating Committee will review the distribution of Industry Members and Execution Venues across tiers, and make any updates to the percentage of CAT Reporters allocated to each tier as may be necessary. In addition, the reviews will evaluate the estimated ongoing CAT costs and the level of the operating reserve. To the extent that the total CAT costs decrease, the fees would be adjusted downward, and to the extent that the total CAT costs increase, the fees would be adjusted upward.<sup>58</sup> Furthermore, any surplus of the Company’s revenues over its expenses is to be included within the operational reserve to offset future fees. The limitations on more frequent changes to the fee, however, are intended to provide budgeting certainty for the CAT Reporters and the Company.<sup>59</sup> To the extent that the Operating Committee approves changes to the number of tiers in the funding model or the fees assigned to each tier, then the Operating Committee will file such changes with the SEC pursuant to Rule 608 of the Exchange Act, and any such changes will become effective in accordance with the requirements of Rule 608.

(I) Initial and Periodic Tier Reassignments

The Operating Committee has determined to calculate fee tiers every three months based on market share or message traffic, as applicable, from the prior three months. For the initial tier assignments, the Company will calculate the relevant tier for each CAT Reporter using the three months of data prior to the commencement date. As

with the initial tier assignment, for the tri-monthly reassignments, the Company will calculate the relevant tier using the three months of data prior to the relevant tri-monthly date. Any movement of CAT Reporters between tiers will not change the criteria for each tier or the fee amount corresponding to each tier.

In performing the tri-monthly reassignments, the assignment of CAT Reporters in each assigned tier is relative. Therefore, a CAT Reporter’s assigned tier will depend, not only on its own message traffic or market share, but also on the message traffic/market share across all CAT Reporters. For example, the percentage of Industry Members (other than Execution Venue ATs) in each tier is relative such that such Industry Member’s assigned tier will depend on message traffic generated across all CAT Reporters as well as the total number of CAT Reporters. The Operating Committee will inform CAT Reporters of their assigned tier every three months following the periodic tiering process, as the funding model will compare an individual CAT Reporter’s activity to that of other CAT Reporters in the marketplace.

The following demonstrates a tier reassignment. In accordance with the funding model, the top 75% of Options Execution Venues in market share are categorized as Tier 1 while the bottom 25% of Options Execution Venues in market share are categorized as Tier 2. In the sample scenario below, Options Execution Venue L is initially categorized as a Tier 2 Options Execution Venue in Period A due to its market share. When market share is recalculated for Period B, the market share of Execution Venue L increases, and it is therefore subsequently reranked and reassigned to Tier 1 in Period B. Correspondingly, Options Execution Venue K, initially a Tier 1 Options Execution Venue in Period A, is reassigned to Tier 2 in Period B due to decreases in its market share.

<sup>57</sup>The amount in excess of the total CAT costs will contribute to the gradual accumulation of the target operating reserve of \$11.425 million.

<sup>58</sup>The CAT Fees are designed to recover the costs associated with the CAT. Accordingly, CAT Fees would not be affected by increases or decreases in other non-CAT expenses incurred by the Participants, such as any changes in costs related

to the retirement of existing regulatory systems, such as OATS.

<sup>59</sup>Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85006.

Period A			Period B		
Options Execution Venue	Market share rank	Tier	Options Execution Venue	Market share rank	Tier
Options Execution Venue A .....	1	1	Options Execution Venue A .....	1	1
Options Execution Venue B .....	2	1	Options Execution Venue B .....	2	1
Options Execution Venue C .....	3	1	Options Execution Venue C .....	3	1
Options Execution Venue D .....	4	1	Options Execution Venue D .....	4	1
Options Execution Venue E .....	5	1	Options Execution Venue E .....	5	1
Options Execution Venue F .....	6	1	Options Execution Venue F .....	6	1
Options Execution Venue G .....	7	1	Options Execution Venue I .....	7	1
Options Execution Venue H .....	8	1	Options Execution Venue H .....	8	1
Options Execution Venue I .....	9	1	Options Execution Venue G .....	9	1
Options Execution Venue J .....	10	1	Options Execution Venue J .....	10	1
Options Execution Venue K .....	11	1	Options Execution Venue L .....	11	1
Options Execution Venue L .....	12	2	Options Execution Venue K .....	12	2
Options Execution Venue M .....	13	2	Options Execution Venue N .....	13	2
Options Execution Venue N .....	14	2	Options Execution Venue M .....	14	2
Options Execution Venue O .....	15	2	Options Execution Venue O .....	15	2

For each periodic tier reassignment, the Operating Committee will review the new tier assignments, particularly those assignments for CAT Reporters that shift from the lowest tier to a higher tier. This review is intended to evaluate whether potential changes to the market or CAT Reporters (e.g., dissolution of a large CAT Reporter) adversely affect the tier reassignments.

(J) Sunset Provision

The Operating Committee developed the proposed funding model by analyzing currently available historical data. Such historical data, however, is not as comprehensive as data that will be submitted to the CAT. Accordingly, the Operating Committee believes that it will be appropriate to revisit the funding model once CAT Reporters have actual experience with the funding model. Accordingly, the Operating Committee determined to include an automatic sunset provision for the proposed fees. Specifically, the Operating Committee determined that the CAT Fees should automatically expire two years after the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. The Operating Committee intends to monitor the operation of the funding model during this two year period and to evaluate its effectiveness during that period. Such a process will inform the Operating Committee’s approach to funding the CAT after the two year period.

(3) Proposed CAT Fee Schedule

SRO proposes the Consolidated Audit Trail Funding Fees to impose the CAT Fees determined by the Operating Committee on SRO’s members. The proposed fee schedule has four sections, covering definitions, the fee schedule for CAT Fees, the timing and manner of

payments, and the automatic sunset of the CAT Fees. Each of these sections is discussed in detail below.

(A) Definitions

Paragraph (a) of the proposed fee schedule sets forth the definitions for the proposed fee schedule. Paragraph (a)(1) states that, for purposes of the Consolidated Audit Trail Funding Fees, the terms “CAT”, “CAT NMS Plan,” “Industry Member,” “NMS Stock,” “OTC Equity Security”, “Options Market Maker”, and “Participant” are defined as set forth in Rule 16010 (Consolidated Audit Trail—Definitions).

The proposed fee schedule imposes different fees on Equity ATSs and Industry Members that are not Equity ATSs. Accordingly, the proposed fee schedule defines the term “Equity ATS.” First, paragraph (a)(2) defines an “ATS” to mean an alternative trading system as defined in Rule 300(a) of Regulation ATS under the Securities Exchange Act of 1934, as amended, that operates pursuant to Rule 301 of Regulation ATS. This is the same definition of an ATS as set forth in Section 1.1 of the CAT NMS Plan in the definition of an “Execution Venue.” Then, paragraph (a)(4) defines an “Equity ATS” as an ATS that executes transactions in NMS Stocks and/or OTC Equity Securities.

Paragraph (a)(3) of the proposed fee schedule defines the term “CAT Fee” to mean the Consolidated Audit Trail Funding Fee(s) to be paid by Industry Members as set forth in paragraph (b) in the proposed fee schedule.

Finally, Paragraph (a)(6) defines an “Execution Venue” as a Participant or an ATS (excluding any such ATS that does not execute orders). This definition is the same substantive definition as set forth in Section 1.1 of the CAT NMS Plan. Paragraph (a)(5) defines an

“Equity Execution Venue” as an Execution Venue that trades NMS Stocks and/or OTC Equity Securities.

(B) Fee Schedule

SRO proposes to impose the CAT Fees applicable to its Industry Members through paragraph (b) of the proposed fee schedule. Paragraph (b)(1) of the proposed fee schedule sets forth the CAT Fees applicable to Industry Members other than Equity ATSs. Specifically, paragraph (b)(1) states that the Company will assign each Industry Member (other than an Equity ATS) to a fee tier once every quarter, where such tier assignment is calculated by ranking each Industry Member based on its total message traffic (with discounts for equity market maker quotes and Options Market Maker quotes based on the trade to quote ratio for equities and options, respectively) for the three months prior to the quarterly tier calculation day and assigning each Industry Member to a tier based on that ranking and predefined Industry Member percentages. The Industry Members with the highest total quarterly message traffic will be ranked in Tier 1, and the Industry Members with lowest quarterly message traffic will be ranked in Tier 7. Each quarter, each Industry Member (other than an Equity ATS) shall pay the following CAT Fee corresponding to the tier assigned by the Company for such Industry Member for that quarter:

Tier	Percentage of Industry Members	Quarterly CAT Fee
1 .....	0.900	\$81,483
2 .....	2.150	59,055
3 .....	2.800	40,899
4 .....	7.750	25,566
5 .....	8.300	7,428
6 .....	18.800	1,968
7 .....	59.300	105

Paragraph (b)(2) of the proposed fee schedule sets forth the CAT Fees applicable to Equity ATSS.<sup>60</sup> These are the same fees that Participants that trade NMS Stocks and/or OTC Equity Securities will pay. Specifically, paragraph (b)(2) states that the Company will assign each Equity ATS to a fee tier once every quarter, where such tier assignment is calculated by ranking each Equity Execution Venue based on its total market share of NMS Stocks and OTC Equity Securities (with a discount for Equity ATSS exclusively trading OTC Equity Securities based on the average shares per trade ratio between NMS Stocks and OTC Equity Securities) for the three months prior to the quarterly tier calculation day and assigning each Equity ATS to a tier based on that ranking and predefined Equity Execution Venue percentages. The Equity ATSS with the higher total quarterly market share will be ranked in Tier 1, and the Equity ATSS with the lowest quarterly market share will be ranked in Tier 4. Specifically, paragraph (b)(2) states that, each quarter, each Equity ATS shall pay the following CAT Fee corresponding to the tier assigned by the Company for such Equity ATS for that quarter:

Tier	Percentage of Equity Execution Venues	Quarterly CAT Fee
1 .....	25.00	\$81,048
2 .....	42.00	37,062
3 .....	23.00	21,126
4 .....	10.00	129

#### (C) Timing and Manner of Payment

Section 11.4 of the CAT NMS Plan states that the Operating Committee shall establish a system for the collection of fees authorized under the CAT NMS Plan. The Operating Committee may include such collection responsibility as a function of the Plan Processor or another administrator. To implement the payment process to be adopted by the Operating Committee, paragraph (c)(1) of the proposed fee schedule states that the Company will provide each Industry Member with one invoice each quarter for its CAT Fees as determined pursuant to paragraph (b) of the proposed fee schedule, regardless of whether the Industry Member is a member of multiple self-regulatory organizations. Paragraph (c)(1) further states that each Industry Member will

<sup>60</sup> Note that no fee schedule is provided for Execution Venue ATSS that execute transactions in Listed Options, as no such Execution Venue ATSS currently exist due to trading restrictions related to Listed Options.

pay its CAT Fees to the Company via the centralized system for the collection of CAT Fees established by the Company in the manner prescribed by the Company. SRO will provide Industry Members with details regarding the manner of payment of CAT Fees by Informational Circular.

All CAT Fees will be billed and collected centrally through the Company via the Plan Processor. Although each Participant will adopt its own fee schedule regarding CAT Fees, no CAT Fees or portion thereof will be collected by the individual Participants. Each Industry Member will receive from the Company one invoice for its applicable CAT fees, not separate invoices from each Participant of which it is a member. The Industry Members will pay the CAT Fees to the Company via the centralized system for the collection of CAT Fees established by the Company.<sup>61</sup>

Section 11.4 of the CAT NMS Plan also states that Participants shall require each Industry Member to pay all applicable authorized CAT Fees within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). Section 11.4 further states that, if an Industry Member fails to pay any such fee when due, such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (i) The Prime Rate plus 300 basis points; or (ii) the maximum rate permitted by applicable law. Therefore, in accordance with Section 11.4 of the CAT NMS Plan, SRO proposed to adopt paragraph (c)(2) of the proposed fee schedule. Paragraph (c)(2) of the proposed fee schedule states that each Industry Member shall pay CAT Fees within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If an Industry Member fails to pay any such fee when due, such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (i) The Prime Rate plus 300 basis points; or (ii) the maximum rate permitted by applicable law.

#### (D) Sunset Provision

The Operating Committee has determined to require that the CAT Fees automatically sunset two years from the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. Accordingly, SRO

<sup>61</sup> Section 11.4 of the CAT NMS Plan.

proposes paragraph (d) of the fee schedule, which states that “[t]hese Consolidated Audit Trailing Funding Fees will automatically expire two years after the operative date of the amendment of the CAT NMS Plan that adopts CAT fees for the Participants.”

#### (4) Changes to Prior CAT Fee Plan Amendment

The proposed funding model set forth in this Amendment is a revised version of the Original Proposal. The Commission received a number of comment letters in response to the Original Proposal.<sup>62</sup> The SEC suspended the Original Proposal and instituted proceedings to determine whether to approve or disapprove it.<sup>63</sup> Pursuant to those proceedings, additional comment letters were submitted regarding the proposed funding model.<sup>64</sup> In developing this Amendment, the Operating Committee carefully considered these comments and made a number of changes to the Original Proposal to address these comments where appropriate.

This Amendment makes the following changes to the Original Proposal: (1) Adds two additional CAT Fee tiers for Equity Execution Venues; (2) discounts the market share of Execution Venue ATSS exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF by the average shares per trade ratio between NMS Stocks and OTC Equity Securities (calculated as 0.17% based on available data from the second quarter of June 2017) when calculating the market share of Execution Venue ATSS exclusively trading OTC Equity Securities and FINRA; (3) discounts the Options Market Maker quotes by the trade to quote ratio for options (calculated as 0.01% based on available data for June 2016 through June 2017) when calculating message traffic for Options Market Makers; (4) discounts equity market maker quotes by the trade to quote ratio for equities (calculated as 5.43% based on available data for June 2016 through June 2017) when calculating message traffic for equity market makers; (5) decreases the number of tiers for Industry Members (other than the Execution Venue ATSS) from nine to seven; (6) changes the allocation of CAT costs between Equity Execution Venues and Options Execution Venues from 75%/25% to

<sup>62</sup> For a description of the comments submitted in response to the Original Proposal, see Suspension Order.

<sup>63</sup> Suspension Order.

<sup>64</sup> See MFA Letter; SIFMA Letter; FIA Principal Traders Group Letter; Belvedere Letter; Sidley Letter; Group One Letter; and Virtu Financial Letter.

67%/33%; (7) adjusts tier percentages and recovery allocations for Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATs); (8) focuses the comparability of CAT Fees on the individual entity level, rather than primarily on the comparability of affiliated entities; (9) commences invoicing of CAT Reporters as promptly as possible following the latest of the operative date of the Consolidated Audit Trail Funding Fees for each of the Participants and the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants; and (10) requires the proposed fees to automatically expire two years from the operative date of the CAT NMS Plan amendment adopting CAT Fees for the Participants.

(A) Equity Execution Venues

(i) Small Equity Execution Venues

In the Original Proposal, the Operating Committee proposed to establish two fee tiers for Equity Execution Venues. The Commission and commenters raised the concern that, by establishing only two tiers, smaller Equity Execution Venues (*e.g.*, those Equity ATs representing less than 1% of NMS market share) would be placed in the same fee tier as larger Equity Execution Venues, thereby imposing an undue or inappropriate burden on competition.<sup>65</sup> To address this concern, the Operating Committee proposes to add two additional tiers for Equity Execution Venues, a third tier for smaller Equity Execution Venues and a fourth tier for the smallest Equity Execution Venues.

Specifically, the Original Proposal had two tiers of Equity Execution Venues. Tier 1 required the largest Equity Execution Venues to pay a quarterly fee of \$63,375. Based on available data, these largest Equity Execution Venues were those that had equity market share of share volume greater than or equal to 1%.<sup>66</sup> Tier 2 required the remaining smaller Equity Execution Venues to pay a quarterly fee of \$38,820.

<sup>65</sup> See Suspension Order at 31664; SIFMA Letter at 3.

<sup>66</sup> Note that while these equity market share thresholds were referenced as data points to help differentiate between Equity Execution Venue tiers, the proposed funding model is directly driven not by market share thresholds, but rather by fixed percentages of Equity Execution Venues across tiers to account for fluctuating levels of market share across time. Actual market share in any tier will vary based on the actual market activity in a given measurement period, as well as the number of Equity Execution Venues included in the measurement period.

To address concerns about the potential for the \$38,820 quarterly fee to impose an undue burden on smaller Equity Execution Venues, the Operating Committee determined to move to a four tier structure for Equity Execution Venues. Tier 1 would continue to include the largest Equity Execution Venues by share volume (that is, based on currently available data, those with market share of equity share volume greater than or equal to one percent), and these Equity Execution Venues would be required to pay a quarterly fee of \$81,048. The Operating Committee determined to divide the original Tier 2 into three tiers. The new Tier 2 Equity Execution Venues, which would include the next largest Equity Execution Venues by equity share volume, would be required to pay a quarterly fee of \$37,062. The new Tier 3 Equity Execution Venues would be required to pay a quarterly fee of \$21,126. The new Tier 4 Equity Execution Venues, which would include the smallest Equity Execution Venues by share volume, would be required to pay a quarterly fee of \$129.

In developing the proposed four tier structure, the Operating Committee considered keeping the existing two tiers, as well as shifting to three, four or five Equity Execution Venue tiers (the maximum number of tiers permitted under the Plan), to address the concerns regarding small Equity Execution Venues. For each of the two, three, four and five tier alternatives, the Operating Committee considered the assignment of various percentages of Equity Execution Venues to each tier as well as various percentage of Equity Execution Venue recovery allocations for each alternative. As discussed below in more detail, each of these options was considered in the context of the full model, as changes in each variable in the model affect other variables in the model when allocating the total CAT costs among CAT Reporters. The Operating Committee determined that the four tier alternative addressed the spectrum of different Equity Execution Venues. The Operating Committee determined that neither a two tier structure nor a three tier structure sufficiently accounted for the range of market shares of smaller Equity Execution Venues. The Operating Committee also determined that, given the limited number of Equity Execution Venues, that a fifth tier was unnecessary to address the range of market shares of the Equity Execution Venues.

By increasing the number of tiers for Equity Execution Venues and reducing the proposed CAT Fees for the smaller Equity Execution Venues, the Operating

Committee believes that the proposed fees for Equity Execution Venues would not impose an undue or inappropriate burden on competition under Section 6 or Section 15A of the Exchange Act. Moreover, the Operating Committee believes that the proposed fees appropriately take into account the distinctions in the securities trading operations of different Equity Execution Venues, as required under the funding principles of the CAT NMS Plan.<sup>67</sup> The larger number of tiers more closely tracks the variety of sizes of equity share volume of Equity Execution Venues. In addition, the reduction in the fees for the smaller Equity Execution Venues recognizes the potential burden of larger fees on smaller entities. In particular, the very small quarterly fee of \$129 for Tier 4 Equity Execution Venues reflects the fact that certain Equity Execution Venues have a very small share volume due to their typically more focused business models.

Accordingly, with this Amendment, SRO proposes to amend paragraph (b)(2) of the proposed fee schedule to add the two additional tiers for Equity Execution Venues, to establish the percentages and fees for Tiers 3 and 4 as described, and to revise the percentages and fees for Tiers 1 and 2 as described.

(ii) Execution Venues for OTC Equity Securities

In the Original Proposal, the Operating Committee proposed to group Execution Venues for OTC Equity Securities and Execution Venues for NMS Stocks in the same tier structure. The Commission and commenters raised concerns as to whether this determination to place Execution Venues for OTC Equity Securities in the same tier structure as Execution Venues for NMS Stocks would result in an undue or inappropriate burden on competition, recognizing that the application of share volume may lead to different outcomes as applied to OTC Equity Securities and NMS Stocks.<sup>68</sup> To address this concern, the Operating Committee proposes to discount the market share of Execution Venue ATs exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF by the average shares per trade ratio between NMS Stocks and OTC Equity Securities (0.17% for the second quarter of 2017) in order to adjust for the greater number of shares being traded in the OTC Equity Securities market, which is generally a function of a lower per share price for

<sup>67</sup> Section 11.2(b) of the CAT NMS Plan.

<sup>68</sup> See Suspension Order at 31664-5.

OTC Equity Securities when compared to NMS Stocks.

As commenters noted, many OTC Equity Securities are priced at less than one dollar—and a significant number at less than one penny—and low-priced shares tend to trade in larger quantities. Accordingly, a disproportionately large number of shares are involved in transactions involving OTC Equity Securities versus NMS Stocks, which has the effect of overstating an Execution Venue's true market share when the Execution Venue is involved in the trading of OTC Equity Securities. Because the proposed fee tiers are based on market share calculated by share volume, Execution Venue ATSS trading OTC Equity Securities and FINRA may be subject to higher tiers than their operations may warrant.<sup>69</sup> The Operating Committee proposes to address this concern in two ways. First, the Operating Committee proposes to increase the number of Equity Execution Venue tiers, as discussed above. Second, the Operating Committee determined to discount the market share of Execution Venue ATSS exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF when calculating their tier placement. Because the disparity in share volume between Execution Venues trading in OTC Equity Securities and NMS Stocks is based on the different number of shares per trade for OTC Equity Securities and NMS Stocks, the Operating Committee believes that discounting the share volume of such Execution Venue ATSS as well as the market share of the FINRA ORF would address the difference in shares per trade for OTC Equity Securities and NMS Stocks. Specifically, the Operating Committee proposes to impose a discount based on the objective measure of the average shares per trade ratio between NMS Stocks and OTC Equity Securities. Based on available data from the second quarter of 2017, the average shares per trade ratio between NMS Stocks and OTC Equity Securities is 0.17%.

The practical effect of applying such a discount for trading in OTC Equity Securities is to shift Execution Venue ATSS exclusively trading OTC Equity Securities to tiers for smaller Execution Venues and with lower fees. For example, under the Original Proposal, one Execution Venue ATS exclusively trading OTC Equity Securities was placed in the first CAT Fee tier, which had a quarterly fee of \$63,375. With the imposition of the proposed tier changes and the discount, this ATS would be

ranked in Tier 3 and would owe a quarterly fee of \$21,126.

In developing the proposed discount for Equity Execution Venue ATSS exclusively trading OTC Equity Securities and FINRA, the Operating Committee evaluated different alternatives to address the concerns related to OTC Equity Securities, including creating a separate tier structure for Execution Venues trading OTC Equity Securities (like the separate tier for Options Execution Venues) as well as the proposed discounting method for Execution Venue ATSS exclusively trading OTC Equity Securities and FINRA. For these alternatives, the Operating Committee considered how each alternative would affect the recovery allocations. In addition, each of these options was considered in the context of the full model, as changes in each variable in the model affect other variables in the model when allocating the total CAT costs among CAT Reporters. The Operating Committee did not adopt a separate tier structure for Equity Execution Venues trading OTC Equity Securities as they determined that the proposed discount approach appropriately addresses the concern. The Operating Committee determined to adopt the proposed discount because it directly relates to the concern regarding the trading patterns and operations in the OTC Equity Securities markets, and is an objective discounting method.

By increasing the number of tiers for Equity Execution Venues and imposing a discount on the market share of share volume calculation for trading in OTC Equity Securities, the Operating Committee believes that the proposed fees for Equity Execution Venues would not impose an undue or inappropriate burden on competition under Section 6 or Section 15A of the Exchange Act. Moreover, the Operating Committee believes that the proposed fees appropriately take into account the distinctions in the securities trading operations of different Equity Execution Venues, as required under the funding principles of the CAT NMS Plan.<sup>70</sup> As discussed above, the larger number of tiers more closely tracks the variety of sizes of equity share volume of Equity Execution Venues. In addition, the proposed discount recognizes the different types of trading operations at Equity Execution Venues trading OTC Equity Securities versus those trading NMS Stocks, thereby more closely matching the relative revenue generation by Equity Execution Venues

trading OTC Equity Securities to their CAT Fees.

Accordingly, with this Amendment, SRO proposes to amend paragraph (b)(2) of the proposed fee schedule to indicate that the market share for Equity ATSS exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF would be discounted. In addition, as discussed above, to address concerns related to smaller ATSS, including those that exclusively trade OTC Equity Securities, SRO proposes to amend paragraph (b)(2) of the proposed fee schedule to add two additional tiers for Equity Execution Venues, to establish the percentages and fees for Tiers 3 and 4 as described, and to revise the percentages and fees for Tiers 1 and 2 as described.

#### (B) Market Makers

In the Original Proposal, the Operating Committee proposed to include both Options Market Maker quotes and equities market maker quotes in the calculation of total message traffic for such market makers for purposes of tiering for Industry Members (other than Execution Venue ATSS). The Commission and commenters raised questions as to whether the proposed treatment of Options Market Maker quotes may result in an undue or inappropriate burden on competition or may lead to a reduction in market quality.<sup>71</sup> To address this concern, the Operating Committee determined to discount the Options Market Maker quotes by the trade to quote ratio for options when calculating message traffic for Options Market Makers. Similarly, to avoid disincentives to quoting behavior on the equities side as well, the Operating Committee determined to discount equity market maker quotes by the trade to quote ratio for equities when calculating message traffic for equities market makers.

In the Original Proposal, market maker quotes were treated the same as other message traffic for purposes of tiering for Industry Members (other than Execution Venue ATSS). Commenters noted, however, that charging Industry Members on the basis of message traffic will impact market makers disproportionately because of their continuous quoting obligations. Moreover, in the context of options market makers, message traffic would include bids and offers for every listed options strikes and series, which are not

<sup>71</sup> See Suspension Order at 31663–4; SIFMA Letter at 4–6; FIA Principal Traders Group Letter at 3; Sidley Letter at 2–6; Group One Letter at 2–6; and Belvedere Letter at 2.

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

<sup>70</sup> Section 11.2(b) of the CAT NMS Plan.

an issue for equities.<sup>72</sup> The Operating Committee proposes to address this concern in two ways. First, the Operating Committee proposes to discount Options Market Maker quotes when calculating the Options Market Makers' tier placement. Specifically, the Operating Committee proposes to impose a discount based on the objective measure of the trade to quote ratio for options. Based on available data from June 2016 through June 2017, the trade to quote ratio for options is 0.01%. Second, the Operating Committee proposes to discount equities market maker quotes when calculating the equities market makers' tier placement. Specifically, the Operating Committee proposes to impose a discount based on the objective measure of the trade to quote ratio for equities. Based on available data for June 2016 through June 2017, this trade to quote ratio for equities is 5.43%.

The practical effect of applying such discounts for quoting activity is to shift market makers' calculated message traffic lower, leading to the potential shift to tiers for lower message traffic and reduced fees. Such an approach would move sixteen Industry Member CAT Reporters that are market makers to a lower tier than in the Original Proposal. For example, under the Original Proposal, Broker-Dealer Firm ABC was placed in the first CAT Fee tier, which had a quarterly fee of \$101,004. With the imposition of the proposed tier changes and the discount, Broker-Dealer Firm ABC, an options market maker, would be ranked in Tier 3 and would owe a quarterly fee of \$40,899.

In developing the proposed market maker discounts, the Operating Committee considered various discounts for Options Market Makers and equity market makers, including discounts of 50%, 25%, 0.00002%, as well as the 5.43% for option market makers and 0.01% for equity market makers. Each of these options were considered in the context of the full model, as changes in each variable in the model affect other variables in the model when allocating the total CAT costs among CAT Reporters. The Operating Committee determined to adopt the proposed discount because it directly relates to the concern regarding the quoting requirement, is an objective discounting method, and has the desired potential to shift market makers to lower fee tiers.

By imposing a discount on Options Market Makers and equities market

makers' quoting traffic for the calculation of message traffic, the Operating Committee believes that the proposed fees for market makers would not impose an undue or inappropriate burden on competition under Section 6 or Section 15A of the Exchange Act. Moreover, the Operating Committee believes that the proposed fees appropriately take into account the distinctions in the securities trading operations of different Industry Members, and avoid disincentives, such as a reduction in market quality, as required under the funding principles of the CAT NMS Plan.<sup>73</sup> The proposed discounts recognize the different types of trading operations presented by Options Market Makers and equities market makers, as well as the value of the market makers' quoting activity to the market as a whole. Accordingly, the Operating Committee believes that the proposed discounts will not impact the ability of small Options Market Makers or equities market makers to provide liquidity.

Accordingly, with this Amendment, SRO proposes to amend paragraph (b)(1) of the proposed fee schedule to indicate that the message traffic related to equity market maker quotes and Options Market Maker quotes would be discounted. In addition, SRO proposes to define the term "Options Market Maker" in paragraph (a)(1) of the proposed fee schedule.

#### (C) Comparability/Allocation of Costs

Under the Original Proposal, 75% of CAT costs were allocated to Industry Members (other than Execution Venue ATs) and 25% of CAT costs were allocated to Execution Venues. This cost allocation sought to maintain the greatest level of comparability across the funding model, where comparability considered affiliations among or between CAT Reporters. The Commission and commenters expressed concerns regarding whether the proposed 75%/25% allocation of CAT costs is consistent with the Plan's funding principles and the Exchange Act, including whether the allocation places a burden on competition or reduces market quality. The Commission and commenters also questioned whether the approach of accounting for affiliations among CAT Reporters in setting CAT Fees disadvantages non-affiliated CAT Reporters or otherwise burdens

competition in the market for trading services.<sup>74</sup>

In response to these concerns, the Operating Committee determined to revise the proposed funding model to focus the comparability of CAT Fees on the individual entity level, rather than primarily on the comparability of affiliated entities. In light of the interconnected nature of the various aspects of the funding model, the Operating Committee determined to revise various aspects of the model to enhance comparability at the individual entity level. Specifically, to achieve such comparability, the Operating Committee determined to (1) decrease the number of tiers for Industry Members (other than Execution Venue ATs) from nine to seven; (2) change the allocation of CAT costs between Equity Execution Venues and Options Execution Venues from 75%/25% to 67%/33%; and (3) adjust tier percentages and recovery allocations for Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATs). With these changes, the proposed funding model provides fee comparability for the largest individual entities, with the largest Industry Members (other than Execution Venue ATs), Equity Execution Venues and Options Execution Venues each paying a CAT Fee of approximately \$81,000 each quarter.

#### (i) Number of Industry Member Tiers

In the Original Proposal, the proposed funding model had nine tiers for Industry Members (other than Execution Venue ATs). The Operating Committee determined that reducing the number of tiers from nine tiers to seven tiers (and adjusting the predefined Industry Member Percentages as well) continues to provide a fair allocation of fees among Industry Members and appropriately distinguishes between Industry Members with differing levels of message traffic. In reaching this conclusion, the Operating Committee considered historical message traffic generated by Industry Members across all exchanges and as submitted to FINRA's OATS, and considered the distribution of firms with similar levels of message traffic, grouping together firms with similar levels of message traffic. Based on this, the Operating Committee determined that seven tiers would group firms with similar levels of message traffic, while also achieving greater comparability in the model for

<sup>72</sup> Suspension Order at 31664.

<sup>73</sup> Section 11.2(b) of the CAT NMS Plan.

<sup>74</sup> See Suspension Order at 31662-3; SIFMA Letter at 3; Sidley Letter at 6-7; Group One Letter at 2; and Belvedere Letter at 2.



the individual CAT Reporters with the greatest market share or message traffic.

In developing the proposed seven tier structure, the Operating Committee considered remaining at nine tiers, as well as reducing the number of tiers down to seven when considering how to address the concerns raised regarding comparability. For each of the alternatives, the Operating Committee considered the assignment of various percentages of Industry Members to each tier as well as various percentages of Industry Member recovery allocations for each alternative. Each of these options was considered in the context of its effects on the full funding model, as changes in each variable in the model affect other variables in the model when allocating the total CAT costs among CAT Reporters. The Operating Committee determined that the seven tier alternative provided the most fee comparability at the individual entity level for the largest CAT Reporters, while both providing logical breaks in tiering for Industry Members with different levels of message traffic and a sufficient number of tiers to provide for the full spectrum of different levels of message traffic for all Industry Members.

(ii) Allocation of CAT Costs Between Equity and Options Execution Venues

The Operating Committee also determined to adjust the allocation of CAT costs between Equity Execution Venues and Options Execution Venues to enhance comparability at the individual entity level. In the Original Proposal, 75% of Execution Venue CAT costs were allocated to Equity Execution Venues, and 25% of Execution Venue CAT costs were allocated to Options Execution Venues. To achieve the goal of increased comparability at the individual entity level, the Operating Committee analyzed a range of alternative splits for revenue recovery between Equity and Options Execution Venues, along with other changes in the proposed funding model. Based on this analysis, the Operating Committee determined to allocate 67 percent of Execution Venue costs recovered to Equity Execution Venues and 33 percent to Options Execution Venues. The Operating Committee determined that a 67/33 allocation between Equity and Options Execution Venues enhances the level of fee comparability for the largest CAT Reporters. Specifically, the largest Equity and Options Execution Venues would pay a quarterly CAT Fee of approximately \$81,000.

In developing the proposed allocation of CAT costs between Equity and Options Execution Venues, the

Operating Committee considered various different options for such allocation, including keeping the original 75%/25% allocation, as well as shifting to a 70%/30%, 67%/33%, or 57.75%/42.25% allocation. For each of the alternatives, the Operating Committee considered the effect each allocation would have on the assignment of various percentages of Equity Execution Venues to each tier as well as various percentages of Equity Execution Venue recovery allocations for each alternative. Moreover, each of these options was considered in the context of the full model, as changes in each variable in the model affect other variables in the model when allocating the total CAT costs among CAT Reporters. The Operating Committee determined that the 67%/33% allocation between Equity and Options Execution Venues provided the greatest level of fee comparability at the individual entity level for the largest CAT Reporters, while still providing for appropriate fee levels across all tiers for all CAT Reporters.

(iii) Allocation of Costs Between Execution Venues and Industry Members

The Operating Committee determined to allocate 25% of CAT costs to Execution Venues and 75% to Industry Members (other than Execution Venue ATSSs), as it had in the Original Proposal. The Operating Committee determined that this 75%/25% allocation, along with the other changes proposed above, led to the most comparable fees for the largest Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATSSs). The largest Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATSSs) would each pay a quarterly CAT Fee of approximately \$81,000.

As a preliminary matter, the Operating Committee determined that it is appropriate to allocate most of the costs to create, implement and maintain the CAT to Industry Members for several reasons. First, there are many more broker-dealers expected to report to the CAT than Participants (*i.e.*, 1,541 broker-dealer CAT Reporters versus 22 Participants). Second, since most of the costs to process CAT reportable data is generated by Industry Members, Industry Members could be expected to contribute toward such costs. Finally, as noted by the SEC, the CAT “substantially enhance[s] the ability of the SROs and the Commission to

oversee today’s securities markets,”<sup>75</sup> thereby benefitting all market participants. After making this determination, the Operating Committee analyzed several different cost allocations, as discussed further below, and determined that an allocation where 75% of the CAT costs should be borne by the Industry Members (other than Execution Venue ATSSs) and 25% should be paid by Execution Venues was most appropriate and led to the greatest comparability of CAT Fees for the largest CAT Reporters.

In developing the proposed allocation of CAT costs between Execution Venues and Industry Members (other than Execution Venue ATSSs), the Operating Committee considered various different options for such allocation, including keeping the original 75%/25% allocation, as well as shifting to an 80%/20%, 70%/30%, or 65%/35% allocation. Each of these options was considered in the context of the full model, including the effect on each of the changes discussed above, as changes in each variable in the model affect other variables in the model when allocating the total CAT costs among CAT Reporters. In particular, for each of the alternatives, the Operating Committee considered the effect each allocation had on the assignment of various percentages of Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATSSs) to each relevant tier as well as various percentages of recovery allocations for each tier. The Operating Committee determined that the 75%/25% allocation between Execution Venues and Industry Members (other than Execution Venue ATSSs) provided the greatest level of fee comparability at the individual entity level for the largest CAT Reporters, while still providing for appropriate fee levels across all tiers for all CAT Reporters.

(iv) Affiliations

The funding principles set forth in Section 11.2 of the Plan require that the fees charged to CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venue and/or Industry Members). The proposed funding model satisfies this requirement. As discussed above, under the proposed funding

<sup>75</sup> Securities Exchange Act Rel. No. 67457 (Jul 18, 2012), 77 FR 45722, 45726 (Aug. 1, 2012) (“Rule 613 Adopting Release”).

model, the largest Equity Execution Venues, Options Execution Venues, and Industry Members (other than Execution Venue ATs) pay approximately the same fee. Moreover, the Operating Committee believes that the proposed funding model takes into consideration affiliations between or among CAT Reporters as complexes with multiple CAT Reporters will pay the appropriate fee based on the proposed fee schedule for each of the CAT Reporters in the complex. For example, a complex with a Tier 1 Equity Execution Venue and Tier 2 Industry Member will pay the same as another complex with a Tier 1 Equity Execution Venue and Tier 2 Industry Member.

#### (v) Fee Schedule Changes

Accordingly, with this Amendment, SRO proposes to amend paragraphs (b)(1) and (2) of the proposed fee schedule to reflect the changes discussed in this section. Specifically, SRO proposes to amend paragraph (b)(1) and (2) of the proposed fee schedule to update the number of tiers, and the fees and percentages assigned to each tier to reflect the described changes.

#### (D) Market Share/Message Traffic

In the Original Proposal, the Operating Committee proposed to charge Execution Venues based on market share and Industry Members (other than Execution Venue ATs) based on message traffic. Commenters questioned the use of the two different metrics for calculating CAT Fees.<sup>76</sup> The Operating Committee continues to believe that the proposed use of market share and message traffic satisfies the requirements of the Exchange Act and the funding principles set forth in the CAT NMS Plan. Accordingly, the proposed funding model continues to charge Execution Venues based on market share and Industry Members (other than Execution Venue ATs) based on message traffic.

In drafting the Plan and the Original Proposal, the Operating Committee expressed the view that the correlation between message traffic and size does not apply to Execution Venues, which they described as producing similar amounts of message traffic regardless of size. The Operating Committee believed that charging Execution Venues based on message traffic would result in both large and small Execution Venues paying comparable fees, which would be inequitable, so the Operating Committee determined that it would be more appropriate to treat Execution

Venues differently from Industry Members in the funding model. Upon a more detailed analysis of available data, however, the Operating Committee noted that Execution Venues have varying levels of message traffic. Nevertheless, the Operating Committee continues to believe that a bifurcated funding model—where Industry Members (other than Execution Venue ATs) are charged fees based on message traffic and Execution Venues are charged based on market share—complies with the Plan and meets the standards of the Exchange Act for the reasons set forth below.

Charging Industry Members based on message traffic is the most equitable means for establishing fees for Industry Members (other than Execution Venue ATs). This approach will assess fees to Industry Members that create larger volumes of message traffic that are relatively higher than those fees charged to Industry Members that create smaller volumes of message traffic. Since message traffic, along with fixed costs of the Plan Processor, is a key component of the costs of operating the CAT, message traffic is an appropriate criterion for placing Industry Members in a particular fee tier.

The Operating Committee also believes that it is appropriate to charge Execution Venues CAT Fees based on their market share. In contrast to Industry Members (other than Execution Venue ATs), which determine the degree to which they produce the message traffic that constitutes CAT Reportable Events, the CAT Reportable Events of Execution Venues are largely derivative of quotations and orders received from Industry Members that the Execution Venues are required to display. The business model for Execution Venues, however, is focused on executions in their markets. As a result, the Operating Committee believes that it is more equitable to charge Execution Venues based on their market share rather than their message traffic.

Similarly, focusing on message traffic would make it more difficult to draw distinctions between large and small exchanges, including options exchanges in particular. For instance, the Operating Committee analyzed the message traffic of Execution Venues and Industry Members for the period of April 2017 to June 2017 and placed all CAT Reporters into a nine-tier framework (*i.e.*, a single tier may include both Execution Venues and Industry Members). The Operating Committee's analysis found that the majority of exchanges (15 total) were grouped in Tiers 1 and 2. Moreover,

virtually all of the options exchanges were in Tiers 1 and 2.<sup>77</sup> Given the concentration of options exchanges in Tiers 1 and 2, the Operating Committee believes that using a funding model based purely on message traffic would make it more difficult to distinguish between large and small options exchanges, as compared to the proposed bifurcated fee approach.

In addition, the Operating Committee also believes that it is appropriate to treat ATs as Execution Venues under the proposed funding model since ATs have business models that are similar to those of exchanges, and ATs also compete with exchanges. For these reasons, the Operating Committee believes that charging Execution Venues based on market share is more appropriate and equitable than charging Execution Venues based on message traffic.

#### (E) Time Limit

In the Original Proposal, the Operating Committee did not impose any time limit on the application of the proposed CAT Fees. As discussed above, the Operating Committee developed the proposed funding model by analyzing currently available historical data. Such historical data, however, is not as comprehensive as data that will be submitted to the CAT. Accordingly, the Operating Committee believes that it will be appropriate to revisit the funding model once CAT Reporters have actual experience with the funding model. Accordingly, the Operating Committee proposes to include a sunset provision in the proposed fee model. The proposed CAT Fees will sunset two years after the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. Specifically, SRO proposes to add paragraph (d) of the proposed fee schedule to include this sunset provision. Such a provision will provide the Operating Committee and other market participants with the opportunity to reevaluate the performance of the proposed funding model.

#### (F) Tier Structure/Decreasing Cost per Unit

In the Original Proposal, the Operating Committee determined to use a tiered fee structure. The Commission and commenters questioned whether the decreasing cost per additional unit (of message traffic in the case of Industry Members, or of share volume

<sup>76</sup> Suspension Order at 31663; FIA Principal Traders Group Letter at 2.

<sup>77</sup> The Participants note that this analysis did not place MIAx PEARL in Tier 1 or Tier 2 since the exchange commenced trading on February 6, 2017.

in the case of Execution Venues) in the proposed fee schedules burdens competition by disadvantaging small Industry Members and Execution Venues and/or by creating barriers to entry in the market for trading services and/or the market for broker-dealer services.<sup>78</sup>

The Operating Committee does not believe that decreasing cost per additional unit in the proposed fee schedules places an unfair competitive burden on Small Industry Members and Execution Venues. While the cost per unit of message traffic or share volume necessarily will decrease as volume increases in any tiered fee model using fixed fee percentages and, as a result, Small Industry Members and small Execution Venues may pay a larger fee per message or share, this comment fails to take account of the substantial differences in the absolute fees paid by Small Industry Members and small Execution Venues as opposed to large Industry Members and large Execution Venues. For example, under the fee proposals, Tier 7 Industry Members would pay a quarterly fee of \$105, while Tier 1 Industry Members would pay a quarterly fee of \$81,483. Similarly, a Tier 4 Equity Execution Venue would pay a quarterly fee of \$129, while a Tier 1 Equity Execution Venue would pay a quarterly fee of \$81,048. Thus, Small Industry Members and small Execution Venues are not disadvantaged in terms of the total fees that they actually pay. In contrast to a tiered model using fixed fee percentages, the Operating Committee believes that strictly variable or metered funding models based on message traffic or share volume would be more likely to affect market behavior and may present administrative challenges (e.g., the costs to calculate and monitor fees may exceed the fees charged to the smallest CAT Reporters).

#### (G) Other Alternatives Considered

In addition to the various funding model alternatives discussed above regarding discounts, number of tiers and allocation percentages, the Operating Committee also discussed other possible funding models. For example, the Operating Committee considered allocating the total CAT costs equally among each of the Participants, and then permitting each Participant to charge its own members as it deems appropriate.<sup>79</sup> The Operating Committee determined that such an approach raised a variety of issues, including the likely inconsistency of the ensuing

charges, potential for lack of transparency, and the impracticality of multiple SROs submitting invoices for CAT charges. The Operating Committee therefore determined that the proposed funding model was preferable to this alternative.

#### (H) Industry Member Input

Commenters expressed concern regarding the level of Industry Member input into the development of the proposed funding model, and certain commenters have recommended a greater role in the governance of the CAT.<sup>80</sup> The Participants previously addressed this concern in its letters responding to comments on the Plan and the CAT Fees.<sup>81</sup> As discussed in those letters, the Participants discussed the funding model with the Development Advisory Group (“DAG”), the advisory group formed to assist in the development of the Plan, during its original development.<sup>82</sup> Moreover, Industry Members currently have a voice in the affairs of the Operating Committee and operation of the CAT generally through the Advisory Committee established pursuant to Rule 613(b)(7) and Section 4.13 of the Plan. The Advisory Committee attends all meetings of the Operating Committee, as well as meetings of various subcommittees and working groups, and provides valuable and critical input for the Participants’ and Operating Committee’s consideration. The Operating Committee continues to believe that that Industry Members have an appropriate voice regarding the funding of the Company.

#### (I) Conflicts of Interest

Commenters also raised concerns regarding Participant conflicts of interest in setting the CAT Fees.<sup>83</sup> The Participants previously responded to this concern in both the Plan Response Letter and the Fee Rule Response Letter.<sup>84</sup> As discussed in those letters, the Plan, as approved by the SEC, adopts various measures to protect against the potential conflicts issues raised by the Participants’ fee-setting authority. Such measures include the operation of the Company as a not for

profit business league and on a break-even basis, and the requirement that the Participants file all CAT Fees under Section 19(b) of the Exchange Act. The Operating Committee continues to believe that these measures adequately protect against concerns regarding conflicts of interest in setting fees, and that additional measures, such as an independent third party to evaluate an appropriate CAT Fee, are unnecessary.

#### (J) Fee Transparency

Commenters also argued that they could not adequately assess whether the CAT Fees were fair and equitable because the Operating Committee has not provided details as to what the Participants are receiving in return for the CAT Fees.<sup>85</sup> The Operating Committee provided a detailed discussion of the proposed funding model in the Plan, including the expenses to be covered by the CAT Fees. In addition, the agreement between the Company and the Plan Processor sets forth a comprehensive set of services to be provided to the Company with regard to the CAT. Such services include, without limitation: user support services (e.g., a help desk); tools to allow each CAT Reporter to monitor and correct their submissions; a comprehensive compliance program to monitor CAT Reporters’ adherence to Rule 613; publication of detailed Technical Specifications for Industry Members and Participants; performing data linkage functions; creating comprehensive data security and confidentiality safeguards; creating query functionality for regulatory users (i.e., the Participants, and the SEC and SEC staff); and performing billing and collection functions. The Operating Committee further notes that the services provided by the Plan Processor and the costs related thereto were subject to a bidding process.

#### (K) Funding Authority

Commenters also questioned the authority of the Operating Committee to impose CAT Fees on Industry Members.<sup>86</sup> The Participants previously responded to this same comment in the Plan Response Letter and the Fee Rule Response Letter.<sup>87</sup> As the Participants previously noted, SEC Rule 613 specifically contemplates broker-dealers contributing to the funding of the CAT. In addition, as noted by the SEC, the CAT “substantially enhance[s] the

<sup>78</sup> See Suspension Order at 31662; MFA Letter at 1–2.

<sup>79</sup> Letter from Participants to Brent J. Fields, Secretary, SEC (Sept. 23, 2016) (“Plan Response Letter”); Letter from CAT NMS Plan Participants to Brent J. Fields, Secretary, SEC (June 29, 2017) (“Fee Rule Response Letter”).

<sup>80</sup> Fee Rule Response Letter at 2; Plan Response Letter at 18.

<sup>81</sup> See Suspension Order at 31662; FIA Principal Traders Group at 3.

<sup>82</sup> See Plan Response Letter at 16, 17; Fee Rule Response Letter at 10–12.

<sup>83</sup> See FIA Principal Traders Group at 3; SIFMA Letter at 3.

<sup>84</sup> See Suspension Order at 31661–2; SIFMA Letter at 2.

<sup>85</sup> See Plan Response Letter at 9–10; Fee Rule Response Letter at 3–4.

<sup>78</sup> Suspension Order at 31667.

<sup>79</sup> See FIA Principal Traders Group Letter at 2; Belvedere Letter at 4.

ability of the SROs and the Commission to oversee today's securities markets,"<sup>88</sup> thereby benefitting all market participants. Therefore, the Operating Committee continues to believe that it is equitable for both Participants and Industry Members to contribute to funding the cost of the CAT.

## 2. Statutory Basis

SRO believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act<sup>89</sup>, which require, among other things, that the SRO 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 dealer, and Section 6(b)(4) of the Act<sup>90</sup>, which requires that SRO rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using its facilities. As discussed above, the SEC approved the bifurcated, tiered, fixed fee funding model in the CAT NMS Plan, finding it was reasonable and that it equitably allocated fees among Participants and Industry Members. SRO believes that the proposed tiered fees adopted pursuant to the funding model approved by the SEC in the CAT NMS Plan are reasonable, equitably allocated and not unfairly discriminatory.

SRO believes that this proposal is consistent with the Act because it implements, interprets or clarifies the provisions of the Plan, and is designed to assist SRO and its Industry Members 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."<sup>91</sup> To the extent that this proposal implements, interprets or clarifies the Plan and applies specific requirements to Industry Members, SRO believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

SRO believes that the proposed tiered fees are reasonable. First, the total CAT Fees to be collected would be directly

associated with the costs of establishing and maintaining the CAT, where such costs include Plan Processor costs and costs related to insurance, third party services and the operational reserve. The CAT Fees would not cover Participant services unrelated to the CAT. In addition, any surplus CAT Fees cannot be distributed to the individual Participants; such surpluses must be used as a reserve to offset future fees. Given the direct relationship between the fees and the CAT costs, SRO believes that the total level of the CAT Fees is reasonable.

In addition, SRO believes that the proposed CAT Fees are reasonably designed to allocate the total costs of the CAT equitably between and among the Participants and Industry Members, and are therefore not unfairly discriminatory. As discussed in detail above, the proposed tiered fees impose comparable fees on similarly situated CAT Reporters. For example, those with a larger impact on the CAT (measured via message traffic or market share) pay higher fees, whereas CAT Reporters with a smaller impact pay lower fees. Correspondingly, the tiered structure lessens the impact on smaller CAT Reporters by imposing smaller fees on those CAT Reporters with less market share or message traffic. In addition, the fee structure takes into consideration distinctions in securities trading operations of CAT Reporters, including ATSS trading OTC Equity Securities, and equity and options market makers.

Moreover, SRO believes that the division of the total CAT costs between Industry Members and Execution Venues, and the division of the Execution Venue portion of total costs between Equity and Options Execution Venues, is reasonably designed to allocate CAT costs among CAT Reporters. The 75%/25% division between Industry Members (other than Execution Venue ATSS) and Execution Venues maintains the greatest level of comparability across the funding model. For example, the cost allocation establishes fees for the largest Industry Members (*i.e.*, those Industry Members in Tiers 1) that are comparable to the largest Equity Execution Venues and Options Execution Venues (*i.e.*, those Execution Venues in Tier 1). Furthermore, the allocation of total CAT cost recovery recognizes the difference in the number of CAT Reporters that are Industry Members (other than Execution Venue ATSS) versus CAT Reporters that are Execution Venues. Similarly, the 67%/33% allocation between Equity and Options Execution Venues also helps to provide fee comparability for the largest CAT Reporters.

Finally, SRO 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 fixed fee. Such factors are crucial to estimating a reliable revenue stream for the Company and for permitting CAT Reporters 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 Act<sup>92</sup> require that SRO rules not impose any burden on competition that is not necessary or appropriate. SRO 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. SRO notes that the proposed rule change implements provisions of the CAT NMS Plan approved by the Commission, and is designed to assist SRO in meeting its regulatory obligations pursuant to the Plan. Similarly, all national securities exchanges and FINRA are proposing this proposed fee schedule 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 exchanges and FINRA.

Moreover, as previously described, SRO believes that the proposed rule change fairly and equitably allocates costs among CAT Reporters. In particular, the proposed fee schedule is structured to impose comparable fees on similarly situated CAT Reporters, and lessen the impact on smaller CAT Reporters. CAT Reporters with similar levels of CAT activity will pay similar fees. For example, Industry Members (other than Execution Venue ATSS) with higher levels of message traffic will pay higher fees, and those with lower levels of message traffic will pay lower fees. Similarly, Execution Venue ATSS and other Execution Venues with larger market share will pay higher fees, and those with lower levels of market share will pay lower fees. Therefore, given that there is generally a relationship between message traffic and/or market share to the CAT Reporter's size, smaller CAT Reporters generally pay less than larger CAT Reporters. Accordingly, SRO does not believe that the CAT Fees would have a disproportionate effect on smaller or larger CAT Reporters. In addition, ATSS and exchanges will pay the same fees based on market share. Therefore, SRO does not believe that the

<sup>88</sup> Rule 613 Adopting Release at 45726.

<sup>89</sup> 15 U.S.C. 78f(b)(5).

<sup>90</sup> 15 U.S.C. 78f(b)(4).

<sup>91</sup> Approval Order at 84697.

<sup>92</sup> 15 U.S.C. 78f(b)(8).

fees will impose any burden on the competition between ATSS and exchanges. Accordingly, SRO believes that the proposed fees will minimize the potential for adverse effects on competition between CAT Reporters in the market.

Furthermore, the tiered, fixed fee funding model limits the disincentives to providing liquidity to the market. Therefore, the proposed fees are structured to limit burdens on competitive quoting and other liquidity provision in the market.

In addition, the Operating Committee believes that the proposed changes to the Original Proposal, as discussed above in detail, address certain competitive concerns raised by commenters, including concerns related to, among other things, smaller ATSS, ATSS trading OTC Equity Securities, market making quoting and fee comparability. As discussed above, the Operating Committee believes that the proposals address the competitive concerns raised by commenters.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

SRO has set forth responses to comments received regarding the Original Proposal in Section 3(a)(4) above.

### **III. Solicitation of Comments on Amendment No. 1**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 is consistent with the Act. In particular, the Commission seeks comment on the following:

#### **Allocation of Costs**

(1) Commenters' views as to whether the allocation of CAT costs is consistent with the funding principle expressed in the CAT NMS Plan that requires the Operating Committee to "avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality."<sup>93</sup>

(2) Commenters' views as to whether the allocation of 25% of CAT costs to the Execution Venues (including all the Participants) and 75% to Industry Members, will incentivize or disincentivize the Participants to effectively and efficiently manage the CAT costs incurred by the Participants since they will only bear 25% of such costs.

(3) Commenters' views on the determination to allocate 75% of all costs incurred by the Participants from November 21, 2016 to November 21, 2017 to Industry Members (other than Execution Venue ATSS), when such costs are development and build costs and when Industry Member reporting is scheduled to commence a year later, including views on whether such "fees, costs and expenses . . . [are] fairly and reasonably shared among the Participants and Industry Members" in accordance with the CAT NMS Plan.<sup>94</sup>

(4) Commenters' views on whether an analysis of the ratio of the expected Industry Member-reported CAT messages to the expected SRO-reported CAT messages should be the basis for determining the allocation of costs between Industry Members and Execution Venues.<sup>95</sup>

(5) Any additional data analysis on the allocation of CAT costs, including any existing supporting evidence.

#### **Comparability**

(6) Commenters' views on the shift in the standard used to assess the comparability of CAT Fees, with the emphasis now on comparability of individual entities instead of affiliated entities, including views as to whether this shift is consistent with the funding principle expressed in the CAT NMS Plan that requires the Operating Committee to establish a fee structure in which the fees charged to "CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venues and/or Industry Members)."<sup>96</sup>

(7) Commenters' views as to whether the reduction in the number of tiers for Industry Members (other than Execution Venue ATSS) from nine to seven, the revised allocation of CAT costs between Equity Execution Venues and Options Execution Venues from a 75%/25% split to a 67%/33% split, and the adjustment of all tier percentages and recovery allocations achieves comparability across individual entities, and whether these changes should have

resulted in a change to the allocation of 75% of total CAT costs to Industry Members (other than Execution Venue ATSS) and 25% of such costs to Execution Venues.

#### **Discounts**

(8) Commenters' views as to whether the discounts for options market-makers, equities market-makers, and Equity ATSS trading OTC Equity Securities are clear, reasonable, and consistent with the funding principle expressed in the CAT NMS Plan that requires the Operating Committee to "avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality,"<sup>97</sup> including views as to whether the discounts for market-makers limit any potential disincentives to act as a market-maker and/or to provide liquidity due to CAT fees.

#### **Calculation of Costs and Imposition of CAT Fees**

(9) Commenters' views as to whether the amendment provides sufficient information regarding the amount of costs incurred from November 21, 2016 to November 21, 2017, particularly, how those costs were calculated, how those costs relate to the proposed CAT Fees, and how costs incurred after November 21, 2017 will be assessed upon Industry Members and Execution Venues;

(10) Commenters' views as to whether the timing of the imposition and collection of CAT Fees on Execution Venues and Industry Members is reasonably related to the timing of when the Company expects to incur such development and implementation costs.<sup>98</sup>

(11) Commenters' views on dividing CAT costs equally among each of the Participants, and then each Participant charging its own members as it deems appropriate, taking into consideration the possibility of inconsistency in charges, the potential for lack of transparency, and the impracticality of multiple SROs submitting invoices for CAT charges.

#### **Burden on Competition and Barriers to Entry**

(12) Commenters' views as to whether the allocation of 75% of CAT costs to Industry Members (other than Execution Venue ATSS) imposes any burdens on competition to Industry Members, including views on what baseline competitive landscape the Commission should consider when analyzing the proposed allocation of CAT costs.

<sup>94</sup> Section 11.1(c) of the CAT NMS Plan.

<sup>95</sup> The Notice for the CAT NMS Plan did not provide a comprehensive count of audit trail message traffic from different regulatory data sources, but the Commission did estimate the ratio of all SRO audit trail messages to OATS audit trail messages to be 1.9431. See Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30613, 30721 n.919 and accompanying text (May 17, 2016).

<sup>96</sup> Section 11.2(c) of the CAT NMS Plan.

<sup>97</sup> Section 11.2(e) of the CAT NMS Plan.

<sup>98</sup> Section 11.1(c) of the CAT NMS Plan.

<sup>93</sup> Section 11.2(e) of the CAT NMS Plan.

(13) Commenters' views on the burdens on competition, including the relevant markets and services and the impact of such burdens on the baseline competitive landscape in those relevant markets and services.

(14) Commenters' views on any potential burdens imposed by the fees on competition between and among CAT Reporters, including views on which baseline markets and services the fees could have competitive effects on and whether the fees are designed to minimize such effects.

(15) Commenters' general views on the impact of the proposed fees on economies of scale and barriers to entry.

(16) Commenters' views on the baseline economies of scale and barriers to entry for Industry Members and Execution Venues and the relevant markets and services over which these economies of scale and barriers to entry exist.

(17) Commenters' views as to whether a tiered fee structure necessarily results in less active tiers paying more per unit than those in more active tiers, thus creating economies of scale, with supporting information if possible.

(18) Commenters' views as to how the level of the fees for the least active tiers would or would not affect barriers to entry.

(19) Commenters' views on whether the difference between the cost per unit (messages or market share) in less active tiers compared to the cost per unit in more active tiers creates regulatory economies of scale that favor larger competitors and, if so:

(a) How those economies of scale compare to operational economies of scale; and

(b) Whether those economies of scale reduce or increase the current advantages enjoyed by larger competitors or otherwise alter the competitive landscape.

(20) Commenters' views on whether the fees could affect competition between and among national securities exchanges and FINRA, in light of the fact that implementation of the fees does not require the unanimous consent of all such entities, and, specifically:

(a) Whether any of the national securities exchanges or FINRA are disadvantaged by the fees; and

(b) If so, whether any such disadvantages would be of a magnitude that would alter the competitive landscape.

(21) Commenters' views on any potential burden imposed by the fees on competitive quoting and other liquidity provision in the market, including, specifically:

(a) Commenters' views on the kinds of disincentives that discourage liquidity provision and/or disincentives that the Commission should consider in its analysis;

(b) Commenters' views as to whether the fees could disincentivize the provision of liquidity; and

(c) Commenters' views as to whether the fees limit any disincentives to provide liquidity.

(22) Commenters' views as to whether the amendment adequately responds to and/or addresses comments received on related filings.

#### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BOX-2017-16 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-BOX-2017-16. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File

Number SR-BOX-2017-16, and should be submitted on or before January 5, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>99</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

[FR Doc. 2017-26989 Filed 12-14-17; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-82270; File No. SR-C2-2017-017]**

### **Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing of Amendment No. 1 to a Proposed Rule Change To Establish the Fees for Industry Members Related to the National Market System Plan Governing the Consolidated Audit Trail**

December 11, 2017.

On May 16, 2017, C2 Options Exchange, Incorporated, n/k/a Cboe C2 Exchange, Inc., ("Exchange" or "SRO") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt a fee schedule to establish the fees for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail ("CAT NMS Plan"). The proposed rule change was published in the **Federal Register** for comment on June 1, 2017.<sup>3</sup> The Commission received seven comment letters on the proposed rule change,<sup>4</sup> and a response to comments

<sup>99</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 80786 (May 26, 2017), 82 FR 25474 (June 1, 2017) ("Original Proposal").

<sup>4</sup> Since the CAT NMS Plan Participants' proposed rule changes to adopt fees to be charged to Industry Members to fund the consolidated audit trail are substantively identical, the Commission is considering all comments received on the proposed rule changes regardless of the comment file to which they were submitted. See text accompanying notes 13-16 *infra*, for a list of the CAT NMS Plan Participants. See Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Brent J. Fields, Secretary, Commission (dated June 6, 2017), available at: <https://www.sec.gov/comments/sr-batsbxz-2017-38/batsbxz201738-1788188-153228.pdf>; Letter from Patricia L. Cerny and Steven O'Malley, Compliance Consultants, to Brent J. Fields, Secretary, Commission (dated June 12, 2017), available at: <https://www.sec.gov/comments/sr-cboe-2017-040/cboe2017040-1799253-153675.pdf>; Letter from Daniel Zinn, General Counsel, OTC Markets Group

from the Participants.<sup>5</sup> On June 30, 2017, the Commission temporarily suspended and initiated proceedings to determine whether to approve or disapprove the proposed rule change.<sup>6</sup> The Commission thereafter received seven comment letters,<sup>7</sup> and a response to comments from the Participants.<sup>8</sup> On

Inc., to Eduardo A. Aleman, Assistant Secretary, Commission (dated June 13, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-1801717-153703.pdf>; Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission (dated June 22, 2017), available at: <https://www.sec.gov/comments/sr-cboe-2017-040/cboe2017040-1819670-154195.pdf>; Letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, Commission (dated June 23, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-1822454-154283.pdf>; and Letter from Suzanne H. Shatto, Investor, to Commission (dated June 27, 2017), available at: <https://www.sec.gov/comments/sr-batsedgx-2017-22/batsedgx201722-154443.pdf>. The Commission also received a comment letter which is not pertinent to these proposed rule changes. See Letter from Christina Crouch, Smart Ltd., to Brent J. Fields, Secretary, Commission (dated June 5, 2017), available at: <https://www.sec.gov/comments/sr-batsbzx-2017-38/batsbzx201738-1785545-153152.htm>.

<sup>5</sup> See Letter from CAT NMS Plan Participants to Brent J. Fields, Secretary, Commission (dated June 29, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-1832632-154584.pdf>.

<sup>6</sup> See Securities Exchange Act Release No. 81067 (June 30, 2017), 82 FR 31656 (July 7, 2017).

<sup>7</sup> See Letter from W. Hardy Callcott, Partner, Sidley Austin LLP, to Brent J. Fields, Secretary, Commission (dated July 27, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2148338-157737.pdf>; Letter from Kevin Coleman, General Counsel and Chief Compliance Officer, Belvedere Trading LLC, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2148360-157740.pdf>; Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2150128-157745.pdf>; Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2150977-157744.pdf>; Letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2150818-157743.pdf>; Letter from John Kinahan, Chief Executive Officer, Group One Trading, L.P., to Brent J. Fields, Secretary, Commission (dated August 10, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-2214568-160619.pdf>; Letter from Joseph Molluso, Executive Vice President and CFO, Virtu Financial, to Brent J. Fields, Commission (dated August 18, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-2238648-160830.pdf>.

<sup>8</sup> See Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Brent J. Fields, Secretary, Commission (dated November 2, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2674608-161412.pdf>.

November 3, 2017, the Exchange filed Amendment No. 1 to the proposed rule change, as described in Items I and II below, which Items have been prepared by the Exchange.<sup>9</sup> On November 9, 2017, the Commission extended the time period within which to approve the proposed rule change or disapprove the proposed rule change to January 14, 2018.<sup>10</sup> The Commission is publishing this notice to solicit comments from interested persons on Amendment No. 1.<sup>11</sup>

### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposed rule change SR-C2-2017-017 (the "Original Proposal"), pursuant to which SRO proposed to amend its Fees Schedule to establish the fees for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail (the "CAT NMS Plan" or "Plan").<sup>12</sup> SRO files this proposed rule change (the "Amendment") to amend the Original Proposal. This Amendment replaces the Original Proposal in its entirety, and also describes the changes from the Original Proposal. The text of the proposed rule change is also available on the Exchange's website (<http://www.c2exchange.com/Legal/>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed

<sup>9</sup> Amendment No. 1 to the proposed rule change replaces and supersedes the Original Proposal in its entirety.

<sup>10</sup> See Securities Exchange Act Release No. 82049 (November 9, 2017), 82 FR 53549 (November 16, 2017).

<sup>11</sup> The Commission notes that on December 7, 2017, the Exchange filed Amendment No. 2 to the proposed rule change. Amendment No. 2 is a partial amendment to the proposed rule change, as amended by Amendment No. 1. Amendment No. 2 proposes to change the parenthetical regarding the OTC Equity Securities discount in paragraph (b)(2) of the proposed fee schedule from "with a discount for Equity ATSS exclusively trading OTC Equity Securities based on the average shares per trade ratio between NMS Stocks and OTC Equity Securities" to "with a discount for OTC Equity Securities market share of Equity ATSS trading OTC Equity Securities based on the average shares per trade ratio between NMS Stocks and OTC Equity Securities." See Securities Exchange Act Release No. 34-82271 (December 11, 2017).

<sup>12</sup> Unless otherwise specified, capitalized terms used in this fee filing are defined as set forth herein, the CAT Compliance Rule Series, in the CAT NMS Plan, or the Original Proposal.

any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

#### **1. Purpose**

BOX Options Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc.,<sup>13</sup> Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc. ("FINRA"), Investors' Exchange LLC, Miami International Securities Exchange, LLC, MIAx PEARL, LLC, NASDAQ BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC,<sup>14</sup> NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC,<sup>15</sup> NYSE Arca, Inc. and NYSE National, Inc.<sup>16</sup> (collectively, the "Participants") filed with the Commission, pursuant to Section 11A of the Exchange Act<sup>17</sup> and Rule 608 of Regulation NMS thereunder,<sup>18</sup> the CAT NMS Plan.<sup>19</sup> The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange

<sup>13</sup> Note that Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., LLC, C2 Options Exchange, Incorporated, and Chicago Board Options Exchange, Incorporated, have been renamed Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., respectively.

<sup>14</sup> ISE Gemini, LLC, ISE Mercury, LLC and International Securities Exchange, LLC have been renamed Nasdaq GEMX, LLC, Nasdaq MRX, LLC, and Nasdaq ISE, LLC, respectively. See Securities Exchange Act Rel. No. 80248 (Mar. 15, 2017), 82 FR 14547 (Mar. 21, 2017); Securities Exchange Act Rel. No. 80326 (Mar. 29, 2017), 82 FR 16460 (Apr. 4, 2017); and Securities Exchange Act Rel. No. 80325 (Mar. 29, 2017), 82 FR 16445 (Apr. 4, 2017).

<sup>15</sup> NYSE MKT LLC has been renamed NYSE American LLC. See Securities Exchange Act Rel. No. 80283 (Mar. 21, 2017), 82 FR 15244 (Mar. 27, 2017).

<sup>16</sup> National Stock Exchange, Inc. has been renamed NYSE National, Inc. See Securities Exchange Act Rel. No. 79902 (Jan. 30, 2017), 82 FR 9258 (Feb. 3, 2017).

<sup>17</sup> 15 U.S.C. 78k-1.

<sup>18</sup> 17 CFR 242.608.

<sup>19</sup> See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. See Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.



Act. The Plan was published for comment in the **Federal Register** on May 17, 2016,<sup>20</sup> and approved by the Commission, as modified, on November 15, 2016.<sup>21</sup> The Plan is designed to create, implement and maintain a consolidated audit trail (“CAT”) that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. The Plan accomplishes this by creating CAT NMS, LLC (the “Company”), of which each Participant is a member, to operate the CAT.<sup>22</sup> Under the CAT NMS Plan, the Operating Committee of the Company (“Operating Committee”) has discretion to establish funding for the Company to operate the CAT, including establishing fees that the Participants will pay, and establishing fees for Industry Members that will be implemented by the Participants (“CAT Fees”).<sup>23</sup> The Participants are required to file with the SEC under Section 19(b) of the Exchange Act any such CAT Fees applicable to Industry Members that the Operating Committee approves.<sup>24</sup> Accordingly, SRO submitted the Original Proposal to propose the Consolidated Audit Trail Funding Fees, which would require Industry Members that are SRO members to pay the CAT Fees determined by the Operating Committee.

The Commission published the Original Proposal for public comment in the **Federal Register** on June 1, 2017,<sup>25</sup> and received comments in response to the Original Proposal or similar fee filings by other Participants.<sup>26</sup> On June 30, 2017, the Commission suspended, and instituted proceedings to determine whether to approve or disapprove, the Original Proposal.<sup>27</sup> The Commission received seven comment letters in response to those proceedings.<sup>28</sup>

In response to the comments on the Original Proposal, the Operating Committee determined to make the following changes to the funding model: (1) Adds two additional CAT Fee tiers for Equity Execution Venues; (2) discounts the market share of Execution Venue ATSs exclusively trading OTC Equity Securities as well as the market share of the FINRA over-the-counter reporting facility (“ORF”) by the average shares per trade ratio between NMS Stocks and OTC Equity Securities (calculated as 0.17% based on available data from the second quarter of 2017) when calculating the market share of Execution Venue ATS exclusively trading OTC Equity Securities and FINRA; (3) discounts the Options Market Maker quotes by the trade to quote ratio for options (calculated as 0.01% based on available data for June 2016 through June 2017) when calculating message traffic for Options Market Makers; (4) discounts equity market maker quotes by the trade to quote ratio for equities (calculated as 5.43% based on available data for June 2016 through June 2017) when calculating message traffic for equity market makers; (5) decreases the number of tiers for Industry Members (other than the Execution Venue ATSs) from nine to seven; (6) changes the allocation of CAT costs between Equity Execution Venues and Options Execution Venues from 75%/25% to 67%/33%; (7) adjusts tier percentages and recovery allocations for Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATSs); (8) focuses the comparability of CAT Fees on the individual entity level, rather than primarily on the comparability of affiliated entities; (9) commences invoicing of CAT Reporters as promptly as possible following the latest of the operative date of the Consolidated Audit Trail Funding Fees for each of the Participants and the operative date of the CAT NMS Plan amendment

Letter”); Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Brent J. Fields, Secretary, SEC (July 28, 2017) (“SIFMA Letter”); Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, SEC (July 28, 2017) (“FIA Principal Traders Group Letter”); Letter from Kevin Coleman, General Counsel & Chief Compliance Officer, Belvedere Trading LLC, to Brent J. Fields, Secretary, SEC (July 28, 2017) (“Belvedere Letter”); Letter from W. Hardy Callcott, Sidley Austin LLP, to Brent J. Fields, Secretary, SEC (July 27, 2017) (“Sidley Letter”); Letter from John Kinahan, Chief Executive Officer, Group One Trading, L.P., to Brent J. Fields, Secretary, SEC (Aug. 10, 2017) (“Group One Letter”); and Letter from Joseph Molluso, Executive Vice President, Virtu Financial, to Brent J. Fields, Secretary, SEC (Aug. 18, 2017) (“Virtu Financial Letter”).

adopting CAT Fees for Participants; and (10) requires the proposed fees to automatically expire two years from the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. As discussed in detail below, SRO proposes to amend the Original Proposal to reflect these changes.

#### (1) Executive Summary

The following provides an executive summary of the CAT funding model approved by the Operating Committee, as well as Industry Members’ rights and obligations related to the payment of CAT Fees calculated pursuant to the CAT funding model, as amended by this Amendment. A detailed description of the CAT funding model and the CAT Fees, as amended by this Amendment, as well as the changes made to the Original Proposal follows this executive summary.

#### (A) CAT Funding Model

- *CAT Costs.* The CAT funding model is designed to establish CAT-specific fees to collectively recover the costs of building and operating the CAT from all CAT Reporters, including Industry Members and Participants. The overall CAT costs used in calculating the CAT Fees in this fee filing are comprised of Plan Processor CAT costs and non-Plan Processor CAT costs incurred, and estimated to be incurred, from November 21, 2016 through November 21, 2017. Although the CAT costs from November 21, 2016 through November 21, 2017 were used in calculating the CAT Fees, the CAT Fees set forth in this fee filing would be in effect until the automatic sunset date, as discussed below. (See Section 3(a)(2)(E) below)

- *Bifurcated Funding Model.* The CAT NMS Plan requires a bifurcated funding model, where costs associated with building and operating the CAT would be borne by (1) Participants and Industry Members that are Execution Venues for Eligible Securities through fixed tier fees based on market share, and (2) Industry Members (other than alternative trading systems (“ATSs”) that execute transactions in Eligible Securities (“Execution Venue ATSs”)) through fixed tier fees based on message traffic for Eligible Securities. (See Section 3(a)(2) below)

- *Industry Member Fees.* Each Industry Member (other than Execution Venue ATSs) will be placed into one of seven tiers of fixed fees, based on “message traffic” in Eligible Securities for a defined period (as discussed below). Prior to the start of CAT reporting, “message traffic” will be comprised of historical equity and

<sup>20</sup> Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

<sup>21</sup> Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (“Approval Order”).

<sup>22</sup> The Plan also serves as the limited liability company agreement for the Company.

<sup>23</sup> Section 11.1(b) of the CAT NMS Plan.

<sup>24</sup> *Id.*

<sup>25</sup> Securities Exchange Act Rel. No. 80786 (May 26, 2017), 82 FR 25474 (June 1, 2017) (SR–C2–2017–017).

<sup>26</sup> For a summary of comments, see generally Securities Exchange Act Rel. No. 81067 (June 30, 2017), 82 FR 31656 (July 7, 2017) (“Suspension Order”).

<sup>27</sup> Suspension Order.

<sup>28</sup> See Letter from Stuart J. Kaswell, Executive Vice President, Managing Director and General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, SEC (July 28, 2017) (“MFA



equity options orders, cancels, quotes and executions provided by each exchange and FINRA over the previous three months. After an Industry Member begins reporting to the CAT, “message traffic” will be calculated based on the Industry Member’s Reportable Events reported to the CAT. Industry Members with lower levels of message traffic will pay a lower fee and Industry Members with higher levels of message traffic will pay a higher fee. To avoid disincentives to quoting behavior, Options Market Maker and equity market maker quotes will be discounted when calculating message traffic. (See Section 3(a)(2)(B) below)

- *Execution Venue Fees.* Each Equity Execution Venue will be placed in one of four tiers of fixed fees based on market share, and each Options Execution Venue will be placed in one of two tiers of fixed fees based on market share. Equity Execution Venue market share will be determined by calculating each Equity Execution Venue’s proportion of the total volume of NMS Stock and OTC Equity shares reported by all Equity Execution Venues during the relevant time period. For purposes of calculating market share, the market share of Execution Venue ATs exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF will be discounted. Similarly, market share for Options Execution Venues will be determined by calculating each Options Execution Venue’s proportion of the total volume of Listed Options contracts reported by all Options Execution Venues during the relevant time period. Equity Execution Venues with a larger market share will pay a larger CAT Fee than Equity Execution Venues with a smaller market share. Similarly, Options Execution Venues with a larger market share will pay a larger CAT Fee than Options Execution Venues with a smaller market share. (See Section 3(a)(2)(C) below)

- *Cost Allocation.* For the reasons discussed below, in designing the model, the Operating Committee determined that 75 percent of total costs recovered would be allocated to Industry Members (other than Execution Venue ATs) and 25 percent would be allocated to Execution Venues. In addition, the Operating Committee determined to allocate 67 percent of Execution Venue costs recovered to Equity Execution Venues and 33 percent to Options Execution Venues. (See Section 3(a)(2)(D) below)

- *Comparability of Fees.* The CAT funding model charges CAT Reporters with the most CAT-related activity (measured by market share and/or

message traffic, as applicable) comparable CAT Fees. (See Section 3(a)(2)(F) below)

(B) CAT Fees for Industry Members

- *Fee Schedule.* The quarterly CAT Fees for each tier for Industry Members are set forth in the two fee schedules in the Consolidated Audit Trail Funding Fees, one for Equity ATs and one for Industry Members other than Equity ATs. (See Section 3(a)(3)(B) below)

- *Quarterly Invoices.* Industry Members will be billed quarterly for CAT Fees, with the invoices payable within 30 days. The quarterly invoices will identify within which tier the Industry Member falls. (See Section 3(a)(3)(C) below)

- *Centralized Payment.* Each Industry Member will receive from the Company one invoice for its applicable CAT Fees, not separate invoices from each Participant of which it is a member. Each Industry Member will pay its CAT Fees to the Company via the centralized system for the collection of CAT Fees established by the Operating Committee. (See Section 3(a)(3)(C) below)

- *Billing Commencement.* Industry Members will begin to receive invoices for CAT Fees as promptly as possible following the latest of the operative date of the Consolidated Audit Trail Funding Fees for each of the Participants and the operative date of the Plan amendment adopting CAT Fees for Participants. (See Section 3(a)(2)(G) below)

- *Sunset Provision.* The Consolidated Audit Trail Funding Fees will sunset automatically two years from the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. (See Section 3(a)(2)(J) below)

(2) Description of the CAT Funding Model

Article XI of the CAT NMS Plan requires the Operating Committee to approve the operating budget, including projected costs of developing and operating the CAT for the upcoming year. In addition to a budget, Article XI of the CAT NMS Plan provides that the Operating Committee has discretion to establish funding for the Company, consistent with a bifurcated funding model, where costs associated with building and operating the Central Repository would be borne by (1) Participants and Industry Members that are Execution Venues through fixed tier fees based on market share, and (2) Industry Members (other than Execution Venue ATs) through fixed tier fees based on message traffic. In its order approving the CAT NMS Plan, the Commission determined that the

proposed funding model was “reasonable”<sup>29</sup> and “reflects a reasonable exercise of the Participants’ funding authority to recover the Participants’ costs related to the CAT.”<sup>30</sup>

More specifically, the Commission stated in approving the CAT NMS Plan that “[t]he Commission believes that the proposed funding model is reasonably designed to allocate the costs of the CAT between the Participants and Industry Members.”<sup>31</sup> The Commission further noted the following:

The Commission believes that the proposed funding model reflects a reasonable exercise of the Participants’ funding authority to recover the Participants’ costs related to the CAT. The CAT is a regulatory facility jointly owned by the Participants and . . . the Exchange Act specifically permits the Participants to charge their members fees to fund their self-regulatory obligations. The Commission further believes that the proposed funding model is designed to impose fees reasonably related to the Participants’ self-regulatory obligations because the fees would be directly associated with the costs of establishing and maintaining the CAT, and not unrelated SRO services.<sup>32</sup>

Accordingly, the funding model approved by the Operating Committee imposes fees on both Participants and Industry Members.

As discussed in Appendix C of the CAT NMS Plan, in developing and approving the approved funding model, the Operating Committee considered the advantages and disadvantages of a variety of alternative funding and cost allocation models before selecting the proposed model.<sup>33</sup> After analyzing the various alternatives, the Operating Committee determined that the proposed tiered, fixed fee funding model provides a variety of advantages in comparison to the alternatives.

In particular, the fixed fee model, as opposed to a variable fee model, provides transparency, ease of calculation, ease of billing and other administrative functions, and predictability of a fixed fee. Such factors are crucial to estimating a reliable revenue stream for the Company and for permitting CAT Reporters to reasonably predict their payment obligations for budgeting purposes. Additionally, a strictly variable or metered funding model based on message volume would be far more likely to affect market behavior and place an inappropriate burden on competition.

<sup>29</sup> Approval Order at 84796.

<sup>30</sup> *Id.* at 84794.

<sup>31</sup> *Id.* at 84795.

<sup>32</sup> *Id.* at 84794.

<sup>33</sup> Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85006.

In addition, reviews from varying time periods of current broker-dealer order and trading data submitted under existing reporting requirements showed a wide range in activity among broker-dealers, with a number of broker-dealers submitting fewer than 1,000 orders per month and other broker-dealers submitting millions and even billions of orders in the same period. Accordingly, the CAT NMS Plan includes a tiered approach to fees. The tiered approach helps ensure that fees are equitably allocated among similarly situated CAT Reporters and furthers the goal of lessening the impact on smaller firms.<sup>34</sup> In addition, in choosing a tiered fee structure, the Operating Committee concluded that the variety of benefits offered by a tiered fee structure, discussed above, outweighed the fact that CAT Reporters in any particular tier would pay different rates per message traffic order event or per market share (e.g., an Industry Member with the largest amount of message traffic in one tier would pay a smaller amount per order event than an Industry Member in the same tier with the least amount of message traffic). Such variation is the natural result of a tiered fee structure.<sup>35</sup> The Operating Committee considered several approaches to developing a tiered model, including defining fee tiers based on such factors as size of firm, message traffic or trading dollar volume. After analyzing the alternatives, it was concluded that the tiering should be based on message traffic which will reflect the relative impact of CAT Reporters on the CAT System.

Accordingly, the CAT NMS Plan contemplates that costs will be allocated across the CAT Reporters on a tiered basis in order to allocate higher costs to those CAT Reporters that contribute more to the costs of creating, implementing and maintaining the CAT and lower costs to those that contribute less.<sup>36</sup> The fees to be assessed at each tier are calculated so as to recoup a proportion of costs appropriate to the message traffic or market share (as applicable) from CAT Reporters in each tier. Therefore, Industry Members generating the most message traffic will be in the higher tiers, and will be charged a higher fee. Industry Members with lower levels of message traffic will be in lower tiers and will be assessed a

smaller fee for the CAT.<sup>37</sup> Correspondingly, Execution Venues with the highest market shares will be in the top tier, and will be charged higher fees. Execution Venues with the lowest market shares will be in the lowest tier and will be assessed smaller fees for the CAT.<sup>38</sup>

The CAT NMS Plan states that Industry Members (other than Execution Venue ATSs) will be charged based on message traffic, and that Execution Venues will be charged based on market share.<sup>39</sup> While there are multiple factors that contribute to the cost of building, maintaining and using the CAT, processing and storage of incoming message traffic is one of the most significant cost drivers for the CAT.<sup>40</sup> Thus, the CAT NMS Plan provides that the fees payable by Industry Members (other than Execution Venue ATSs) will be based on the message traffic generated by such Industry Member.<sup>41</sup>

In contrast to Industry Members, which determine the degree to which they produce message traffic that constitute CAT Reportable Events, the CAT Reportable Events of the Execution Venues are largely derivative of quotations and orders received from Industry Members that they are required to display. The business model for Execution Venues (other than FINRA), however, is focused on executions in their markets. As a result, the Operating Committee believes that it is more equitable to charge Execution Venues based on their market share rather than their message traffic.

Focusing on message traffic would make it more difficult to draw distinctions between large and small Execution Venues and, in particular, between large and small options exchanges. For instance, the Operating Committee analyzed the message traffic of Execution Venues and Industry Members for the period of April 2017 to June 2017 and placed all CAT Reporters into a nine-tier framework (i.e., a single tier may include both Execution Venues and Industry Members). The Operating Committee's analysis found that the majority of exchanges (15 total) were grouped in Tiers 1 and 2. Moreover, virtually all of the options exchanges were in Tiers 1 and 2.<sup>42</sup> Given the resulting concentration of options

exchanges in Tiers 1 and 2 under this approach, the analysis shows that a funding model for Execution Venues based on message traffic would make it more difficult to distinguish between large and small options exchanges, as compared to the proposed fee approach that bases fees for Execution Venues on market share.

The CAT NMS Plan's funding model also is structured to avoid a "reduction in market quality."<sup>43</sup> The tiered, fixed fee funding model is designed to limit the disincentives to providing liquidity to the market. For example, the Operating Committee expects that a firm that has a large volume of quotes would likely be categorized in one of the upper tiers, and would not be assessed a fee for this traffic directly as they would under a more directly metered model. In contrast, strictly variable or metered funding models based on message volume are far more likely to affect market behavior. In approving the CAT NMS Plan, the SEC stated that "[t]he Participants also offered a reasonable basis for establishing a funding model based on broad tiers, in that it may be . . . less likely to have an incremental deterrent effect on liquidity provision."<sup>44</sup>

The funding model also is structured to avoid a reduction market quality because it discounts Options Market Maker and equity market maker quotes when calculating message traffic for Options Market Makers and equity market makers, respectively. As discussed in more detail below, the Operating Committee determined to discount the Options Market Maker quotes by the trade to quote ratio for options when calculating message traffic for Options Market Makers. Similarly, to avoid disincentives to quoting behavior on the equities side as well, the Operating Committee determined to discount equity market maker quotes by the trade to quote ratio for equities when calculating message traffic for equity market makers. The proposed discounts recognize the value of the market makers' quoting activity to the market as a whole.

The CAT NMS Plan is further structured to avoid potential conflicts raised by the Operating Committee determining fees applicable to its own members—the Participants. First, the Company will operate on a "break-even" basis, with fees imposed to cover costs and an appropriate reserve. Any surpluses will be treated as an operational reserve to offset future fees and will not be distributed to the

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> Section 11.3(a) and (b) of the CAT NMS Plan.

<sup>40</sup> Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85005.

<sup>41</sup> Section 11.3(b) of the CAT NMS Plan.

<sup>42</sup> The Operating Committee notes that this analysis did not place MIAx PEARL in Tier 1 or Tier 2 since the exchange commenced trading on February 6, 2017.

<sup>43</sup> Section 11.2(e) of the CAT NMS Plan.

<sup>44</sup> Approval Order at 84796.

<sup>34</sup> Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85006.

<sup>35</sup> Moreover, as the SEC noted in approving the CAT NMS Plan, "[t]he Participants also have offered a reasonable basis for establishing a funding model based on broad tiers, in that it may be easier to implement." Approval Order at 84796.

<sup>36</sup> Approval Order at 85005.

Participants as profits.<sup>45</sup> To ensure that the Participants' operation of the CAT will not contribute to the funding of their other operations, Section 11.1(c) of the CAT NMS Plan specifically states that "[a]ny surplus of the Company's revenues over its expenses shall be treated as an operational reserve to offset future fees." In addition, as set forth in Article VIII of the CAT NMS Plan, the Company "intends to operate in a manner such that it qualifies as a 'business league' within the meaning of Section 501(c)(6) of the [Internal Revenue] Code." To qualify as a business league, an organization must "not [be] organized for profit and no part of the net earnings of [the organization can] inure[ ] to the benefit of any private shareholder or individual."<sup>46</sup> As the SEC stated when approving the CAT NMS Plan, "the Commission believes that the Company's application for Section 501(c)(6) business league status addresses issues raised by commenters about the Plan's proposed allocation of profit and loss by mitigating concerns that the Company's earnings could be used to benefit individual Participants."<sup>47</sup> The Internal Revenue Service recently has determined that the Company is exempt from federal income tax under Section 501(c)(6) of the Internal Revenue Code.

The funding model also is structured to take into account distinctions in the securities trading operations of Participants and Industry Members. For example, the Operating Committee designed the model to address the different trading characteristics in the OTC Equity Securities market. Specifically, the Operating Committee proposes to discount the market share of Execution Venue ATSs exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF by the average shares per trade ratio between NMS Stocks and OTC Equity Securities to adjust for the greater number of shares being traded in the OTC Equity Securities market, which is generally a function of a lower per share price for OTC Equity Securities when compared to NMS Stocks. In addition, the Operating Committee also proposes to discount Options Market Maker and equity market maker message traffic in recognition of their role in the securities markets. Furthermore, the funding model creates separate tiers for Equity and Options Execution Venues due to the different trading characteristics of those markets.

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

A full description of the funding model is set forth below. This description includes the framework for the funding model as set forth in the CAT NMS Plan, as well as the details as to how the funding model will be applied in practice, including the number of fee tiers and the applicable fees for each tier. The complete funding model is described below, including those fees that are to be paid by the Participants. The proposed Consolidated Audit Trail Funding Fees, however, do not apply to the Participants; the proposed Consolidated Audit Trail Funding Fees only apply to Industry Members. The CAT Fees for Participants will be imposed separately by the Operating Committee pursuant to the CAT NMS Plan.

#### (A) Funding Principles

Section 11.2 of the CAT NMS Plan sets forth the principles that the Operating Committee applied in establishing the funding for the Company. The Operating Committee has considered these funding principles as well as the other funding requirements set forth in the CAT NMS Plan and in Rule 613 in developing the proposed funding model. The following are the funding principles in Section 11.2 of the CAT NMS Plan:

- To create transparent, predictable revenue streams for the Company that are aligned with the anticipated costs to build, operate and administer the CAT and other costs of the Company;
- To establish an allocation of the Company's related costs among Participants and Industry Members that is consistent with the Exchange Act, taking into account the timeline for implementation of the CAT and distinctions in the securities trading operations of Participants and Industry Members and their relative impact upon the Company's resources and operations;
- To establish a tiered fee structure in which the fees charged to: (i) CAT Reporters that are Execution Venues, including ATSs, are based upon the level of market share; (ii) Industry Members' non-ATS activities are based upon message traffic; (iii) the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are

generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venue and/or Industry Members);

- To provide for ease of billing and other administrative functions;
- To avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality; and
- To build financial stability to support the Company as a going concern.

#### (B) Industry Member Tiering

Under Section 11.3(b) of the CAT NMS Plan, the Operating Committee is required to establish fixed fees to be payable by Industry Members, based on message traffic generated by such Industry Member, with the Operating Committee establishing at least five and no more than nine tiers.

The CAT NMS Plan clarifies that the fixed fees payable by Industry Members pursuant to Section 11.3(b) shall, in addition to any other applicable message traffic, include message traffic generated by: (i) An ATS that does not execute orders that is sponsored by such Industry Member; and (ii) routing orders to and from any ATS sponsored by such Industry Member. In addition, the Industry Member fees will apply to Industry Members that act as routing broker-dealers for exchanges. The Industry Member fees will not be applicable, however, to an ATS that qualifies as an Execution Venue, as discussed in more detail in the section on Execution Venue tiering.

In accordance with Section 11.3(b), the Operating Committee approved a tiered fee structure for Industry Members (other than Execution Venue ATSs) as described in this section. In determining the tiers, the Operating Committee considered the funding principles set forth in Section 11.2 of the CAT NMS Plan, seeking to create funding tiers that take into account the relative impact on CAT System resources of different Industry Members, and that establish comparable fees among the CAT Reporters with the most Reportable Events. The Operating Committee has determined that establishing seven tiers results in an allocation of fees that distinguishes between Industry Members with differing levels of message traffic. Thus, each such Industry Member will be placed into one of seven tiers of fixed fees, based on "message traffic" for a defined period (as discussed below).

A seven tier structure was selected to provide a wide range of levels for tiering

<sup>45</sup> *Id.* at 84792.

<sup>46</sup> 26 U.S.C. 501(c)(6).

<sup>47</sup> Approval Order at 84793.

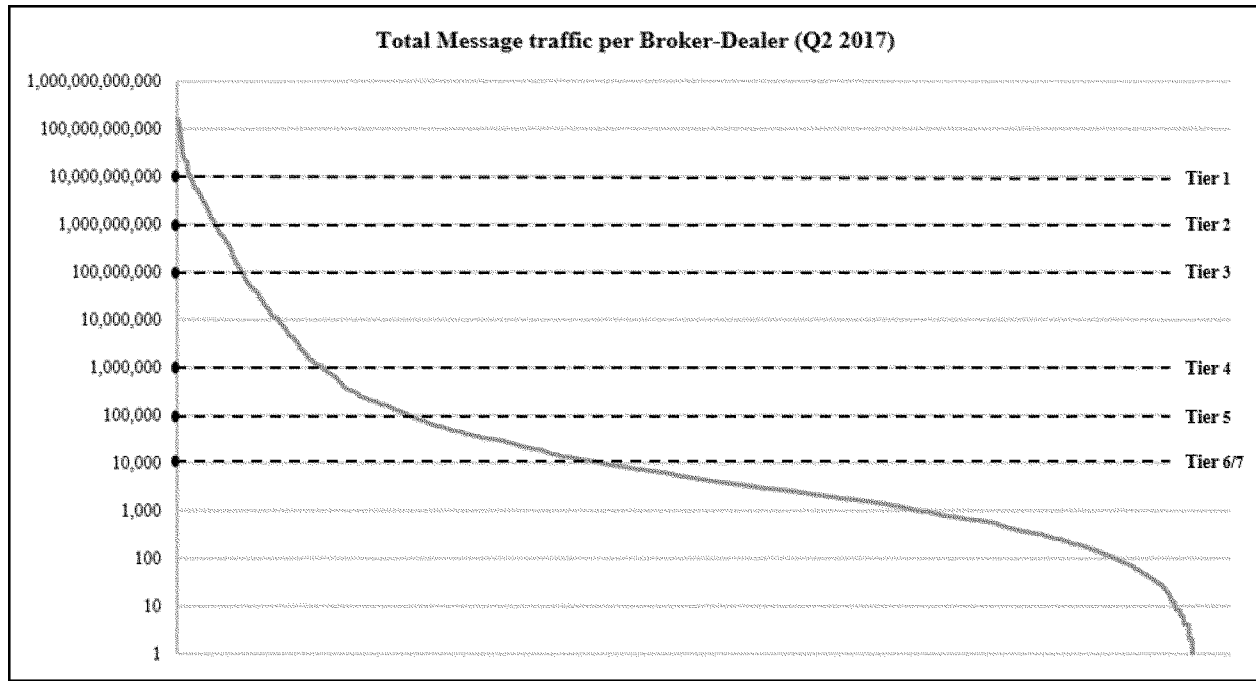
Industry Members such that Industry Members submitting significantly less message traffic to the CAT would be adequately differentiated from Industry Members submitting substantially more message traffic. The Operating Committee considered historical message traffic from multiple time periods, generated by Industry Members across all exchanges and as submitted to FINRA's Order Audit Trail System ("OATS"), and considered the distribution of firms with similar levels of message traffic, grouping together firms with similar levels of message traffic. Based on this, the Operating Committee determined that seven tiers would group firms with similar levels of message traffic, charging those firms with higher impact on the CAT more, while lowering the burden on Industry Members that have less CAT-related activity. Furthermore, the selection of seven tiers establishes comparable fees among the largest CAT Reporters.

Each Industry Member (other than Execution Venue ATSs) will be ranked by message traffic and tiered by predefined Industry Member percentages (the "Industry Member Percentages"). The Operating Committee determined to use predefined percentages rather than fixed volume thresholds to ensure that the total CAT Fees collected recover the expected CAT costs regardless of changes in the total level of message traffic. To determine the fixed percentage of Industry Members in each tier, the Operating Committee analyzed historical message traffic generated by Industry Members across all exchanges and as submitted to OATS, and considered the distribution of firms

with similar levels of message traffic, grouping together firms with similar levels of message traffic. Based on this, the Operating Committee identified seven tiers that would group firms with similar levels of message traffic.

The percentage of costs recovered by each Industry Member tier will be determined by predefined percentage allocations (the "Industry Member Recovery Allocation"). In determining the fixed percentage allocation of costs recovered for each tier, the Operating Committee considered the impact of CAT Reporter message traffic on the CAT System as well as the distribution of total message volume across Industry Members while seeking to maintain comparable fees among the largest CAT Reporters. Accordingly, following the determination of the percentage of Industry Members in each tier, the Operating Committee identified the percentage of total market volume for each tier based on the historical message traffic upon which Industry Members had been initially ranked. Taking this into account along with the resulting percentage of total recovery, the percentage allocation of costs recovered for each tier were assigned, allocating higher percentages of recovery to tiers with higher levels of message traffic while avoiding any inappropriate burden on competition. Furthermore, by using percentages of Industry Members and costs recovered per tier, the Operating Committee sought to include elasticity within the funding model, allowing the funding model to respond to changes in either the total number of Industry Members or the total level of message traffic.

The following chart illustrates the breakdown of seven Industry Member tiers across the monthly average of total equity and equity options orders, cancels, quotes and executions in the second quarter of 2017 as well as message traffic thresholds between the largest of Industry Member message traffic gaps. The Operating Committee referenced similar distribution illustrations to determine the appropriate division of Industry Member percentages in each tier by considering the grouping of firms with similar levels of message traffic and seeking to identify relative breakpoints in the message traffic between such groupings. In reviewing the chart and its corresponding table, note that while these distribution illustrations were referenced to help differentiate between Industry Member tiers, the proposed funding model is driven by fixed percentages of Industry Members across tiers to account for fluctuating levels of message traffic over time. This approach also provides financial stability for the CAT by ensuring that the funding model will recover the required amounts regardless of changes in the number of Industry Members or the amount of message traffic. Actual messages in any tier will vary based on the actual traffic in a given measurement period, as well as the number of firms included in the measurement period. The Industry Member Percentages and Industry Member Recovery Allocation for each tier will remain fixed with each Industry Member's tier to be reassigned periodically, as described below in Section 3(a)(2)(I).



Industry Member tier	Approximate message traffic per Industry Member (Q2 2017) (orders, quotes, cancels and executions)
Tier 1 .....	>10,000,000,000
Tier 2 .....	1,000,000,000–10,000,000,000
Tier 3 .....	100,000,000–1,000,000,000
Tier 4 .....	1,000,000–100,000,000
Tier 5 .....	100,000–1,000,000
Tier 6 .....	10,000–100,000
Tier 7 .....	<10,000

Based on the above analysis, the Operating Committee approved the following Industry Member Percentages

and Industry Member Recovery Allocations:

Industry Member tier	Percentage of Industry Members	Percentage of Industry Member Recovery	Percentage of total recovery
Tier 1 .....	0.900	12.00	9.00
Tier 2 .....	2.150	20.50	15.38
Tier 3 .....	2.800	18.50	13.88
Tier 4 .....	7.750	32.00	24.00
Tier 5 .....	8.300	10.00	7.50
Tier 6 .....	18.800	6.00	4.50
Tier 7 .....	59.300	1.00	0.75
<b>Total .....</b>	<b>100</b>	<b>100</b>	<b>75</b>

For the purposes of creating these tiers based on message traffic, the Operating Committee determined to define the term “message traffic” separately for the period before the commencement of CAT reporting and for the period after the start of CAT reporting. The different definition for message traffic is necessary as there will be no Reportable Events as defined in

the Plan, prior to the commencement of CAT reporting. Accordingly, prior to the start of CAT reporting, “message traffic” will be comprised of historical equity and equity options orders, cancels, quotes and executions provided by each exchange and FINRA over the previous three months. Prior to the start of CAT reporting, orders would be comprised of the total number of equity and equity

options orders received and originated by a member of an exchange or FINRA over the previous three-month period, including principal orders, cancel/replace orders, market maker orders originated by a member of an exchange, and reserve (iceberg) orders as well as executions originated by a member of FINRA, and excluding order rejects, system-modified orders, order routes

and implied orders.<sup>48</sup> In addition, prior to the start of CAT reporting, cancels would be comprised of the total number of equity and equity option cancels received and originated by a member of an exchange or FINRA over a three-month period, excluding order modifications (e.g., order updates, order splits, partial cancels) and multiple cancels of a complex order. Furthermore, prior to the start of CAT reporting, quotes would be comprised of information readily available to the exchanges and FINRA, such as the total number of historical equity and equity options quotes received and originated by a member of an exchange or FINRA over the prior three-month period. Additionally, prior to the start of CAT reporting, executions would be comprised of the total number of equity and equity option executions received or originated by a member of an exchange or FINRA over a three-month period.

After an Industry Member begins reporting to the CAT, “message traffic” will be calculated based on the Industry Member’s Reportable Events reported to the CAT as will be defined in the Technical Specifications.<sup>49</sup>

Quotes of Options Market Makers and equity market makers will be included in the calculation of total message traffic for those market makers for purposes of tiering under the CAT funding model both prior to CAT reporting and once CAT reporting commences.<sup>50</sup> To address potential concerns regarding burdens on competition or market quality of including quotes in the calculation of message traffic, however, the Operating Committee determined to discount the Options Market Maker quotes by the trade to quote ratio for

options when calculating message traffic for Options Market Makers. Based on available data for June 2016 through June 2017, the trade to quote ratio for options is 0.01%. Similarly, to avoid disincentives to quoting behavior on the equities side, the Operating Committee determined to discount equity market maker quotes by the trade to quote ratio for equities. Based on available data for June 2016 through June 2017, the trade to quote ratio for equities is 5.43%.<sup>51</sup> The trade to quote ratio for options and the trade to quote ratio for equities will be calculated every three months when tiers are recalculated (as discussed below).

The Operating Committee has determined to calculate fee tiers every three months, on a calendar quarter basis, based on message traffic from the prior three months. Based on its analysis of historical data, the Operating Committee believes that calculating tiers based on three months of data will provide the best balance between reflecting changes in activity by Industry Members while still providing predictability in the tiering for Industry Members. Because fee tiers will be calculated based on message traffic from the prior three months, the Operating Committee will begin calculating message traffic based on an Industry Member’s Reportable Events reported to the CAT once the Industry Member has been reporting to the CAT for three months. Prior to that, fee tiers will be calculated as discussed above with regard to the period prior to CAT reporting.

#### (C) Execution Venue Tiering

Under Section 11.3(a) of the CAT NMS Plan, the Operating Committee is required to establish fixed fees payable by Execution Venues. Section 1.1 of the CAT NMS Plan defines an Execution Venue as “a Participant or an alternative trading system (“ATS”) (as defined in Rule 300 of Regulation ATS) that operates pursuant to Rule 301 of Regulation ATS (excluding any such ATS that does not execute orders).”<sup>52</sup>

The Operating Committee determined that ATSS should be included within the definition of Execution Venue. The Operating Committee believes that it is appropriate to treat ATSS as Execution Venues under the proposed funding

model since ATSS have business models that are similar to those of exchanges, and ATSS also compete with exchanges.

Given the differences between Execution Venues that trade NMS Stocks and/or OTC Equity Securities and Execution Venues that trade Listed Options, Section 11.3(a) addresses Execution Venues that trade NMS Stocks and/or OTC Equity Securities separately from Execution Venues that trade Listed Options. Equity and Options Execution Venues are treated separately for two reasons. First, the differing quoting behavior of Equity and Options Execution Venues makes comparison of activity between such Execution Venues difficult. Second, Execution Venue tiers are calculated based on market share of share volume, and it is therefore difficult to compare market share between asset classes (i.e., equity shares versus options contracts). Discussed below is how the funding model treats the two types of Execution Venues.

#### (I) NMS Stocks and OTC Equity Securities

Section 11.3(a)(i) of the CAT NMS Plan states that each Execution Venue that (i) executes transactions or, (ii) in the case of a national securities association, has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange, in NMS Stocks or OTC Equity Securities will pay a fixed fee depending on the market share of that Execution Venue in NMS Stocks and OTC Equity Securities, with the Operating Committee establishing at least two and not more than five tiers of fixed fees, based on an Execution Venue’s NMS Stocks and OTC Equity Securities market share. For these purposes, market share for Execution Venues that execute transactions will be calculated by share volume, and market share for a national securities association that has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange in NMS Stocks or OTC Equity Securities will be calculated based on share volume of trades reported, provided, however, that the share volume reported to such national securities association by an Execution Venue shall not be included in the calculation of such national security association’s market share.

In accordance with Section 11.3(a)(i) of the CAT NMS Plan, the Operating Committee approved a tiered fee structure for Equity Execution Venues and Option Execution Venues. In determining the Equity Execution

<sup>48</sup> Consequently, firms that do not have “message traffic” reported to an exchange or OATS before they are reporting to the CAT would not be subject to a fee until they begin to report information to CAT.

<sup>49</sup> If an Industry Member (other than an Execution Venue ATS) has no orders, cancels, quotes and executions prior to the commencement of CAT Reporting, or no Reportable Events after CAT reporting commences, then the Industry Member would not have a CAT Fee obligation.

<sup>50</sup> The SEC approved exemptive relief permitting Options Market Maker quotes to be reported to the Central Repository by the relevant Options Exchange in lieu of requiring that such reporting be done by both the Options Exchange and the Options Market Maker, as required by Rule 613 of Regulation NMS. See Securities Exchange Act Rel. No. 77265 (Mar. 1, 2017), 81 FR 11856 (Mar. 7, 2016). This exemption applies to Options Market Maker quotes for CAT reporting purposes only. Therefore, notwithstanding the reporting exemption provided for Options Market Maker quotes, Options Market Maker quotes will be included in the calculation of total message traffic for Options Market Makers for purposes of tiering under the CAT funding model both prior to CAT reporting and once CAT reporting commences.

<sup>51</sup> The trade to quote ratios were calculated based on the inverse of the average of the monthly equity SIP and OPRA quote to trade ratios from June 2016–June 2017 that were compiled by the Financial Information Forum using data from NASDAQ and SIAC.

<sup>52</sup> Although FINRA does not operate an execution venue, because it is a Participant, it is considered an “Execution Venue” under the Plan for purposes of determining fees.

Venue Tiers, the Operating Committee considered the funding principles set forth in Section 11.2 of the CAT NMS Plan, seeking to create funding tiers that take into account the relative impact on system resources of different Equity Execution Venues, and that establish comparable fees among the CAT Reporters with the most Reportable Events. Each Equity Execution Venue will be placed into one of four tiers of fixed fees, based on the Execution Venue's NMS Stocks and OTC Equity Securities market share. In choosing four tiers, the Operating Committee performed an analysis similar to that discussed above with regard to the non-Execution Venue Industry Members to determine the number of tiers for Equity Execution Venues. The Operating Committee determined to establish four tiers for Equity Execution Venues, rather than a larger number of tiers as established for non-Execution Venue Industry Members, because the four tiers were sufficient to distinguish between the smaller number of Equity Execution Venues based on market share. Furthermore, the selection of four tiers serves to help establish comparability among the largest CAT Reporters.

Each Equity Execution Venue will be ranked by market share and tiered by predefined Execution Venue percentages (the "Equity Execution Venue Percentages"). In determining the fixed percentage of Equity Execution Venues in each tier, the Operating Committee reviewed historical market share of share volume for Execution Venues. Equity Execution Venue market shares of share volume were sourced from market statistics made publicly-available by Bats Global Markets, Inc. ("Bats"). ATS market shares of share volume was sourced from market statistics made publicly-available by FINRA. FINRA trade reporting facility ("TRF") and ORF market share of share volume was sourced from market

statistics made publicly available by FINRA. Based on data from FINRA and *otcm Markets.com*, ATSS accounted for 39.12% of the share volume across the TRFs and ORFs during the recent tiering period. A 39.12/60.88 split was applied to the ATS and non-ATS breakdown of FINRA market share, with FINRA tiered based only on the non-ATS portion of its market share of share volume.

The Operating Committee determined to discount the market share of Execution Venue ATSS exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF in recognition of the different trading characteristics of the OTC Equity Securities market as compared to the market in NMS Stocks. Many OTC Equity Securities are priced at less than one dollar—and a significant number at less than one penny—per share and low-priced shares tend to trade in larger quantities. Accordingly, a disproportionately large number of shares are involved in transactions involving OTC Equity Securities versus NMS Stocks. Because the proposed fee tiers are based on market share calculated by share volume, Execution Venue ATSS exclusively trading OTC Equity Securities and FINRA would likely be subject to higher tiers than their operations may warrant. To address this potential concern, the Operating Committee determined to discount the market share of Execution Venue ATSS exclusively trading OTC Equity Securities and the market share of the FINRA ORF by multiplying such market share by the average shares per trade ratio between NMS Stocks and OTC Equity Securities in order to adjust for the greater number of shares being traded in the OTC Equity Securities market. Based on available data for the second quarter of 2017, the average shares per trade ratio between NMS Stocks and OTC Equity Securities is 0.17%.<sup>53</sup> The average shares per trade ratio between NMS Stocks and OTC

Equity Securities will be recalculated every three months when tiers are recalculated.

Based on this, the Operating Committee considered the distribution of Execution Venues, and grouped together Execution Venues with similar levels of market share. The percentage of costs recovered by each Equity Execution Venue tier will be determined by predefined percentage allocations (the "Equity Execution Venue Recovery Allocation"). In determining the fixed percentage allocation of costs to be recovered from each tier, the Operating Committee considered the impact of CAT Reporter market share activity on the CAT System as well as the distribution of total market volume across Equity Execution Venues while seeking to maintain comparable fees among the largest CAT Reporters. Accordingly, following the determination of the percentage of Execution Venues in each tier, the Operating Committee identified the percentage of total market volume for each tier based on the historical market share upon which Execution Venues had been initially ranked. Taking this into account along with the resulting percentage of total recovery, the percentage allocation of cost recovery for each tier were assigned, allocating higher percentages of recovery to the tier with a higher level of market share while avoiding any inappropriate burden on competition. Furthermore, by using percentages of Equity Execution Venues and cost recovery per tier, the Operating Committee sought to include elasticity within the funding model, allowing the funding model to respond to changes in either the total number of Equity Execution Venues or changes in market share.

Based on this analysis, the Operating Committee approved the following Equity Execution Venue Percentages and Recovery Allocations:

Equity Execution Venue tier	Percentage of Equity Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1 .....	25.00	33.25	8.31
Tier 2 .....	42.00	25.73	6.43
Tier 3 .....	23.00	8.00	2.00
Tier 4 .....	10.00	0.02	0.01
Total .....	100	67	16.75

<sup>53</sup> The average shares per trade ratio for both NMS Stocks and OTC Equity Securities from the second quarter of 2017 was calculated using publicly

available market volume data from Bats and OTC Markets Group, and the totals were divided to

determine the average number of shares per trade between NMS Stocks and OTC Equity Securities.

(II) Listed Options

Section 11.3(a)(ii) of the CAT NMS Plan states that each Execution Venue that executes transactions in Listed Options will pay a fixed fee depending on the Listed Options market share of that Execution Venue, with the Operating Committee establishing at least two and no more than five tiers of fixed fees, based on an Execution Venue's Listed Options market share. For these purposes, market share will be calculated by contract volume.

In accordance with Section 11.3(a)(ii) of the CAT NMS Plan, the Operating Committee approved a tiered fee structure for Options Execution Venues. In determining the tiers, the Operating Committee considered the funding principles set forth in Section 11.2 of the CAT NMS Plan, seeking to create funding tiers that take into account the relative impact on system resources of different Options Execution Venues, and that establish comparable fees among the CAT Reporters with the most Reportable Events. Each Options Execution Venue will be placed into one of two tiers of fixed fees, based on the Execution Venue's Listed Options market share. In choosing two tiers, the Operating Committee performed an analysis similar to that discussed above with regard to Industry Members (other than Execution Venue ATSS) to

determine the number of tiers for Options Execution Venues. The Operating Committee determined to establish two tiers for Options Execution Venues, rather than a larger number, because the two tiers were sufficient to distinguish between the smaller number of Options Execution Venues based on market share. Furthermore, due to the smaller number of Options Execution Venues, the incorporation of additional Options Execution Venue tiers would result in significantly higher fees for Tier 1 Options Execution Venues and reduce comparability between Execution Venues and Industry Members. Furthermore, the selection of two tiers served to establish comparable fees among the largest CAT Reporters.

Each Options Execution Venue will be ranked by market share and tiered by predefined Execution Venue percentages (the "Options Execution Venue Percentages"). To determine the fixed percentage of Options Execution Venues in each tier, the Operating Committee analyzed the historical and publicly available market share of Options Execution Venues to group Options Execution Venues with similar market shares across the tiers. Options Execution Venue market share of share volume were sourced from market statistics made publicly-available by

Bats. The process for developing the Options Execution Venue Percentages was the same as discussed above with regard to Equity Execution Venues.

The percentage of costs to be recovered from each Options Execution Venue tier will be determined by predefined percentage allocations (the "Options Execution Venue Recovery Allocation"). In determining the fixed percentage allocation of cost recovery for each tier, the Operating Committee considered the impact of CAT Reporter market share activity on the CAT System as well as the distribution of total market volume across Options Execution Venues while seeking to maintain comparable fees among the largest CAT Reporters. Furthermore, by using percentages of Options Execution Venues and cost recovery per tier, the Operating Committee sought to include elasticity within the funding model, allowing the funding model to respond to changes in either the total number of Options Execution Venues or changes in market share. The process for developing the Options Execution Venue Recovery Allocation was the same as discussed above with regard to Equity Execution Venues.

Based on this analysis, the Operating Committee approved the following Options Execution Venue Percentages and Recovery Allocations:

Options Execution Venue tier	Percentage of Options Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1 .....	75.00	28.25	7.06
Tier 2 .....	25.00	4.75	1.19
Total .....	100	33	8.25

(III) Market Share/Tier Assignments

The Operating Committee determined that, prior to the start of CAT reporting, market share for Execution Venues would be sourced from publicly-available market data. Options and equity volumes for Participants will be sourced from market data made publicly available by Bats while Execution Venue ATS volumes will be sourced from market data made publicly available by FINRA and OTC Markets. Set forth in the Appendix are two charts, one listing the current Equity Execution Venues, each with its rank and tier, and one listing the current Options Execution Venues, each with its rank and tier.

After the commencement of CAT reporting, market share for Execution Venues will be sourced from data reported to the CAT. Equity Execution

Venue market share will be determined by calculating each Equity Execution Venue's proportion of the total volume of NMS Stock and OTC Equity shares reported by all Equity Execution Venues during the relevant time period (with the discounting of market share of Execution Venue ATSS exclusively trading OTC Equity Securities, as described above). Similarly, market share for Options Execution Venues will be determined by calculating each Options Execution Venue's proportion of the total volume of Listed Options contracts reported by all Options Execution Venues during the relevant time period.

The Operating Committee has determined to calculate fee tiers for Execution Venues every three months based on market share from the prior three months. Based on its analysis of

historical data, the Operating Committee believes calculating tiers based on three months of data will provide the best balance between reflecting changes in activity by Execution Venues while still providing predictability in the tiering for Execution Venues.

(D) Allocation of Costs

In addition to the funding principles discussed above, including comparability of fees, Section 11.1(c) of the CAT NMS Plan also requires expenses to be fairly and reasonably shared among the Participants and Industry Members. Accordingly, in developing the proposed fee schedules pursuant to the funding model, the Operating Committee calculated how the CAT costs would be allocated between Industry Members and Execution Venues, and how the portion



of CAT costs allocated to Execution Venues would be allocated between Equity Execution Venues and Options Execution Venues. These determinations are described below.

(I) Allocation Between Industry Members and Execution Venues

In determining the cost allocation between Industry Members (other than Execution Venue ATSS) and Execution Venues, the Operating Committee analyzed a range of possible splits for revenue recovery from such Industry Members and Execution Venues, including 80%/20%, 75%/25%, 70%/30% and 65%/35% allocations. Based on this analysis, the Operating Committee determined that 75 percent of total costs recovered would be allocated to Industry Members (other than Execution Venue ATSS) and 25 percent would be allocated to Execution Venues. The Operating Committee determined that this 75%/25% division maintained the greatest level of comparability across the funding model. For example, the cost allocation establishes fees for the largest Industry Members (*i.e.*, those Industry Members in Tiers 1) that are comparable to the largest Equity Execution Venues and Options Execution Venues (*i.e.*, those Execution Venues in Tier 1).

Furthermore, the allocation of total CAT cost recovery recognizes the difference in the number of CAT Reporters that are Industry Members versus CAT Reporters that are Execution Venues. Specifically, the cost allocation takes into consideration that there are approximately 23 times more Industry Members expected to report to the CAT than Execution Venues (*e.g.*, an estimated 1,541 Industry Members versus 67 Execution Venues as of June 2017).

(II) Allocation Between Equity Execution Venues and Options Execution Venues

The Operating Committee also analyzed how the portion of CAT costs allocated to Execution Venues would be allocated between Equity Execution

Venues and Options Execution Venues. In considering this allocation of costs, the Operating Committee analyzed a range of alternative splits for revenue recovered between Equity and Options Execution Venues, including a 70%/30%, 67%/33%, 65%/35%, 50%/50% and 25%/75% split. Based on this analysis, the Operating Committee determined to allocate 67 percent of Execution Venue costs recovered to Equity Execution Venues and 33 percent to Options Execution Venues. The Operating Committee determined that a 67%/33% allocation between Equity and Options Execution Venues maintained the greatest level of fee equitability and comparability based on the current number of Equity and Options Execution Venues. For example, the allocation establishes fees for the larger Equity Execution Venues that are comparable to the larger Options Execution Venues. Specifically, Tier 1 Equity Execution Venues would pay a quarterly fee of \$81,047 and Tier 1 Options Execution Venues would pay a quarterly fee of \$81,379. In addition to fee comparability between Equity Execution Venues and Options Execution Venues, the allocation also establishes equitability between larger (Tier 1) and smaller (Tier 2) Execution Venues based upon the level of market share. Furthermore, the allocation is intended to reflect the relative levels of current equity and options order events.

(E) Fee Levels

The Operating Committee determined to establish a CAT-specific fee to collectively recover the costs of building and operating the CAT. Accordingly, under the funding model, the sum of the CAT Fees is designed to recover the total cost of the CAT. The Operating Committee has determined overall CAT costs to be comprised of Plan Processor costs and non-Plan Processor costs, which are estimated to be \$50,700,000 in total for the year beginning November 21, 2016.<sup>54</sup>

The Plan Processor costs relate to costs incurred and to be incurred

through November 21, 2017 by the Plan Processor and consist of the Plan Processor's current estimates of average yearly ongoing costs, including development costs, which total \$37,500,000. This amount is based upon the fees due to the Plan Processor pursuant to the Company's agreement with the Plan Processor.

The non-Plan Processor estimated costs incurred and to be incurred by the Company through November 21, 2017 consist of three categories of costs. The first category of such costs are third party support costs, which include legal fees, consulting fees and audit fees from November 21, 2016 until the date of filing as well as estimated third party support costs for the rest of the year. These amount to an estimated \$5,200,000. The second category of non-Plan Processor costs are estimated cyber-insurance costs for the year. Based on discussions with potential cyber-insurance providers, assuming \$2–5 million cyber-insurance premium on \$100 million coverage, the Company has estimated \$3,000,000 for the annual cost. The final cost figures will be determined following receipt of final underwriter quotes. The third category of non-Plan Processor costs is the CAT operational reserve, which is comprised of three months of ongoing Plan Processor costs (\$9,375,000), third party support costs (\$1,300,000) and cyber-insurance costs (\$750,000). The Operating Committee aims to accumulate the necessary funds to establish the three-month operating reserve for the Company through the CAT Fees charged to CAT Reporters for the year. On an ongoing basis, the Operating Committee will account for any potential need to replenish the operating reserve or other changes to total cost during its annual budgeting process. The following table summarizes the Plan Processor and non-Plan Processor cost components which comprise the total estimated CAT costs of \$50,700,000 for the covered period.

Cost category	Cost component	Amount
Plan Processor .....	Operational Costs .....	\$37,500,000
Non-Plan Processor .....	Third Party Support Costs .....	5,200,000
	Operational Reserve .....	<sup>55</sup> 5,000,000
	Cyber-insurance Costs .....	3,000,000
Estimated Total .....		50,700,000

<sup>54</sup> It is anticipated that CAT-related costs incurred prior to November 21, 2016 will be addressed via a separate filing.

<sup>55</sup> This \$5,000,000 represents the gradual accumulation of the funds for a target operating reserve of \$11,425,000.

Based on these estimated costs and the calculations for the funding model described above, the Operating

Committee determined to impose the following fees:<sup>56</sup>

For Industry Members (other than Execution Venue ATs):

Tier	Percentage of Industry Members	Quarterly CAT Fee
1 .....	0.900	\$81,483
2 .....	2.150	59,055
3 .....	2.800	40,899
4 .....	7.750	25,566
5 .....	8.300	7,428
6 .....	18.800	1,968
7 .....	59.300	105

For Execution Venues for NMS Stocks and OTC Equity Securities:

Tier	Percentage of Equity Execution Venues	Quarterly CAT Fee
1 .....	25.00	\$81,048
2 .....	42.00	37,062
3 .....	23.00	21,126
4 .....	10.00	129

For Execution Venues for Listed Options:

Tier	Percentage of Options Execution Venues	Quarterly CAT Fee
1 .....	75.00	\$81,381
2 .....	25.00	37,629

The Operating Committee has calculated the schedule of effective fees for Industry Members (other than Execution Venue ATs) and Execution

Venues in the following manner. Note that the calculation of CAT Fees assumes 52 Equity Execution Venues, 15 Options Execution Venues and 1,541

Industry Members (other than Execution Venue ATs) as of June 2017.

#### CALCULATION OF ANNUAL TIER FEES FOR INDUSTRY MEMBERS ("IM")

Industry Member tier	Percentage of Industry Members	Percentage of Industry Member Recovery	Percentage of total recovery
Tier 1 .....	0.900	12.00	9.00
Tier 2 .....	2.150	20.50	15.38
Tier 3 .....	2.800	18.50	13.88
Tier 4 .....	7.750	32.00	24.00
Tier 5 .....	8.300	10.00	7.50
Tier 6 .....	18.800	6.00	4.50
Tier 7 .....	59.300	1.00	0.75
Total .....	100	100	75

<sup>56</sup>Note that all monthly, quarterly and annual CAT Fees have been rounded to the nearest dollar.

Industry Member tier	Estimated number of Industry Members
Tier 1 .....	14
Tier 2 .....	33
Tier 3 .....	43
Tier 4 .....	119
Tier 5 .....	128
Tier 6 .....	290
Tier 7 .....	914
Total .....	1,541

BILLING CODE 8011-01-P

**Calculation 1.1 (Calculation of a Tier 1 Industry Member Monthly Fee)**

1,541 [Estimated Tot. IMs] × 0.9% [% of Tier 1 IMs] = 14 [Estimated Tier 1 IMs]

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 75\% \text{ [IM \% of Tot. Ann. CAT Costs]} \times 12\% \text{ [% of Tier 1 IM Recovery]}}{14 \text{ [Estimated Tier 1 IMs]}} \right) \div 12 \text{ [Months per year]} = \mathbf{\$27,161}$$

**Calculation 1.2 (Calculation of a Tier 2 Industry Member Monthly Fee)**

1,541 [Estimated Tot. IMs] × 2.15% [% of Tier 2 IMs] = 33 [Estimated Tier 2 IMs]

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 75\% \text{ [IM \% of Tot. Ann. CAT Costs]} \times 20.5\% \text{ [% of Tier 2 IM Recovery]}}{33 \text{ [Estimated Tier 2 IMs]}} \right) \div 12 \text{ [Months per year]} = \mathbf{\$19,685}$$

**Calculation 1.3 (Calculation of a Tier 3 Industry Member Monthly Fee)**

1,541 [Estimated Tot. IMs] × 2.125% [% of Tier 3 IMs] = 43 [Estimated Tier 3 IMs]

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 75\% \text{ [IM \% of Tot. Ann. CAT Costs]} \times 18.5\% \text{ [% of Tier 3 IM Recovery]}}{43 \text{ [Estimated Tier 3 IMs]}} \right) \div 12 \text{ [Months per year]} = \mathbf{\$13,633}$$

**Calculation 1.4 (Calculation of a Tier 4 Industry Member Monthly Fee)**

1,541 [Estimated Tot. IMs] × 7.75% [% of Tier 4 IMs] = 119 [Estimated Tier 4 IMs]

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 75\% \text{ [IM \% of Tot. Ann. CAT Costs]} \times 32\% \text{ [% of Tier 4 IM Recovery]}}{119 \text{ [Estimated Tier 4 IMs]}} \right) \div 12 \text{ [Months per year]} = \mathbf{\$8522}$$

**Calculation 1.5 (Calculation of a Tier 5 Industry Member Annual Fee)**

1,541 [Estimated Tot. IMs] × 8.3% [% of Tier 5 IMs] = 128 [Estimated Tier 5 IMs]

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 75\% \text{ [IM \% of Tot. Ann. CAT Costs]} \times 7.75\% \text{ [% of Tier 5 IM Recovery]}}{128 \text{ [Estimated Tier 5 IMs]}} \right) \div 12 \text{ [Months per year]} = \mathbf{\$2476}$$

**Calculation 1.6 (Calculation of a Tier 6 Industry Member Monthly Fee)**

1,541 [Estimated Tot. IMs] × 18.8% [% of Tier 6 IMs] = 290 [Estimated Tier 6 IMs]

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 75\% \text{ [IM \% of Tot. Ann. CAT Costs]} \times 6\% \text{ [% of Tier 6 IM Recovery]}}{290 \text{ [Estimated Tier 6 IMs]}} \right) \div 12 \text{ [Months per year]} = \mathbf{\$656}$$

**Calculation 1.7 (Calculation of a Tier 7 Industry Member Monthly Fee)**

1,541 [Estimated Tot. IMs] × 59.3% [% of Tier 7 IMs] = 914 [Estimated Tier 7 IMs]

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 75\% \text{ [IM \% of Tot. Ann. CAT Costs]} \times 1\% \text{ [% of Tier 7 IM Recovery]}}{914 \text{ [Estimated Tier 7 IMs]}} \right) \div 12 \text{ [Months per year]} = \mathbf{\$35}$$

BILLING CODE 8011-01-C

**CALCULATION OF ANNUAL TIER FEES FOR EQUITY EXECUTION VENUES (“EV”)**

Equity Execution Venue tier	Percentage of Equity Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1 .....	25.00	33.25	8.31
Tier 2 .....	42.00	25.73	6.43
Tier 3 .....	23.00	8.00	2.00
Tier 4 .....	10.00	49.00	0.01
Total .....	100	67	16.75

Equity Execution Venue tier	Estimated number of Equity Execution Venues
Tier 1 .....	13
Tier 2 .....	22
Tier 3 .....	12
Tier 4 .....	5
<b>Total .....</b>	<b>52</b>

**Calculation 2.1 (Calculation of a Tier 1 Equity Execution Venue Monthly Fee)**

52 [Estimated Tot. Equity EVs] × 25% [% of Tier 1 Equity EVs] = 13 [Estimated Tier 1 Equity EVs]

$$\left( \frac{\$50,700,000 [\text{Tot. Ann.CAT Costs}] \times 33.25\% [\text{EV \% of Tot.Ann.CAT Costs}] \times 26\% [\text{\% of Tier 1 Equity EV Recovery}]}{13 [\text{Estimated Tier 1 Equity EVs}]} \right) \div 12 [\text{Months per year}] = \mathbf{\$27,016}$$

**Calculation 2.2 (Calculation of a Tier 2 Equity Execution Venue Monthly Fee)**

52 [Estimated Tot. Equity EVs] × 42% [% of Tier 2 Equity EVs] = 22 [Estimated Tier 2 Equity EVs]

$$\left( \frac{\$50,700,000 [\text{Tot. Ann.CAT Costs}] \times 25\% [\text{EV \% of Tot.Ann.CAT Costs}] \times 25.73\% [\text{\% of Tier 2 Equity EV Recovery}]}{22 [\text{Estimated Tier 2 Equity EVs}]} \right) \div 12 [\text{Months per year}] = \mathbf{\$12,353}$$

**Calculation 2.3 (Calculation of a Tier 3 Equity Execution Venue Monthly Fee)**

52 [Estimated Tot. Equity EVs] × 23% [% of Tier 2 Equity EVs] = 12 [Estimated Tier 2 Equity EVs]

$$\left( \frac{\$50,700,000 [\text{Tot. Ann.CAT Costs}] \times 25\% [\text{EV \% of Tot.Ann.CAT Costs}] \times 8\% [\text{\% of Tier 2 Equity EV Recovery}]}{12 [\text{Estimated Tier 2 Equity EVs}]} \right) \div 12 [\text{Months per year}] = \mathbf{\$7,042}$$

**Calculation 2.4 (Calculation of a Tier 4 Equity Execution Venue Monthly Fee)**

52 [Estimated Tot. Equity EVs] × 10% [% of Tier 2 Equity EVs] = 5 [Estimated Tier 2 Equity EVs]

$$\left( \frac{\$50,700,000 [\text{Tot. Ann.CAT Costs}] \times 25\% [\text{EV \% of Tot.Ann.CAT Costs}] \times 0.02\% [\text{\% of Tier 2 Equity EV Recovery}]}{5 [\text{Estimated Tier 2 Equity EVs}]} \right) \div 12 [\text{Months per year}] = \mathbf{\$42}$$

**CALCULATION OF ANNUAL TIER FEES FOR OPTIONS EXECUTION VENUES (“EV”)**

Options Execution Venue tier	Percentage of Options Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1 .....	75.00	28.25	7.06
Tier 2 .....	25.00	4.75	1.19
<b>Total .....</b>	<b>100</b>	<b>33</b>	<b>8.25</b>

Options Execution Venue tier	Estimated number of Options Execution Venues
Tier 1 .....	11
Tier 2 .....	4
<b>Total .....</b>	<b>15</b>

## TRACEABILITY OF TOTAL CAT FEES

Type	Industry Member tier	Estimated number of members	CAT fees paid annually	Total recovery
Industry Members .....	Tier 1 .....	14	\$325,932	\$4,563,048
	Tier 2 .....	33	236,220	7,795,260
	Tier 3 .....	43	163,596	7,034,628
	Tier 4 .....	119	102,264	12,169,416
	Tier 5 .....	128	29,712	3,803,136
	Tier 6 .....	290	7,872	2,282,880
	Tier 7 .....	914	420	383,880
Total .....	.....	1,541	.....	38,032,248
Equity Execution Venues .....	Tier 1 .....	13	324,192	4,214,496
	Tier 2 .....	22	148,248	3,261,456
	Tier 3 .....	12	84,504	1,014,048
	Tier 4 .....	5	516	2,580
Total .....	.....	52	.....	8,492,580
Options Execution Venues .....	Tier 1 .....	11	325,524	3,580,764
	Tier 2 .....	4	150,516	602,064
Total .....	.....	15	.....	4,182,828
Total .....	.....	.....	.....	50,700,000
Excess <sup>57</sup> .....	.....	.....	.....	7,656

## (F) Comparability of Fees

The funding principles require a funding model in which the fees charged to the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venue and/or Industry Members). Accordingly, in creating the model, the Operating Committee sought to establish comparable fees for the top tier of Industry Members (other than Execution Venue ATSS), Equity Execution Venues and Options Execution Venues. Specifically, each Tier 1 CAT Reporter would be required to pay a quarterly fee of approximately \$81,000.

## (G) Billing Onset

Under Section 11.1(c) of the CAT NMS Plan, to fund the development and implementation of the CAT, the Company shall time the imposition and collection of all fees on Participants and Industry Members in a manner reasonably related to the timing when the Company expects to incur such development and implementation costs. The Company is currently incurring such development and implementation

<sup>57</sup> The amount in excess of the total CAT costs will contribute to the gradual accumulation of the target operating reserve of \$11.425 million.

costs and will continue to do so prior to the commencement of CAT reporting and thereafter. In accordance with the CAT NMS Plan, all CAT Reporters, including both Industry Members and Execution Venues (including Participants), will be invoiced as promptly as possible following the latest of the operative date of the Consolidated Audit Trail Funding Fees for each of the Participants and the operative date of the Plan amendment adopting CAT Fees for Participants.

## (H) Changes to Fee Levels and Tiers

Section 11.3(d) of the CAT NMS Plan states that “[t]he Operating Committee shall review such fee schedule on at least an annual basis and shall make any changes to such fee schedule that it deems appropriate. The Operating Committee is authorized to review such fee schedule on a more regular basis, but shall not make any changes on more than a semi-annual basis unless, pursuant to a Supermajority Vote, the Operating Committee concludes that such change is necessary for the adequate funding of the Company.” With such reviews, the Operating Committee will review the distribution of Industry Members and Execution Venues across tiers, and make any updates to the percentage of CAT Reporters allocated to each tier as may be necessary. In addition, the reviews will evaluate the estimated ongoing CAT costs and the level of the operating

reserve. To the extent that the total CAT costs decrease, the fees would be adjusted downward, and to the extent that the total CAT costs increase, the fees would be adjusted upward.<sup>58</sup> Furthermore, any surplus of the Company’s revenues over its expenses is to be included within the operational reserve to offset future fees. The limitations on more frequent changes to the fee, however, are intended to provide budgeting certainty for the CAT Reporters and the Company.<sup>59</sup> To the extent that the Operating Committee approves changes to the number of tiers in the funding model or the fees assigned to each tier, then the Operating Committee will file such changes with the SEC pursuant to Rule 608 of the Exchange Act, and the Participants will file such changes with the SEC pursuant to Section 19(b) of the Exchange Act and Rule 19b-4 thereunder, and any such changes will become effective in accordance with the requirements of those provisions.

<sup>58</sup> The CAT Fees are designed to recover the costs associated with the CAT. Accordingly, CAT Fees would not be affected by increases or decreases in other non-CAT expenses incurred by the Participants, such as any changes in costs related to the retirement of existing regulatory systems, such as OATS.

<sup>59</sup> Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85006.

(I) Initial and Periodic Tier Reassignments

The Operating Committee has determined to calculate fee tiers every three months based on market share or message traffic, as applicable, from the prior three months. For the initial tier assignments, the Company will calculate the relevant tier for each CAT Reporter using the three months of data prior to the commencement date. As with the initial tier assignment, for the tri-monthly reassignments, the Company will calculate the relevant tier using the three months of data prior to the relevant tri-monthly date. Any movement of CAT Reporters between tiers will not change the criteria for each tier or the fee amount corresponding to each tier.

In performing the tri-monthly reassignments, the assignment of CAT

Reporters in each assigned tier is relative. Therefore, a CAT Reporter’s assigned tier will depend, not only on its own message traffic or market share, but also on the message traffic/market share across all CAT Reporters. For example, the percentage of Industry Members (other than Execution Venue ATSS) in each tier is relative such that such Industry Member’s assigned tier will depend on message traffic generated across all CAT Reporters as well as the total number of CAT Reporters. The Operating Committee will inform CAT Reporters of their assigned tier every three months following the periodic tiering process, as the funding model will compare an individual CAT Reporter’s activity to that of other CAT Reporters in the marketplace.

The following demonstrates a tier reassignment. In accordance with the funding model, the top 75% of Options Execution Venues in market share are categorized as Tier 1 while the bottom 25% of Options Execution Venues in market share are categorized as Tier 2. In the sample scenario below, Options Execution Venue L is initially categorized as a Tier 2 Options Execution Venue in Period A due to its market share. When market share is recalculated for Period B, the market share of Execution Venue L increases, and it is therefore subsequently reranked and reassigned to Tier 1 in Period B. Correspondingly, Options Execution Venue K, initially a Tier 1 Options Execution Venue in Period A, is reassigned to Tier 2 in Period B due to decreases in its market share.

Period A			Period B		
Options Execution Venue	Market share rank	Tier	Options Execution Venue	Market share rank	Tier
Options Execution Venue A .....	1	1	Options Execution Venue A .....	1	1
Options Execution Venue B .....	2	1	Options Execution Venue B .....	2	1
Options Execution Venue C .....	3	1	Options Execution Venue C .....	3	1
Options Execution Venue D .....	4	1	Options Execution Venue D .....	4	1
Options Execution Venue E .....	5	1	Options Execution Venue E .....	5	1
Options Execution Venue F .....	6	1	Options Execution Venue F .....	6	1
Options Execution Venue G .....	7	1	Options Execution Venue I .....	7	1
Options Execution Venue H .....	8	1	Options Execution Venue H .....	8	1
Options Execution Venue I .....	9	1	Options Execution Venue G .....	9	1
Options Execution Venue J .....	10	1	Options Execution Venue J .....	10	1
Options Execution Venue K .....	11	1	Options Execution Venue L .....	11	1
Options Execution Venue L .....	12	2	Options Execution Venue K .....	12	2
Options Execution Venue M .....	13	2	Options Execution Venue N .....	13	2
Options Execution Venue N .....	14	2	Options Execution Venue M .....	14	2
Options Execution Venue O .....	15	2	Options Execution Venue O .....	15	2

For each periodic tier reassignment, the Operating Committee will review the new tier assignments, particularly those assignments for CAT Reporters that shift from the lowest tier to a higher tier. This review is intended to evaluate whether potential changes to the market or CAT Reporters (e.g., dissolution of a large CAT Reporter) adversely affect the tier reassignments.

(J) Sunset Provision

The Operating Committee developed the proposed funding model by analyzing currently available historical data. Such historical data, however, is not as comprehensive as data that will be submitted to the CAT. Accordingly, the Operating Committee believes that it will be appropriate to revisit the funding model once CAT Reporters have actual experience with the funding model. Accordingly, the Operating Committee determined to include an automatic sunset provision for the

proposed fees. Specifically, the Operating Committee determined that the CAT Fees should automatically expire two years after the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. The Operating Committee intends to monitor the operation of the funding model during this two year period and to evaluate its effectiveness during that period. Such a process will inform the Operating Committee’s approach to funding the CAT after the two year period.

(3) Proposed CAT Fee Schedule

SRO proposes the Consolidated Audit Trail Funding Fees to impose the CAT Fees determined by the Operating Committee on SRO’s members. The proposed fee schedule has four sections, covering definitions, the fee schedule for CAT Fees, the timing and manner of payments, and the automatic sunset

of the CAT Fees. Each of these sections is discussed in detail below.

(A) Definitions

Paragraph (a) of the proposed fee schedule sets forth the definitions for the proposed fee schedule. Paragraph (a)(1) states that, for purposes of the Consolidated Audit Trail Funding Fees, the terms “CAT”, “CAT NMS Plan,” “Industry Member,” “NMS Stock,” “OTC Equity Security”, “Options Market Maker”, and “Participant” are defined as set forth in Cboe Options Rule 6.85 (Consolidated Audit Trail (CAT)—Definitions).

The proposed fee schedule imposes different fees on Equity ATSS and Industry Members that are not Equity ATSS. Accordingly, the proposed fee schedule defines the term “Equity ATS.” First, paragraph (a)(2) defines an “ATS” to mean an alternative trading system as defined in Rule 300(a) of Regulation ATS under the Securities

Exchange Act of 1934, as amended, that operates pursuant to Rule 301 of Regulation ATS. This is the same definition of an ATS as set forth in Section 1.1 of the CAT NMS Plan in the definition of an "Execution Venue."

Then, paragraph (a)(4) defines an "Equity ATS" as an ATS that executes transactions in NMS Stocks and/or OTC Equity Securities.

Paragraph (a)(3) of the proposed fee schedule defines the term "CAT Fee" to mean the Consolidated Audit Trail Funding Fee(s) to be paid by Industry Members as set forth in paragraph (b) in the proposed fee schedule.

Finally, Paragraph (a)(6) defines an "Execution Venue" as a Participant or an ATS (excluding any such ATS that does not execute orders). This definition is the same substantive definition as set forth in Section 1.1 of the CAT NMS Plan. Paragraph (a)(5) defines an "Equity Execution Venue" as an Execution Venue that trades NMS Stocks and/or OTC Equity Securities.

**(B) Fee Schedule**

SRO proposes to impose the CAT Fees applicable to its Industry Members through paragraph (b) of the proposed fee schedule. Paragraph (b)(1) of the proposed fee schedule sets forth the CAT Fees applicable to Industry Members other than Equity ATSs. Specifically, paragraph (b)(1) states that the Company will assign each Industry Member (other than an Equity ATS) to a fee tier once every quarter, where such tier assignment is calculated by ranking each Industry Member based on its total message traffic (with discounts for equity market maker quotes and Options Market Maker quotes based on the trade to quote ratio for equities and options, respectively) for the three months prior to the quarterly tier calculation day and assigning each Industry Member to a tier based on that ranking and predefined Industry Member percentages. The Industry Members with the highest total quarterly message traffic will be ranked in Tier 1, and the Industry Members with lowest quarterly message traffic will be ranked in Tier 7. Each quarter, each Industry Member (other than an Equity ATS) shall pay the following CAT Fee corresponding to the tier assigned by the Company for such Industry Member for that quarter:

Tier	Percentage of Industry Members	Quarterly CAT Fee
1 .....	0.900	\$81,483
2 .....	2.150	59,055
3 .....	2.800	40,899
4 .....	7.750	25,566
5 .....	8.300	7,428

Tier	Percentage of Industry Members	Quarterly CAT Fee
6 .....	18.800	1,968
7 .....	59.300	105

Paragraph (b)(2) of the proposed fee schedule sets forth the CAT Fees applicable to Equity ATSs.<sup>60</sup> These are the same fees that Participants that trade NMS Stocks and/or OTC Equity Securities will pay. Specifically, paragraph (b)(2) states that the Company will assign each Equity ATS to a fee tier once every quarter, where such tier assignment is calculated by ranking each Equity Execution Venue based on its total market share of NMS Stocks and OTC Equity Securities (with a discount for Equity ATSs exclusively trading OTC Equity Securities based on the average shares per trade ratio between NMS Stocks and OTC Equity Securities) for the three months prior to the quarterly tier calculation day and assigning each Equity ATS to a tier based on that ranking and predefined Equity Execution Venue percentages. The Equity ATSs with the higher total quarterly market share will be ranked in Tier 1, and the Equity ATSs with the lowest quarterly market share will be ranked in Tier 4. Specifically, paragraph (b)(2) states that, each quarter, each Equity ATS shall pay the following CAT Fee corresponding to the tier assigned by the Company for such Equity ATS for that quarter:

Tier	Percentage of Equity Execution Venues	Quarterly CAT Fee
1 .....	25.00	\$81,048
2 .....	42.00	37,062
3 .....	23.00	21,126
4 .....	10.00	129

**(C) Timing and Manner of Payment**

Section 11.4 of the CAT NMS Plan states that the Operating Committee shall establish a system for the collection of fees authorized under the CAT NMS Plan. The Operating Committee may include such collection responsibility as a function of the Plan Processor or another administrator. To implement the payment process to be adopted by the Operating Committee, paragraph (c)(1) of the proposed fee schedule states that the Company will provide each Industry Member with one invoice each quarter for its CAT Fees as

<sup>60</sup>Note that no fee schedule is provided for Execution Venue ATSs that execute transactions in Listed Options, as no such Execution Venue ATSs currently exist due to trading restrictions related to Listed Options.

determined pursuant to paragraph (b) of the proposed fee schedule, regardless of whether the Industry Member is a member of multiple self-regulatory organizations. Paragraph (c)(1) further states that each Industry Member will pay its CAT Fees to the Company via the centralized system for the collection of CAT Fees established by the Company in the manner prescribed by the Company. SRO will provide Industry Members with details regarding the manner of payment of CAT Fees by Regulatory Circular.

All CAT fees will be billed and collected centrally through the Company via the Plan Processor. Although each Participant will adopt its own fee schedule regarding CAT Fees, no CAT Fees or portion thereof will be collected by the individual Participants. Each Industry Member will receive from the Company one invoice for its applicable CAT fees, not separate invoices from each Participant of which it is a member. The Industry Members will pay the CAT Fees to the Company via the centralized system for the collection of CAT fees established by the Company.<sup>61</sup>

Section 11.4 of the CAT NMS Plan also states that Participants shall require each Industry Member to pay all applicable authorized CAT Fees within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). Section 11.4 further states that, if an Industry Member fails to pay any such fee when due, such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (i) The Prime Rate plus 300 basis points; or (ii) the maximum rate permitted by applicable law. Therefore, in accordance with Section 11.4 of the CAT NMS Plan, SRO proposed to adopt paragraph (c)(2) of the proposed fee schedule. Paragraph (c)(2) of the proposed fee schedule states that each Industry Member shall pay CAT Fees within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If an Industry Member fails to pay any such fee when due, such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (i) The Prime Rate plus 300 basis points; or (ii) the maximum rate permitted by applicable law.

<sup>61</sup>Section 11.4 of the CAT NMS Plan.



## (D) Sunset Provision

The Operating Committee has determined to require that the CAT Fees automatically sunset two years from the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. Accordingly, SRO proposes paragraph (d) of the fee schedule, which states that “[t]hese Consolidated Audit Trailing Funding Fees will automatically expire two years after the operative date of the amendment of the CAT NMS Plan that adopts CAT fees for the Participants.”

## (4) Changes to Prior CAT Fee Plan Amendment

The proposed funding model set forth in this Amendment is a revised version of the Original Proposal. The Commission received a number of comment letters in response to the Original Proposal.<sup>62</sup> The SEC suspended the Original Proposal and instituted proceedings to determine whether to approve or disapprove it.<sup>63</sup> Pursuant to those proceedings, additional comment letters were submitted regarding the proposed funding model.<sup>64</sup> In developing this Amendment, the Operating Committee carefully considered these comments and made a number of changes to the Original Proposal to address these comments where appropriate.

This Amendment makes the following changes to the Original Proposal: (1) Adds two additional CAT Fee tiers for Equity Execution Venues; (2) discounts the market share of Execution Venue ATSS exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF by the average shares per trade ratio between NMS Stocks and OTC Equity Securities (calculated as 0.17% based on available data from the second quarter of 2017) when calculating the market share of Execution Venue ATSS exclusively trading OTC Equity Securities and FINRA; (3) discounts the Options Market Maker quotes by the trade to quote ratio for options (calculated as 0.01% based on available data for June 2016 through June 2017) when calculating message traffic for Options Market Makers; (4) discounts equity market maker quotes by the trade to quote ratio for equities (calculated as 5.43% based on available data for June 2016 through June 2017) when

calculating message traffic for equity market makers; (5) decreases the number of tiers for Industry Members (other than the Execution Venue ATSS) from nine to seven; (6) changes the allocation of CAT costs between Equity Execution Venues and Options Execution Venues from 75%/25% to 67%/33%; (7) adjusts tier percentages and recovery allocations for Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATSS); (8) focuses the comparability of CAT Fees on the individual entity level, rather than primarily on the comparability of affiliated entities; (9) commences invoicing of CAT Reporters as promptly as possible following the latest of the operative date of the Consolidated Audit Trail Funding Fees for each of the Participants and the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants; and (10) requires the proposed fees to automatically expire two years from the operative date of the CAT NMS Plan amendment adopting CAT Fees for the Participants.

## (A) Equity Execution Venues

## (i) Small Equity Execution Venues

In the Original Proposal, the Operating Committee proposed to establish two fee tiers for Equity Execution Venues. The Commission and commenters raised the concern that, by establishing only two tiers, smaller Equity Execution Venues (*e.g.*, those Equity ATSS representing less than 1% of NMS market share) would be placed in the same fee tier as larger Equity Execution Venues, thereby imposing an undue or inappropriate burden on competition.<sup>65</sup> To address this concern, the Operating Committee proposes to add two additional tiers for Equity Execution Venues, a third tier for smaller Equity Execution Venues and a fourth tier for the smallest Equity Execution Venues.

Specifically, the Original Proposal had two tiers of Equity Execution Venues. Tier 1 required the largest Equity Execution Venues to pay a quarterly fee of \$63,375. Based on available data, these largest Equity Execution Venues were those that had equity market share of share volume greater than or equal to 1%.<sup>66</sup> Tier 2

required the remaining smaller Equity Execution Venues to pay a quarterly fee of \$38,820.

To address concerns about the potential for the \$38,820 quarterly fee to impose an undue burden on smaller Equity Execution Venues, the Operating Committee determined to move to a four tier structure for Equity Execution Venues. Tier 1 would continue to include the largest Equity Execution Venues by share volume (that is, based on currently available data, those with market share of equity share volume greater than or equal to one percent), and these Equity Execution Venues would be required to pay a quarterly fee of \$81,048. The Operating Committee determined to divide the original Tier 2 into three tiers. The new Tier 2 Equity Execution Venues, which would include the next largest Equity Execution Venues by equity share volume, would be required to pay a quarterly fee of \$37,062. The new Tier 3 Equity Execution Venues would be required to pay a quarterly fee of \$21,126. The new Tier 4 Equity Execution Venues, which would include the smallest Equity Execution Venues by share volume, would be required to pay a quarterly fee of \$129.

In developing the proposed four tier structure, the Operating Committee considered keeping the existing two tiers, as well as shifting to three, four or five Equity Execution Venue tiers (the maximum number of tiers permitted under the Plan), to address the concerns regarding small Equity Execution Venues. For each of the two, three, four and five tier alternatives, the Operating Committee considered the assignment of various percentages of Equity Execution Venues to each tier as well as various percentage of Equity Execution Venue recovery allocations for each alternative. As discussed below in more detail, each of these options was considered in the context of the full model, as changes in each variable in the model affect other variables in the model when allocating the total CAT costs among CAT Reporters. The Operating Committee determined that the four tier alternative addressed the spectrum of different Equity Execution Venues. The Operating Committee determined that neither a two tier structure nor a three tier structure sufficiently accounted for the range of market shares of smaller Equity Execution Venues. The Operating Committee also determined that, given the limited number of Equity

across time. Actual market share in any tier will vary based on the actual market activity in a given measurement period, as well as the number of Equity Execution Venues included in the measurement period.

<sup>62</sup> For a description of the comments submitted in response to the Original Proposal, see Suspension Order.

<sup>63</sup> Suspension Order.

<sup>64</sup> See MFA Letter; SIFMA Letter; FIA Principal Traders Group Letter; Belvedere Letter; Sidley Letter; Group One Letter; and Virtu Financial Letter.

<sup>65</sup> See Suspension Order at 31664; SIFMA Letter at 3.

<sup>66</sup> Note that while these equity market share thresholds were referenced as data points to help differentiate between Equity Execution Venue tiers, the proposed funding model is directly driven not by market share thresholds, but rather by fixed percentages of Equity Execution Venues across tiers to account for fluctuating levels of market share

Execution Venues, that a fifth tier was unnecessary to address the range of market shares of the Equity Execution Venues.

By increasing the number of tiers for Equity Execution Venues and reducing the proposed CAT Fees for the smaller Equity Execution Venues, the Operating Committee believes that the proposed fees for Equity Execution Venues would not impose an undue or inappropriate burden on competition under Section 6 or Section 15A of the Exchange Act. Moreover, the Operating Committee believes that the proposed fees appropriately take into account the distinctions in the securities trading operations of different Equity Execution Venues, as required under the funding principles of the CAT NMS Plan.<sup>67</sup> The larger number of tiers more closely tracks the variety of sizes of equity share volume of Equity Execution Venues. In addition, the reduction in the fees for the smaller Equity Execution Venues recognizes the potential burden of larger fees on smaller entities. In particular, the very small quarterly fee of \$129 for Tier 4 Equity Execution Venues reflects the fact that certain Equity Execution Venues have a very small share volume due to their typically more focused business models.

Accordingly, with this Amendment, SRO proposes to amend paragraph (b)(2) of the proposed fee schedule to add the two additional tiers for Equity Execution Venues, to establish the percentages and fees for Tiers 3 and 4 as described, and to revise the percentages and fees for Tiers 1 and 2 as described.

(ii) Execution Venues for OTC Equity Securities

In the Original Proposal, the Operating Committee proposed to group Execution Venues for OTC Equity Securities and Execution Venues for NMS Stocks in the same tier structure. The Commission and commenters raised concerns as to whether this determination to place Execution Venues for OTC Equity Securities in the same tier structure as Execution Venues for NMS Stocks would result in an undue or inappropriate burden on competition, recognizing that the application of share volume may lead to different outcomes as applied to OTC Equity Securities and NMS Stocks.<sup>68</sup> To address this concern, the Operating Committee proposes to discount the market share of Execution Venue ATSS exclusively trading OTC Equity Securities as well as the market share of

the FINRA ORF by the average shares per trade ratio between NMS Stocks and OTC Equity Securities (0.17% for the second quarter of 2017) in order to adjust for the greater number of shares being traded in the OTC Equity Securities market, which is generally a function of a lower per share price for OTC Equity Securities when compared to NMS Stocks.

As commenters noted, many OTC Equity Securities are priced at less than one dollar—and a significant number at less than one penny—and low-priced shares tend to trade in larger quantities. Accordingly, a disproportionately large number of shares are involved in transactions involving OTC Equity Securities versus NMS Stocks, which has the effect of overstating an Execution Venue's true market share when the Execution Venue is involved in the trading of OTC Equity Securities. Because the proposed fee tiers are based on market share calculated by share volume, Execution Venue ATSS trading OTC Equity Securities and FINRA may be subject to higher tiers than their operations may warrant.<sup>69</sup> The Operating Committee proposes to address this concern in two ways. First, the Operating Committee proposes to increase the number of Equity Execution Venue tiers, as discussed above. Second, the Operating Committee determined to discount the market share of Execution Venue ATSS exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF when calculating their tier placement. Because the disparity in share volume between Execution Venues trading in OTC Equity Securities and NMS Stocks is based on the different number of shares per trade for OTC Equity Securities and NMS Stocks, the Operating Committee believes that discounting the share volume of such Execution Venue ATSS as well as the market share of the FINRA ORF would address the difference in shares per trade for OTC Equity Securities and NMS Stocks. Specifically, the Operating Committee proposes to impose a discount based on the objective measure of the average shares per trade ratio between NMS Stocks and OTC Equity Securities. Based on available data from the second quarter of 2017, the average shares per trade ratio between NMS Stocks and OTC Equity Securities is 0.17%.

The practical effect of applying such a discount for trading in OTC Equity Securities is to shift Execution Venue ATSS exclusively trading OTC Equity Securities to tiers for smaller Execution Venues and with lower fees. For

example, under the Original Proposal, one Execution Venue ATSS exclusively trading OTC Equity Securities was placed in the first CAT Fee tier, which had a quarterly fee of \$63,375. With the imposition of the proposed tier changes and the discount, this ATSS would be ranked in Tier 3 and would owe a quarterly fee of \$21,126.

In developing the proposed discount for Equity Execution Venue ATSS exclusively trading OTC Equity Securities and FINRA, the Operating Committee evaluated different alternatives to address the concerns related to OTC Equity Securities, including creating a separate tier structure for Execution Venues trading OTC Equity Securities (like the separate tier for Options Execution Venues) as well as the proposed discounting method for Execution Venue ATSS exclusively trading OTC Equity Securities and FINRA. For these alternatives, the Operating Committee considered how each alternative would affect the recovery allocations. In addition, each of these options was considered in the context of the full model, as changes in each variable in the model affect other variables in the model when allocating the total CAT costs among CAT Reporters. The Operating Committee did not adopt a separate tier structure for Equity Execution Venues trading OTC Equity Securities as they determined that the proposed discount approach appropriately addresses the concern. The Operating Committee determined to adopt the proposed discount because it directly relates to the concern regarding the trading patterns and operations in the OTC Equity Securities markets, and is an objective discounting method.

By increasing the number of tiers for Equity Execution Venues and imposing a discount on the market share of share volume calculation for trading in OTC Equity Securities, the Operating Committee believes that the proposed fees for Equity Execution Venues would not impose an undue or inappropriate burden on competition under Section 6 or Section 15A of the Exchange Act. Moreover, the Operating Committee believes that the proposed fees appropriately take into account the distinctions in the securities trading operations of different Equity Execution Venues, as required under the funding principles of the CAT NMS Plan.<sup>70</sup> As discussed above, the larger number of tiers more closely tracks the variety of sizes of equity share volume of Equity Execution Venues. In addition, the proposed discount recognizes the

<sup>67</sup> Section 11.2(b) of the CAT NMS Plan.

<sup>68</sup> See Suspension Order at 31664–5.

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

<sup>70</sup> Section 11.2(b) of the CAT NMS Plan.

different types of trading operations at Equity Execution Venues trading OTC Equity Securities versus those trading NMS Stocks, thereby more closely matching the relative revenue generation by Equity Execution Venues trading OTC Equity Securities to their CAT Fees.

Accordingly, with this Amendment, SRO proposes to amend paragraph (b)(2) of the proposed fee schedule to indicate that the market share for Equity ATSS exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF would be discounted. In addition, as discussed above, to address concerns related to smaller ATSS, including those that exclusively trade OTC Equity Securities, SRO proposes to amend paragraph (b)(2) of the proposed fee schedule to add two additional tiers for Equity Execution Venues, to establish the percentages and fees for Tiers 3 and 4 as described, and to revise the percentages and fees for Tiers 1 and 2 as described.

#### (B) Market Makers

In the Original Proposal, the Operating Committee proposed to include both Options Market Maker quotes and equities market maker quotes in the calculation of total message traffic for such market makers for purposes of tiering for Industry Members (other than Execution Venue ATSS). The Commission and commenters raised questions as to whether the proposed treatment of Options Market Maker quotes may result in an undue or inappropriate burden on competition or may lead to a reduction in market quality.<sup>71</sup> To address this concern, the Operating Committee determined to discount the Options Market Maker quotes by the trade to quote ratio for options when calculating message traffic for Options Market Makers. Similarly, to avoid disincentives to quoting behavior on the equities side as well, the Operating Committee determined to discount equity market maker quotes by the trade to quote ratio for equities when calculating message traffic for equities market makers.

In the Original Proposal, market maker quotes were treated the same as other message traffic for purposes of tiering for Industry Members (other than Execution Venue ATSS). Commenters noted, however, that charging Industry Members on the basis of message traffic will impact market makers

disproportionately because of their continuous quoting obligations. Moreover, in the context of options market makers, message traffic would include bids and offers for every listed options strikes and series, which are not an issue for equities.<sup>72</sup> The Operating Committee proposes to address this concern in two ways. First, the Operating Committee proposes to discount Options Market Maker quotes when calculating the Options Market Makers' tier placement. Specifically, the Operating Committee proposes to impose a discount based on the objective measure of the trade to quote ratio for options. Based on available data from June 2016 through June 2017, the trade to quote ratio for options is 0.01%. Second, the Operating Committee proposes to discount equities market maker quotes when calculating the equities market makers' tier placement. Specifically, the Operating Committee proposes to impose a discount based on the objective measure of the trade to quote ratio for equities. Based on available data for June 2016 through June 2017, this trade to quote ratio for equities is 5.43%.

The practical effect of applying such discounts for quoting activity is to shift market makers' calculated message traffic lower, leading to the potential shift to tiers for lower message traffic and reduced fees. Such an approach would move sixteen Industry Member CAT Reporters that are market makers to a lower tier than in the Original Proposal. For example, under the Original Proposal, Broker-Dealer Firm ABC was placed in the first CAT Fee tier, which had a quarterly fee of \$101,004. With the imposition of the proposed tier changes and the discount, Broker-Dealer Firm ABC, an options market maker, would be ranked in Tier 3 and would owe a quarterly fee of \$40,899.

In developing the proposed market maker discounts, the Operating Committee considered various discounts for Options Market Makers and equity market makers, including discounts of 50%, 25%, 0.00002%, as well as the 5.43% for option market makers and 0.01% for equity market makers. Each of these options were considered in the context of the full model, as changes in each variable in the model affect other variables in the model when allocating the total CAT costs among CAT Reporters. The Operating Committee determined to adopt the proposed discount because it directly relates to the concern regarding

the quoting requirement, is an objective discounting method, and has the desired potential to shift market makers to lower fee tiers.

By imposing a discount on Options Market Makers and equities market makers' quoting traffic for the calculation of message traffic, the Operating Committee believes that the proposed fees for market makers would not impose an undue or inappropriate burden on competition under Section 6 or Section 15A of the Exchange Act. Moreover, the Operating Committee believes that the proposed fees appropriately take into account the distinctions in the securities trading operations of different Industry Members, and avoid disincentives, such as a reduction in market quality, as required under the funding principles of the CAT NMS Plan.<sup>73</sup> The proposed discounts recognize the different types of trading operations presented by Options Market Makers and equities market makers, as well as the value of the market makers' quoting activity to the market as a whole. Accordingly, the Operating Committee believes that the proposed discounts will not impact the ability of small Options Market Makers or equities market makers to provide liquidity.

Accordingly, with this Amendment, SRO proposes to amend paragraph (b)(1) of the proposed fee schedule to indicate that the message traffic related to equity market maker quotes and Options Market Maker quotes would be discounted. In addition, SRO proposes to define the term "Options Market Maker" in paragraph (a)(1) of the proposed fee schedule.

#### (C) Comparability/Allocation of Costs

Under the Original Proposal, 75% of CAT costs were allocated to Industry Members (other than Execution Venue ATSS) and 25% of CAT costs were allocated to Execution Venues. This cost allocation sought to maintain the greatest level of comparability across the funding model, where comparability considered affiliations among or between CAT Reporters. The Commission and commenters expressed concerns regarding whether the proposed 75%/25% allocation of CAT costs is consistent with the Plan's funding principles and the Exchange Act, including whether the allocation places a burden on competition or reduces market quality. The Commission and commenters also questioned whether the approach of accounting for affiliations among CAT Reporters in setting CAT Fees

<sup>71</sup> See Suspension Order at 31663-4; SIFMA Letter at 4-6; FIA Principal Traders Group Letter at 3; Sidley Letter at 2-6; Group One Letter at 2-6; and Belvedere Letter at 2.

<sup>72</sup> Suspension Order at 31664.

<sup>73</sup> Section 11.2(b) of the CAT NMS Plan.

disadvantages non-affiliated CAT Reporters or otherwise burdens competition in the market for trading services.<sup>74</sup>

In response to these concerns, the Operating Committee determined to revise the proposed funding model to focus the comparability of CAT Fees on the individual entity level, rather than primarily on the comparability of affiliated entities. In light of the interconnected nature of the various aspects of the funding model, the Operating Committee determined to revise various aspects of the model to enhance comparability at the individual entity level. Specifically, to achieve such comparability, the Operating Committee determined to (1) decrease the number of tiers for Industry Members (other than Execution Venue ATs) from nine to seven; (2) change the allocation of CAT costs between Equity Execution Venues and Options Execution Venues from 75%/25% to 67%/33%; and (3) adjust tier percentages and recovery allocations for Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATs). With these changes, the proposed funding model provides fee comparability for the largest individual entities, with the largest Industry Members (other than Execution Venue ATs), Equity Execution Venues and Options Execution Venues each paying a CAT Fee of approximately \$81,000 each quarter.

#### (i) Number of Industry Member Tiers

In the Original Proposal, the proposed funding model had nine tiers for Industry Members (other than Execution Venue ATs). The Operating Committee determined that reducing the number of tiers from nine tiers to seven tiers (and adjusting the predefined Industry Member Percentages as well) continues to provide a fair allocation of fees among Industry Members and appropriately distinguishes between Industry Members with differing levels of message traffic. In reaching this conclusion, the Operating Committee considered historical message traffic generated by Industry Members across all exchanges and as submitted to FINRA's OATS, and considered the distribution of firms with similar levels of message traffic, grouping together firms with similar levels of message traffic. Based on this, the Operating Committee determined that seven tiers would group firms with similar levels of

message traffic, while also achieving greater comparability in the model for the individual CAT Reporters with the greatest market share or message traffic.

In developing the proposed seven tier structure, the Operating Committee considered remaining at nine tiers, as well as reducing the number of tiers down to seven when considering how to address the concerns raised regarding comparability. For each of the alternatives, the Operating Committee considered the assignment of various percentages of Industry Members to each tier as well as various percentages of Industry Member recovery allocations for each alternative. Each of these options was considered in the context of its effects on the full funding model, as changes in each variable in the model affect other variables in the model when allocating the total CAT costs among CAT Reporters. The Operating Committee determined that the seven tier alternative provided the most fee comparability at the individual entity level for the largest CAT Reporters, while both providing logical breaks in tiering for Industry Members with different levels of message traffic and a sufficient number of tiers to provide for the full spectrum of different levels of message traffic for all Industry Members.

#### (ii) Allocation of CAT Costs Between Equity and Options Execution Venues

The Operating Committee also determined to adjust the allocation of CAT costs between Equity Execution Venues and Options Execution Venues to enhance comparability at the individual entity level. In the Original Proposal, 75% of Execution Venue CAT costs were allocated to Equity Execution Venues, and 25% of Execution Venue CAT costs were allocated to Options Execution Venues. To achieve the goal of increased comparability at the individual entity level, the Operating Committee analyzed a range of alternative splits for revenue recovery between Equity and Options Execution Venues, along with other changes in the proposed funding model. Based on this analysis, the Operating Committee determined to allocate 67 percent of Execution Venue costs recovered to Equity Execution Venues and 33 percent to Options Execution Venues. The Operating Committee determined that a 67/33 allocation between Equity and Options Execution Venues enhances the level of fee comparability for the largest CAT Reporters. Specifically, the largest Equity and Options Execution Venues would pay a quarterly CAT Fee of approximately \$81,000.

In developing the proposed allocation of CAT costs between Equity and Options Execution Venues, the Operating Committee considered various different options for such allocation, including keeping the original 75%/25% allocation, as well as shifting to a 70%/30%, 67%/33%, or 57.75%/42.25% allocation. For each of the alternatives, the Operating Committee considered the effect each allocation would have on the assignment of various percentages of Equity Execution Venues to each tier as well as various percentages of Equity Execution Venue recovery allocations for each alternative. Moreover, each of these options was considered in the context of the full model, as changes in each variable in the model affect other variables in the model when allocating the total CAT costs among CAT Reporters. The Operating Committee determined that the 67%/33% allocation between Equity and Options Execution Venues provided the greatest level of fee comparability at the individual entity level for the largest CAT Reporters, while still providing for appropriate fee levels across all tiers for all CAT Reporters.

#### (iii) Allocation of Costs Between Execution Venues and Industry Members

The Operating Committee determined to allocate 25% of CAT costs to Execution Venues and 75% to Industry Members (other than Execution Venue ATs), as it had in the Original Proposal. The Operating Committee determined that this 75%/25% allocation, along with the other changes proposed above, led to the most comparable fees for the largest Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATs). The largest Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATs) would each pay a quarterly CAT Fee of approximately \$81,000.

As a preliminary matter, the Operating Committee determined that it is appropriate to allocate most of the costs to create, implement and maintain the CAT to Industry Members for several reasons. First, there are many more broker-dealers expected to report to the CAT than Participants (*i.e.*, 1,541 broker-dealer CAT Reporters versus 22 Participants). Second, since most of the costs to process CAT reportable data is generated by Industry Members, Industry Members could be expected to contribute toward such costs. Finally, as noted by the SEC, the CAT "substantially enhance[s] the ability of

<sup>74</sup> See Suspension Order at 31662-3; SIFMA Letter at 3; Sidley Letter at 6-7; Group One Letter at 2; and Belvedere Letter at 2.

the SROs and the Commission to oversee today's securities markets,"<sup>75</sup> thereby benefitting all market participants. After making this determination, the Operating Committee analyzed several different cost allocations, as discussed further below, and determined that an allocation where 75% of the CAT costs should be borne by the Industry Members (other than Execution Venue ATSs) and 25% should be paid by Execution Venues was most appropriate and led to the greatest comparability of CAT Fees for the largest CAT Reporters.

In developing the proposed allocation of CAT costs between Execution Venues and Industry Members (other than Execution Venue ATSs), the Operating Committee considered various different options for such allocation, including keeping the original 75%/25% allocation, as well as shifting to an 80%/20%, 70%/30%, or 65%/35% allocation. Each of these options was considered in the context of the full model, including the effect on each of the changes discussed above, as changes in each variable in the model affect other variables in the model when allocating the total CAT costs among CAT Reporters. In particular, for each of the alternatives, the Operating Committee considered the effect each allocation had on the assignment of various percentages of Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATSs) to each relevant tier as well as various percentages of recovery allocations for each tier. The Operating Committee determined that the 75%/25% allocation between Execution Venues and Industry Members (other than Execution Venue ATSs) provided the greatest level of fee comparability at the individual entity level for the largest CAT Reporters, while still providing for appropriate fee levels across all tiers for all CAT Reporters.

#### (iv) Affiliations

The funding principles set forth in Section 11.2 of the Plan require that the fees charged to CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venue and/or Industry Members). The proposed funding model satisfies this requirement. As discussed

above, under the proposed funding model, the largest Equity Execution Venues, Options Execution Venues, and Industry Members (other than Execution Venue ATSs) pay approximately the same fee. Moreover, the Operating Committee believes that the proposed funding model takes into consideration affiliations between or among CAT Reporters as complexes with multiple CAT Reporters will pay the appropriate fee based on the proposed fee schedule for each of the CAT Reporters in the complex. For example, a complex with a Tier 1 Equity Execution Venue and Tier 2 Industry Member will pay the same as another complex with a Tier 1 Equity Execution Venue and Tier 2 Industry Member.

#### (v) Fee Schedule Changes

Accordingly, with this Amendment, SRO proposes to amend paragraphs (b)(1) and (2) of the proposed fee schedule to reflect the changes discussed in this section. Specifically, SRO proposes to amend paragraph (b)(1) and (2) of the proposed fee schedule to update the number of tiers, and the fees and percentages assigned to each tier to reflect the described changes.

#### (D) Market Share/Message Traffic

In the Original Proposal, the Operating Committee proposed to charge Execution Venues based on market share and Industry Members (other than Execution Venue ATSs) based on message traffic. Commenters questioned the use of the two different metrics for calculating CAT Fees.<sup>76</sup> The Operating Committee continues to believe that the proposed use of market share and message traffic satisfies the requirements of the Exchange Act and the funding principles set forth in the CAT NMS Plan. Accordingly, the proposed funding model continues to charge Execution Venues based on market share and Industry Members (other than Execution Venue ATSs) based on message traffic.

In drafting the Plan and the Original Proposal, the Operating Committee expressed the view that the correlation between message traffic and size does not apply to Execution Venues, which they described as producing similar amounts of message traffic regardless of size. The Operating Committee believed that charging Execution Venues based on message traffic would result in both large and small Execution Venues paying comparable fees, which would be inequitable, so the Operating Committee determined that it would be

more appropriate to treat Execution Venues differently from Industry Members in the funding model. Upon a more detailed analysis of available data, however, the Operating Committee noted that Execution Venues have varying levels of message traffic. Nevertheless, the Operating Committee continues to believe that a bifurcated funding model—where Industry Members (other than Execution Venue ATSs) are charged fees based on message traffic and Execution Venues are charged based on market share—complies with the Plan and meets the standards of the Exchange Act for the reasons set forth below.

Charging Industry Members based on message traffic is the most equitable means for establishing fees for Industry Members (other than Execution Venue ATSs). This approach will assess fees to Industry Members that create larger volumes of message traffic that are relatively higher than those fees charged to Industry Members that create smaller volumes of message traffic. Since message traffic, along with fixed costs of the Plan Processor, is a key component of the costs of operating the CAT, message traffic is an appropriate criterion for placing Industry Members in a particular fee tier.

The Operating Committee also believes that it is appropriate to charge Execution Venues CAT Fees based on their market share. In contrast to Industry Members (other than Execution Venue ATSs), which determine the degree to which they produce the message traffic that constitutes CAT Reportable Events, the CAT Reportable Events of Execution Venues are largely derivative of quotations and orders received from Industry Members that the Execution Venues are required to display. The business model for Execution Venues, however, is focused on executions in their markets. As a result, the Operating Committee believes that it is more equitable to charge Execution Venues based on their market share rather than their message traffic.

Similarly, focusing on message traffic would make it more difficult to draw distinctions between large and small exchanges, including options exchanges in particular. For instance, the Operating Committee analyzed the message traffic of Execution Venues and Industry Members for the period of April 2017 to June 2017 and placed all CAT Reporters into a nine-tier framework (*i.e.*, a single tier may include both Execution Venues and Industry Members). The Operating Committee's analysis found that the majority of exchanges (15 total) were

<sup>75</sup> Securities Exchange Act Rel. No. 67457 (Jul 18, 2012), 77 FR 45722, 45726 (Aug. 1, 2012) ("Rule 613 Adopting Release").

<sup>76</sup> Suspension Order at 31663; FIA Principal Traders Group Letter at 2.

grouped in Tiers 1 and 2. Moreover, virtually all of the options exchanges were in Tiers 1 and 2.<sup>77</sup> Given the concentration of options exchanges in Tiers 1 and 2, the Operating Committee believes that using a funding model based purely on message traffic would make it more difficult to distinguish between large and small options exchanges, as compared to the proposed bifurcated fee approach.

In addition, the Operating Committee also believes that it is appropriate to treat ATSS as Execution Venues under the proposed funding model since ATSS have business models that are similar to those of exchanges, and ATSS also compete with exchanges. For these reasons, the Operating Committee believes that charging Execution Venues based on market share is more appropriate and equitable than charging Execution Venues based on message traffic.

#### (E) Time Limit

In the Original Proposal, the Operating Committee did not impose any time limit on the application of the proposed CAT Fees. As discussed above, the Operating Committee developed the proposed funding model by analyzing currently available historical data. Such historical data, however, is not as comprehensive as data that will be submitted to the CAT. Accordingly, the Operating Committee believes that it will be appropriate to revisit the funding model once CAT Reporters have actual experience with the funding model. Accordingly, the Operating Committee proposes to include a sunset provision in the proposed fee model. The proposed CAT Fees will sunset two years after the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. Specifically, SRO proposes to add paragraph (d) of the proposed fee schedule to include this sunset provision. Such a provision will provide the Operating Committee and other market participants with the opportunity to reevaluate the performance of the proposed funding model.

#### (F) Tier Structure/Decreasing Cost per Unit

In the Original Proposal, the Operating Committee determined to use a tiered fee structure. The Commission and commenters questioned whether the decreasing cost per additional unit (of message traffic in the case of

Industry Members, or of share volume in the case of Execution Venues) in the proposed fee schedules burdens competition by disadvantaging small Industry Members and Execution Venues and/or by creating barriers to entry in the market for trading services and/or the market for broker-dealer services.<sup>78</sup>

The Operating Committee does not believe that decreasing cost per additional unit in the proposed fee schedules places an unfair competitive burden on Small Industry Members and Execution Venues. While the cost per unit of message traffic or share volume necessarily will decrease as volume increases in any tiered fee model using fixed fee percentages and, as a result, Small Industry Members and small Execution Venues may pay a larger fee per message or share, this comment fails to take account of the substantial differences in the absolute fees paid by Small Industry Members and small Execution Venues as opposed to large Industry Members and large Execution Venues. For example, under the fee proposals, Tier 7 Industry Members would pay a quarterly fee of \$105, while Tier 1 Industry Members would pay a quarterly fee of \$81,483. Similarly, a Tier 4 Equity Execution Venue would pay a quarterly fee of \$129, while a Tier 1 Equity Execution Venue would pay a quarterly fee of \$81,048. Thus, Small Industry Members and small Execution Venues are not disadvantaged in terms of the total fees that they actually pay. In contrast to a tiered model using fixed fee percentages, the Operating Committee believes that strictly variable or metered funding models based on message traffic or share volume would be more likely to affect market behavior and may present administrative challenges (e.g., the costs to calculate and monitor fees may exceed the fees charged to the smallest CAT Reporters).

#### (G) Other Alternatives Considered

In addition to the various funding model alternatives discussed above regarding discounts, number of tiers and allocation percentages, the Operating Committee also discussed other possible funding models. For example, the Operating Committee considered allocating the total CAT costs equally among each of the Participants, and then permitting each Participant to charge its own members as it deems appropriate.<sup>79</sup> The Operating Committee determined that such an approach raised a variety of issues, including the

likely inconsistency of the ensuing charges, potential for lack of transparency, and the impracticality of multiple SROs submitting invoices for CAT charges. The Operating Committee therefore determined that the proposed funding model was preferable to this alternative.

#### (H) Industry Member Input

Commenters expressed concern regarding the level of Industry Member input into the development of the proposed funding model, and certain commenters have recommended a greater role in the governance of the CAT.<sup>80</sup> The Participants previously addressed this concern in its letters responding to comments on the Plan and the CAT Fees.<sup>81</sup> As discussed in those letters, the Participants discussed the funding model with the Development Advisory Group (“DAG”), the advisory group formed to assist in the development of the Plan, during its original development.<sup>82</sup> Moreover, Industry Members currently have a voice in the affairs of the Operating Committee and operation of the CAT generally through the Advisory Committee established pursuant to Rule 613(b)(7) and Section 4.13 of the Plan. The Advisory Committee attends all meetings of the Operating Committee, as well as meetings of various subcommittees and working groups, and provides valuable and critical input for the Participants’ and Operating Committee’s consideration. The Operating Committee continues to believe that that Industry Members have an appropriate voice regarding the funding of the Company.

#### (I) Conflicts of Interest

Commenters also raised concerns regarding Participant conflicts of interest in setting the CAT Fees.<sup>83</sup> The Participants previously responded to this concern in both the Plan Response Letter and the Fee Rule Response Letter.<sup>84</sup> As discussed in those letters, the Plan, as approved by the SEC, adopts various measures to protect against the potential conflicts issues raised by the Participants’ fee-setting authority. Such measures include the

<sup>77</sup> See Suspension Order at 31662; MFA Letter at 1–2.

<sup>78</sup> Letter from Participants to Brent J. Fields, Secretary, SEC (Sept. 23, 2016) (“Plan Response Letter”); Letter from CAT NMS Plan Participants to Brent J. Fields, Secretary, SEC (June 29, 2017) (“Fee Rule Response Letter”).

<sup>79</sup> Fee Rule Response Letter at 2; Plan Response Letter at 18.

<sup>80</sup> See Suspension Order at 31662; FIA Principal Traders Group at 3.

<sup>81</sup> See Plan Response Letter at 16, 17; Fee Rule Response Letter at 10–12.

<sup>77</sup> The Participants note that this analysis did not place MIAx PEARL in Tier 1 or Tier 2 since the exchange commenced trading on February 6, 2017.

<sup>78</sup> Suspension Order at 31667.

<sup>79</sup> See FIA Principal Traders Group Letter at 2; Belvedere Letter at 4.

operation of the Company as a not for profit business league and on a break-even basis, and the requirement that the Participants file all CAT Fees under Section 19(b) of the Exchange Act. The Operating Committee continues to believe that these measures adequately protect against concerns regarding conflicts of interest in setting fees, and that additional measures, such as an independent third party to evaluate an appropriate CAT Fee, are unnecessary.

#### (J) Fee Transparency

Commenters also argued that they could not adequately assess whether the CAT Fees were fair and equitable because the Operating Committee has not provided details as to what the Participants are receiving in return for the CAT Fees.<sup>85</sup> The Operating Committee provided a detailed discussion of the proposed funding model in the Plan, including the expenses to be covered by the CAT Fees. In addition, the agreement between the Company and the Plan Processor sets forth a comprehensive set of services to be provided to the Company with regard to the CAT. Such services include, without limitation: User support services (e.g., a help desk); tools to allow each CAT Reporter to monitor and correct their submissions; a comprehensive compliance program to monitor CAT Reporters' adherence to Rule 613; publication of detailed Technical Specifications for Industry Members and Participants; performing data linkage functions; creating comprehensive data security and confidentiality safeguards; creating query functionality for regulatory users (i.e., the Participants, and the SEC and SEC staff); and performing billing and collection functions. The Operating Committee further notes that the services provided by the Plan Processor and the costs related thereto were subject to a bidding process.

#### (K) Funding Authority

Commenters also questioned the authority of the Operating Committee to impose CAT Fees on Industry Members.<sup>86</sup> The Participants previously responded to this same comment in the Plan Response Letter and the Fee Rule Response Letter.<sup>87</sup> As the Participants previously noted, SEC Rule 613 specifically contemplates broker-dealers contributing to the funding of the CAT. In addition, as noted by the SEC, the

CAT "substantially enhance[s] the ability of the SROs and the Commission to oversee today's securities markets,"<sup>88</sup> thereby benefitting all market participants. Therefore, the Operating Committee continues to believe that it is equitable for both Participants and Industry Members to contribute to funding the cost of the CAT.

#### 2. Statutory Basis

SRO believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,<sup>89</sup> which require, among other things, that the SRO 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 dealer, and Section 6(b)(4) of the Act,<sup>90</sup> which requires that SRO rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using its facilities. As discussed above, the SEC approved the bifurcated, tiered, fixed fee funding model in the CAT NMS Plan, finding it was reasonable and that it equitably allocated fees among Participants and Industry Members. SRO believes that the proposed tiered fees adopted pursuant to the funding model approved by the SEC in the CAT NMS Plan are reasonable, equitably allocated and not unfairly discriminatory.

SRO believes that this proposal is consistent with the Act because it implements, interprets or clarifies the provisions of the Plan, and is designed to assist SRO and its Industry Members 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."<sup>91</sup> To the extent that this proposal implements, interprets or clarifies the Plan and applies specific requirements to Industry Members, SRO believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

SRO believes that the proposed tiered fees are reasonable. First, the total CAT

Fees to be collected would be directly associated with the costs of establishing and maintaining the CAT, where such costs include Plan Processor costs and costs related to insurance, third party services and the operational reserve. The CAT Fees would not cover Participant services unrelated to the CAT. In addition, any surplus CAT Fees cannot be distributed to the individual Participants; such surpluses must be used as a reserve to offset future fees. Given the direct relationship between the fees and the CAT costs, SRO believes that the total level of the CAT Fees is reasonable.

In addition, SRO believes that the proposed CAT Fees are reasonably designed to allocate the total costs of the CAT equitably between and among the Participants and Industry Members, and are therefore not unfairly discriminatory. As discussed in detail above, the proposed tiered fees impose comparable fees on similarly situated CAT Reporters. For example, those with a larger impact on the CAT (measured via message traffic or market share) pay higher fees, whereas CAT Reporters with a smaller impact pay lower fees. Correspondingly, the tiered structure lessens the impact on smaller CAT Reporters by imposing smaller fees on those CAT Reporters with less market share or message traffic. In addition, the fee structure takes into consideration distinctions in securities trading operations of CAT Reporters, including ATSS trading OTC Equity Securities, and equity and options market makers.

Moreover, SRO believes that the division of the total CAT costs between Industry Members and Execution Venues, and the division of the Execution Venue portion of total costs between Equity and Options Execution Venues, is reasonably designed to allocate CAT costs among CAT Reporters. The 75%/25% division between Industry Members (other than Execution Venue ATSS) and Execution Venues maintains the greatest level of comparability across the funding model. For example, the cost allocation establishes fees for the largest Industry Members (i.e., those Industry Members in Tiers 1) that are comparable to the largest Equity Execution Venues and Options Execution Venues (i.e., those Execution Venues in Tier 1). Furthermore, the allocation of total CAT cost recovery recognizes the difference in the number of CAT Reporters that are Industry Members (other than Execution Venue ATSS) versus CAT Reporters that are Execution Venues. Similarly, the 67%/33% allocation between Equity and Options Execution Venues also

<sup>85</sup> See FIA Principal Traders Group at 3; SIFMA Letter at 3.

<sup>86</sup> See Suspension Order at 31661-2; SIFMA Letter at 2.

<sup>87</sup> See Plan Response Letter at 9-10; Fee Rule Response Letter at 3-4.

<sup>88</sup> Rule 613 Adopting Release at 45726.

<sup>89</sup> 15 U.S.C. 78f(b)(5).

<sup>90</sup> 15 U.S.C. 78f(b)(4).

<sup>91</sup> Approval Order at 84697.



helps to provide fee comparability for the largest CAT Reporters.

Finally, SRO 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 fixed fee. Such factors are crucial to estimating a reliable revenue stream for the Company and for permitting CAT Reporters 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 Act<sup>92</sup> require that SRO rules not impose any burden on competition that is not necessary or appropriate. SRO 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. SRO notes that the proposed rule change implements provisions of the CAT NMS Plan approved by the Commission, and is designed to assist SRO in meeting its regulatory obligations pursuant to the Plan. Similarly, all national securities exchanges and FINRA are proposing this proposed fee schedule 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 exchanges and FINRA.

Moreover, as previously described, SRO believes that the proposed rule change fairly and equitably allocates costs among CAT Reporters. In particular, the proposed fee schedule is structured to impose comparable fees on similarly situated CAT Reporters, and lessen the impact on smaller CAT Reporters. CAT Reporters with similar levels of CAT activity will pay similar fees. For example, Industry Members (other than Execution Venue ATSS) with higher levels of message traffic will pay higher fees, and those with lower levels of message traffic will pay lower fees. Similarly, Execution Venue ATSS and other Execution Venues with larger market share will pay higher fees, and those with lower levels of market share will pay lower fees. Therefore, given that there is generally a relationship between message traffic and/or market share to the CAT Reporter's size, smaller CAT Reporters generally pay less than larger CAT Reporters. Accordingly, SRO does not believe that the CAT Fees would have a disproportionate effect on smaller or larger CAT Reporters. In addition, ATSS and exchanges will pay

the same fees based on market share. Therefore, SRO does not believe that the fees will impose any burden on the competition between ATSS and exchanges. Accordingly, SRO believes that the proposed fees will minimize the potential for adverse effects on competition between CAT Reporters in the market.

Furthermore, the tiered, fixed fee funding model limits the disincentives to providing liquidity to the market. Therefore, the proposed fees are structured to limit burdens on competitive quoting and other liquidity provision in the market.

In addition, the Operating Committee believes that the proposed changes to the Original Proposal, as discussed above in detail, address certain competitive concerns raised by commenters, including concerns related to, among other things, smaller ATSS, ATSS trading OTC Equity Securities, market making quoting and fee comparability. As discussed above, the Operating Committee believes that the proposals address the competitive concerns raised by commenters.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

SRO has set forth responses to comments received regarding the Original Proposal in Section 3(a)(4) above.

### **III. Solicitation of Comments on Amendment No. 1**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 is consistent with the Act. In particular, the Commission seeks comment on the following:

#### *Allocation of Costs*

(1) Commenters' views as to whether the allocation of CAT costs is consistent with the funding principle expressed in the CAT NMS Plan that requires the Operating Committee to "avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality."<sup>93</sup>

(2) Commenters' views as to whether the allocation of 25% of CAT costs to the Execution Venues (including all the Participants) and 75% to Industry Members, will incentivize or disincentivize the Participants to effectively and efficiently manage the CAT costs incurred by the Participants

since they will only bear 25% of such costs.

(3) Commenters' views on the determination to allocate 75% of all costs incurred by the Participants from November 21, 2016 to November 21, 2017 to Industry Members (other than Execution Venue ATSS), when such costs are development and build costs and when Industry Member reporting is scheduled to commence a year later, including views on whether such "fees, costs and expenses . . . [are] fairly and reasonably shared among the Participants and Industry Members" in accordance with the CAT NMS Plan.<sup>94</sup>

(4) Commenters' views on whether an analysis of the ratio of the expected Industry Member-reported CAT messages to the expected SRO-reported CAT messages should be the basis for determining the allocation of costs between Industry Members and Execution Venues.<sup>95</sup>

(5) Any additional data analysis on the allocation of CAT costs, including any existing supporting evidence.

#### *Comparability*

(6) Commenters' views on the shift in the standard used to assess the comparability of CAT Fees, with the emphasis now on comparability of individual entities instead of affiliated entities, including views as to whether this shift is consistent with the funding principle expressed in the CAT NMS Plan that requires the Operating Committee to establish a fee structure in which the fees charged to "CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venues and/or Industry Members)."<sup>96</sup>

(7) Commenters' views as to whether the reduction in the number of tiers for Industry Members (other than Execution Venue ATSS) from nine to seven, the revised allocation of CAT costs between Equity Execution Venues and Options Execution Venues from a 75%/25% split to a 67%/33% split, and the adjustment of all tier percentages and recovery allocations achieves

<sup>94</sup> Section 11.1(c) of the CAT NMS Plan.

<sup>95</sup> The Notice for the CAT NMS Plan did not provide a comprehensive count of audit trail message traffic from different regulatory data sources, but the Commission did estimate the ratio of all SRO audit trail messages to OATS audit trail messages to be 1.9431. See Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30613, 30721 n.919 and accompanying text (May 17, 2016).

<sup>96</sup> Section 11.2(c) of the CAT NMS Plan.

<sup>92</sup> 15 U.S.C. 78f(b)(8).

<sup>93</sup> Section 11.2(e) of the CAT NMS Plan.



comparability across individual entities, and whether these changes should have resulted in a change to the allocation of 75% of total CAT costs to Industry Members (other than Execution Venue ATs) and 25% of such costs to Execution Venues.

#### *Discounts*

(8) Commenters' views as to whether the discounts for options market-makers, equities market-makers, and Equity ATs trading OTC Equity Securities are clear, reasonable, and consistent with the funding principle expressed in the CAT NMS Plan that requires the Operating Committee to "avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality,"<sup>97</sup> including views as to whether the discounts for market-makers limit any potential disincentives to act as a market-maker and/or to provide liquidity due to CAT fees.

#### *Calculation of Costs and Imposition of CAT Fees*

(9) Commenters' views as to whether the amendment provides sufficient information regarding the amount of costs incurred from November 21, 2016 to November 21, 2017, particularly, how those costs were calculated, how those costs relate to the proposed CAT Fees, and how costs incurred after November 21, 2017 will be assessed upon Industry Members and Execution Venues;

(10) Commenters' views as to whether the timing of the imposition and collection of CAT Fees on Execution Venues and Industry Members is reasonably related to the timing of when the Company expects to incur such development and implementation costs.<sup>98</sup>

(11) Commenters' views on dividing CAT costs equally among each of the Participants, and then each Participant charging its own members as it deems appropriate, taking into consideration the possibility of inconsistency in charges, the potential for lack of transparency, and the impracticality of multiple SROs submitting invoices for CAT charges.

#### *Burden on Competition and Barriers to Entry*

(12) Commenters' views as to whether the allocation of 75% of CAT costs to Industry Members (other than Execution Venue ATs) imposes any burdens on competition to Industry Members, including views on what baseline competitive landscape the Commission

should consider when analyzing the proposed allocation of CAT costs.

(13) Commenters' views on the burdens on competition, including the relevant markets and services and the impact of such burdens on the baseline competitive landscape in those relevant markets and services.

(14) Commenters' views on any potential burdens imposed by the fees on competition between and among CAT Reporters, including views on which baseline markets and services the fees could have competitive effects on and whether the fees are designed to minimize such effects.

(15) Commenters' general views on the impact of the proposed fees on economies of scale and barriers to entry.

(16) Commenters' views on the baseline economies of scale and barriers to entry for Industry Members and Execution Venues and the relevant markets and services over which these economies of scale and barriers to entry exist.

(17) Commenters' views as to whether a tiered fee structure necessarily results in less active tiers paying more per unit than those in more active tiers, thus creating economies of scale, with supporting information if possible.

(18) Commenters' views as to how the level of the fees for the least active tiers would or would not affect barriers to entry.

(19) Commenters' views on whether the difference between the cost per unit (messages or market share) in less active tiers compared to the cost per unit in more active tiers creates regulatory economies of scale that favor larger competitors and, if so:

(a) How those economies of scale compare to operational economies of scale; and

(b) Whether those economies of scale reduce or increase the current advantages enjoyed by larger competitors or otherwise alter the competitive landscape.

(20) Commenters' views on whether the fees could affect competition between and among national securities exchanges and FINRA, in light of the fact that implementation of the fees does not require the unanimous consent of all such entities, and, specifically:

(a) Whether any of the national securities exchanges or FINRA are disadvantaged by the fees; and

(b) If so, whether any such disadvantages would be of a magnitude that would alter the competitive landscape.

(21) Commenters' views on any potential burden imposed by the fees on competitive quoting and other liquidity

provision in the market, including, specifically:

(a) Commenters' views on the kinds of disincentives that discourage liquidity provision and/or disincentives that the Commission should consider in its analysis;

(b) Commenters' views as to whether the fees could disincentivize the provision of liquidity; and

(c) Commenters' views as to whether the fees limit any disincentives to provide liquidity.

(22) Commenters' views as to whether the amendment adequately responds to and/or addresses comments received on related filings.

#### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-C2-2017-017 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-C2-2017-017. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File

<sup>97</sup> Section 11.2(e) of the CAT NMS Plan.

<sup>98</sup> Section 11.1(c) of the CAT NMS Plan.

Number SR–C2–2017–017, and should be submitted on or before January 5, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>99</sup>

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2017–26992 Filed 12–14–17; 8:45 am]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82271; File No. SR–C2–2017–017]

### Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing of Amendment No. 2 to the Proposed Rule Change To Amend the Schedule of Fees and Assessments To Adopt a Fee Schedule To Establish Fees for Industry Members Related to the National Market System Plan Governing the Consolidated Audit Trail

December 11, 2017.

#### I. Introduction

On May 16, 2017, C2 Options Exchange, Incorporated, n/k/a Cboe C2 Exchange, Inc., (“Exchange” or “SRO”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> a proposed rule change to adopt a fee schedule to establish the fees for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail (“CAT NMS Plan”). The proposed rule change was published in the **Federal Register** for comment on June 1, 2017.<sup>3</sup> The Commission received seven comment letters on the proposed rule change,<sup>4</sup> and a response to comments

from the CAT NMS Plan Participants.<sup>5</sup> On June 30, 2017, the Commission temporarily suspended and initiated proceedings to determine whether to approve or disapprove the proposed rule change.<sup>6</sup> The Commission thereafter received seven comment letters,<sup>7</sup> and a response to comments from the Participants.<sup>8</sup> On November 3,

<https://www.sec.gov/comments/sr-cboe-2017-040/cboe2017040-1799253-153675.pdf>; Letter from Daniel Zinn, General Counsel, OTC Markets Group Inc., to Eduardo A. Aleman, Assistant Secretary, Commission (dated June 13, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-1801717-153703.pdf>; Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission (dated June 22, 2017), available at: <https://www.sec.gov/comments/sr-cboe-2017-040/cboe2017040-1819670-154195.pdf>; Letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, Commission (dated June 23, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-1822454-154283.pdf>; and Letter from Suzanne H. Shatto, Investor, to Commission (dated June 27, 2017), available at: <https://www.sec.gov/comments/sr-batsedgx-2017-22/batsedgx201722-154443.pdf>. The Commission also received a comment letter which is not pertinent to these proposed rule changes. See Letter from Christina Crouch, Smart Ltd., to Brent J. Fields, Secretary, Commission (dated June 5, 2017), available at: <https://www.sec.gov/comments/sr-batsbx-2017-38/batsbx201738-1785545-153152.htm>.

<sup>5</sup> See Letter from CAT NMS Plan Participants to Brent J. Fields, Secretary, Commission (dated June 29, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-1832632-154584.pdf>.

<sup>6</sup> See Securities Exchange Act Release No. 81067 (June 30, 2017), 82 FR 31656 (July 7, 2017).

<sup>7</sup> See Letter from W. Hardy Callcott, Partner, Sidley Austin LLP, to Brent J. Fields, Secretary, Commission (dated July 27, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2148338-157737.pdf>; Letter from Kevin Coleman, General Counsel and Chief Compliance Officer, Belvedere Trading LLC, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2148360-157740.pdf>; Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2151228-157745.pdf>; Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2150977-157744.pdf>; Letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2150818-157743.pdf>; Letter from John Kinahan, Chief Executive Officer, Group One Trading, L.P., to Brent J. Fields, Secretary, Commission (dated August 10, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-2214568-160619.pdf>; Letter from Joseph Molluso, Executive Vice President and CFO, Virtu Financial, to Brent J. Fields, Commission (dated August 18, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-2238648-160830.pdf>.

<sup>8</sup> See Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Brent J. Fields,

2017, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>9</sup> On November 9, 2017, the Commission extended the time period within which to approve the proposed rule change or disapprove the proposed rule change to January 14, 2018.<sup>10</sup> On December 7, 2017, the Exchange filed Amendment No. 2 to the proposed rule change, as described in Item II, which Item has been prepared by the Exchange. The Commission is publishing this notice to solicit comments from interested persons on Amendment No. 2.

#### II. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Amendment

On May 16, 2017, Cboe C2 Exchange, Inc. (“SRO”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) proposed rule change SR–C2–2017–017 (the “Original Proposal”), pursuant to which SRO proposed to adopt a fee schedule to establish the fees for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”).<sup>11</sup> On November 3, 2017, SRO filed an amendment to the Original Proposal (“First Amendment”). SRO files this proposed rule change (the “Second Amendment”) to amend the Original Proposal as amended by the First Amendment.

With this Second Amendment, SRO is including Exhibit 4, which reflects the changes to the text of the proposed rule change as set forth in the First Amendment, and Exhibit 5, which reflects all proposed changes to SRO’s current rule text.

BOX Options Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc. (“FINRA”), Investors’ Exchange LLC, Miami International Securities Exchange, LLC, MIAX PEARL, LLC, NASDAQ BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC,

Commission, Secretary (dated November 2, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2674608-161412.pdf>.

<sup>9</sup> Amendment No. 1 to the proposed rule change replaced and superseded the Original Proposal in its entirety. See Securities Exchange Act Release No. 34–82270 (December 11, 2017).

<sup>10</sup> See Securities Exchange Act Release No. 82049 (November 9, 2017), 82 FR 53549 (November 16, 2017).

<sup>11</sup> Unless otherwise specified, capitalized terms used in this fee filing are defined as set forth herein, the CAT Compliance Rule Series, in the CAT NMS Plan, or the Original Proposal.

<sup>99</sup> 17 CFR 200.30–3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> See Securities Exchange Act Release No. 80786 (May 26, 2017), 82 FR 25474 (June 1, 2017) (“Original Proposal”).

<sup>4</sup> Since the CAT NMS Plan Participants’ proposed rule changes to adopt fees to be charged to Industry Members to fund the consolidated audit trail are substantively identical, the Commission is considering all comments received on the proposed rule changes regardless of the comment file to which they were submitted. See text accompanying note 12 *infra*, for a list of the CAT NMS Plan Participants. See Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Brent J. Fields, Secretary, Commission (dated June 6, 2017), available at: <https://www.sec.gov/comments/sr-batsbx-2017-38/batsbx201738-1788188-153228.pdf>; Letter from Patricia L. Cerny and Steven O’Malley, Compliance Consultants, to Brent J. Fields, Secretary, Commission (dated June 12, 2017), available at:

NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc. and NYSE National, Inc.<sup>12</sup> (collectively, the “Participants”) filed with the Commission, pursuant to Section 11A of the Exchange Act<sup>13</sup> and Rule 608 of Regulation NMS thereunder,<sup>14</sup> the CAT NMS Plan.<sup>15</sup> The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act. The Plan was published for comment in the **Federal Register** on May 17, 2016,<sup>16</sup> and approved by the Commission, as modified, on November 15, 2016.<sup>17</sup> The Plan is designed to create, implement and maintain a consolidated audit trail (“CAT”) that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. The Plan accomplishes this by creating CAT NMS, LLC (the “Company”), of which each Participant is a member, to operate the CAT.<sup>18</sup> Under the CAT NMS Plan, the Operating Committee of the Company (“Operating Committee”) has discretion to establish funding for the Company to operate the CAT, including establishing fees that the Participants will pay, and establishing fees for Industry Members that will be implemented by the Participants (“CAT Fees”).<sup>19</sup> The Participants are required to file with the SEC under Section 19(b) of the Exchange Act any such CAT Fees applicable to Industry Members that the Operating Committee approves.<sup>20</sup> Accordingly, SRO submitted the Original Proposal to propose the

Consolidated Audit Trail Funding Fees, which would require Industry Members that are SRO members to pay the CAT Fees determined by the Operating Committee.

The Commission published the Original Proposal for public comment in the **Federal Register** on June 1, 2017,<sup>21</sup> and received comments in response to the Original Proposal or similar fee filings by other Participants.<sup>22</sup> On June 30, 2017, the Commission suspended, and instituted proceedings to determine whether to approve or disapprove, the Original Proposal.<sup>23</sup> The Commission received seven comment letters in response to those proceedings.<sup>24</sup>

In response to the comments on the Original Proposal, the Operating Committee determined to make the following changes to the funding model: (1) Adds two additional CAT Fee tiers for Equity Execution Venues; (2) discounts the market share of Execution Venue ATSs exclusively trading OTC Equity Securities as well as the market share of the FINRA over-the-counter reporting facility (“ORF”) by the average shares per trade ratio between NMS Stocks and OTC Equity Securities (calculated as 0.17% based on available data from the second quarter of 2017) when calculating the market share of Execution Venue ATS exclusively trading OTC Equity Securities and FINRA; (3) discounts the Options Market Maker quotes by the trade to quote ratio for options (calculated as 0.01% based on available data for June 2016 through June 2017) when calculating message traffic for Options Market Makers; (4) discounts equity market maker quotes by the trade to quote ratio for equities (calculated as 5.43% based on available data for June 2016 through June 2017) when

calculating message traffic for equity market makers; (5) decreases the number of tiers for Industry Members (other than the Execution Venue ATSs) from nine to seven; (6) changes the allocation of CAT costs between Equity Execution Venues and Options Execution Venues from 75%/25% to 67%/33%; (7) adjusts tier percentages and recovery allocations for Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATSs); (8) focuses the comparability of CAT Fees on the individual entity level, rather than primarily on the comparability of affiliated entities; (9) commences invoicing of CAT Reporters as promptly as possible following the latest of the operative date of the Consolidated Audit Trail Funding Fees for each of the Participants and the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants; and (10) requires the proposed fees to automatically expire two years from the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. On November 3, 2017, SRO filed the First Amendment and proposed to amend the Original Proposal to reflect these changes.

SRO submits this Second Amendment to the revise the proposal as set forth in the First Amendment to discount the OTC Equity Securities market share of all Execution Venue ATSs trading OTC Equity Securities, rather than applying the discount solely to those Execution Venue ATSs that exclusively trade OTC Equity Securities, when calculating the market share of Execution Venue ATS trading OTC Equity Securities. As discussed in the First Amendment:

The Operating Committee determined to discount the market share of Execution Venue ATSs exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF in recognition of the different trading characteristics of the OTC Equity Securities market as compared to the market in NMS Stocks. Many OTC Equity Securities are priced at less than one dollar—and a significant number at less than one penny—per share and low-priced shares tend to trade in larger quantities. Accordingly, a disproportionately large number of shares are involved in transactions involving OTC Equity Securities versus NMS Stocks. Because the proposed fee tiers are based on market share calculated by share volume, Execution Venue ATSs exclusively trading OTC Equity Securities and FINRA would likely be subject to higher tiers than their operations may warrant.<sup>25</sup>

The Operating Committee believes that this argument applies equally to

<sup>12</sup> Note that Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., LLC, C2 Options Exchange, Incorporated, and Chicago Board Options Exchange, Incorporated, have been renamed Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., respectively.

<sup>13</sup> 15 U.S.C. 78k-1.

<sup>14</sup> 17 CFR 242.608.

<sup>15</sup> See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. See Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.

<sup>16</sup> Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

<sup>17</sup> Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (“Approval Order”).

<sup>18</sup> The Plan also serves as the limited liability company agreement for the Company.

<sup>19</sup> Section 11.1(b) of the CAT NMS Plan.

<sup>20</sup> *Id.*

<sup>21</sup> Securities Exchange Act Rel. No. 80786 (May 26, 2017), 82 FR 25474 (June 1, 2017) (SR-C2-2017-017).

<sup>22</sup> For a summary of comments, see generally Securities Exchange Act Rel. No. 81067 (June 30, 2017), 82 FR 31656 (July 7, 2017) (“Suspension Order”).

<sup>23</sup> Suspension Order.

<sup>24</sup> See Letter from Stuart J. Kaswell, Executive Vice President, Managing Director and General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, SEC (July 28, 2017); Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Brent J. Fields, Secretary, SEC (July 28, 2017); Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, SEC (July 28, 2017); Letter from Kevin Coleman, General Counsel & Chief Compliance Officer, Belvedere Trading LLC, to Brent J. Fields, Secretary, SEC (July 28, 2017); Letter from W. Hardy Callcott, Sidley Austin LLP, to Brent J. Fields, Secretary, SEC (July 27, 2017); Letter from John Kinahan, Chief Executive Officer, Group One Trading, L.P., to Brent J. Fields, Secretary, SEC (Aug. 10, 2017); and Letter from Joseph Molluso, Executive Vice President, Virtu Financial, to Brent J. Fields, Secretary, SEC (Aug. 18, 2017).

<sup>25</sup> SR-C2-2017-017, Amendment No. 1 at page 30.

both Execution Venue ATSS exclusively trading OTC Equity Securities and to Execution Venue ATSS that trade OTC Equity Securities as well as other securities. Accordingly, SRO proposes to amend paragraph (b)(2) of the Consolidated Audit Trail Funding Fees to apply the discount to all Execution Venue ATSS trading OTC Equity Securities. Specifically, SRO proposes to change the parenthetical regarding the OTC Equity Securities discount in paragraph (b)(2) of the proposed fee schedule from “with a discount for Equity ATSS exclusively trading OTC Equity Securities based on the average shares per trade ratio between NMS Stocks and OTC Equity Securities” to “with a discount for OTC Equity Securities market share of Equity ATSS trading OTC Equity Securities based on the average shares per trade ratio between NMS Stocks and OTC Equity Securities.”

### III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal, as amended by Amendment No. 1 and Amendment No. 2, is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission’s internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR–C2–2017–017 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090. All submissions should refer to File Number SR–C2–2017–017. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2017–017, and should be submitted on or before January 5, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

**Robert W. Errett,**  
Deputy Secretary.

[FR Doc. 2017–26993 Filed 12–14–17; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82257; File No. SR–MIAX–2017–18]

### Self-Regulatory Organizations, Miami International Securities Exchange LLC; Notice of Filing of Amendment No. 2 to a Proposed Rule Change To Amend the Fee Schedule

December 11, 2017.

On May 1, 2017, Miami International Securities Exchange LLC (“MIAX Options” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) <sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> a proposed rule change to adopt a fee schedule to establish the fees for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail (“CAT NMS Plan”). The proposed rule change was published in the **Federal Register** for comment on May 19, 2017.<sup>3</sup> The Commission received seven comment letters on the proposed rule change,<sup>4</sup>

<sup>26</sup> 17 CFR 200.30–3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> See Securities Exchange Act Release No. 80675 (May 15, 2017), 82 FR 23100 (May 19, 2017) (“Original Proposal”).

<sup>4</sup> Since the CAT NMS Plan Participants’ proposed rule changes to adopt fees to be charged to Industry Members to fund the consolidated audit trail are substantively identical, the Commission is considering all comments received on the proposed

and a response to comments from the Participants.<sup>5</sup> On June 30, 2017, the Commission temporarily suspended and initiated proceedings to determine whether to approve or disapprove the proposed rule change.<sup>6</sup> The Commission thereafter received seven comment letters,<sup>7</sup> and a response to comments

rule changes regardless of the comment file to which they were submitted. See text accompanying note 13 *infra*, for a list of the CAT NMS Plan Participants. See Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Brent J. Fields, Secretary, Commission (dated June 6, 2017), available at: <https://www.sec.gov/comments/sr-batsbzx-2017-38/batsbzx201738-1788188-153228.pdf>; Letter from Patricia L. Cerny and Steven O’Malley, Compliance Consultants, to Brent J. Fields, Secretary, Commission (dated June 12, 2017), available at: <https://www.sec.gov/comments/sr-cboe-2017-040/cboe2017040-1799253-153675.pdf>; Letter from Daniel Zinn, General Counsel, OTC Markets Group Inc., to Eduardo A. Aleman, Assistant Secretary, Commission (dated June 13, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-1801717-153703.pdf>; Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission (dated June 22, 2017), available at: <https://www.sec.gov/comments/sr-cboe-2017-040/cboe2017040-1819670-154195.pdf>; Letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, Commission (dated June 23, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-1822454-154283.pdf>; and Letter from Suzanne H. Shatto, Investor, to Commission (dated June 27, 2017), available at: <https://www.sec.gov/comments/sr-batsedg-2017-22/batsedg201722-154443.pdf>. The Commission also received a comment letter which is not pertinent to these proposed rule changes. See Letter from Christina Crouch, Smart Ltd., to Brent J. Fields, Secretary, Commission (dated June 5, 2017), available at: <https://www.sec.gov/comments/sr-batsbzx-2017-38/batsbzx201738-1785545-153152.htm>.

<sup>5</sup> See Letter from CAT NMS Plan Participants to Brent J. Fields, Secretary, Commission (dated June 29, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-1832632-154584.pdf>.

<sup>6</sup> See Securities Exchange Act Release No. 81067 (June 30, 2017), 82 FR 31656 (July 7, 2017).

<sup>7</sup> See Letter from W. Hardy Callcott, Partner, Sidley Austin LLP, to Brent J. Fields, Secretary, Commission (dated July 27, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2148338-157737.pdf>; Letter from Kevin Coleman, General Counsel and Chief Compliance Officer, Belvedere Trading LLC, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2148360-157740.pdf>; Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2151228-157745.pdf>; Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2150977-157744.pdf>; Letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at:

from the Participants.<sup>8</sup> On November 7, 2017, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>9</sup> On November 9, 2017, the Commission extended the time period within which to approve the proposed rule change or disapprove the proposed rule change to January 14, 2018.<sup>10</sup> On December 1, 2017, the Exchange filed Amendment No. 2 to the proposed rule change, as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments from interested persons on Amendment No. 2.

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

On May 1, 2017, Miami International Securities Exchange, LLC ("MIAX Options" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change SR-MIAX-2017-18 (the "Original Proposal"),<sup>11</sup> pursuant to which the Exchange proposed to adopt a fee schedule to establish the fees for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail (the "CAT NMS Plan" or "Plan").<sup>12</sup> On November 7, 2017, the Exchange filed an amendment to the Original Proposal ("First Amendment"). The Exchange files this proposed rule change (the "Second Amendment") to amend the Original Proposal as amended by the First Amendment.

The text of the proposed rule change is available on the Exchange's website at

<https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2150818-157743.pdf>; Letter from John Kinahan, Chief Executive Officer, Group One Trading, L.P., to Brent J. Fields, Secretary, Commission (dated August 10, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-2214568-160619.pdf>; Letter from Joseph Molluso, Executive Vice President and CFO, Virtu Financial, to Brent J. Fields, Commission (dated August 18, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-2238648-160830.pdf>.

<sup>8</sup> See Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Brent J. Fields, Commission, Secretary (dated November 2, 2017), available at <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2674608-161412.pdf>.

<sup>9</sup> Amendment No. 1 to the proposed rule change replaced and superseded the Original Proposal in its entirety. See Securities Exchange Act Release No. 82256 (December 11, 2017).

<sup>10</sup> See Securities Exchange Act Release No. 82049 (November 9, 2017), 82 FR 53549 (November 16, 2017).

<sup>11</sup> See Securities Exchange Act Release No. 80675 (May 15, 2017), 82 FR 23100 (May 19, 2017) (SR-MIAX-2017-18).

<sup>12</sup> Unless otherwise specified, capitalized terms used in this fee filing are defined as set forth herein, the CAT Compliance Rule Series, in the CAT NMS Plan, or the Original Proposal.

<http://www.miaxoptions.com/rule-filings>, at MIAX's principal office, and at the Commission's Public Reference Room.

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

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

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

##### 1. Purpose

BOX Options Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc. ("FINRA"), Investors' Exchange LLC, Miami International Securities Exchange, LLC, MIAX PEARL, LLC, NASDAQ BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc. and NYSE National, Inc.<sup>13</sup> (collectively, the "Participants") filed with the Commission, pursuant to Section 11A of the Exchange Act<sup>14</sup> and Rule 608 of Regulation NMS thereunder,<sup>15</sup> the CAT NMS Plan.<sup>16</sup> The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act. The Plan was published for comment in the **Federal**

<sup>13</sup> Note that Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., LLC, C2 Options Exchange, Incorporated, and Chicago Board Options Exchange, Incorporated, have been renamed Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., respectively.

<sup>14</sup> 15 U.S.C. 78k-1.

<sup>15</sup> 17 CFR 242.608.

<sup>16</sup> See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. See Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.

**Register** on May 17, 2016,<sup>17</sup> and approved by the Commission, as modified, on November 15, 2016.<sup>18</sup> The Plan is designed to create, implement and maintain a consolidated audit trail ("CAT") that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. The Plan accomplishes this by creating CAT NMS, LLC (the "Company"), of which each Participant is a member, to operate the CAT.<sup>19</sup> Under the CAT NMS Plan, the Operating Committee of the Company ("Operating Committee") has discretion to establish funding for the Company to operate the CAT, including establishing fees that the Participants will pay, and establishing fees for Industry Members that will be implemented by the Participants ("CAT Fees").<sup>20</sup> The Participants are required to file with the SEC under Section 19(b) of the Exchange Act any such CAT Fees applicable to Industry Members that the Operating Committee approves.<sup>21</sup> Accordingly, the Exchange submitted the Original Proposal to propose the Consolidated Audit Trail Funding Fees, which would require Industry Members that are Exchange members to pay the CAT Fees determined by the Operating Committee.

The Commission published the Original Proposal for public comment in the **Federal Register** on May 19, 2017,<sup>22</sup> and received comments in response to the Original Proposal or similar fee filings by other Participants.<sup>23</sup> On June 30, 2017, the Commission suspended, and instituted proceedings to determine whether to approve or disapprove, the Original Proposal.<sup>24</sup> The Commission received seven comment letters in response to those proceedings.<sup>25</sup>

<sup>17</sup> Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

<sup>18</sup> Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) ("Approval Order").

<sup>19</sup> The Plan also serves as the limited liability company agreement for the Company.

<sup>20</sup> Section 11.1(b) of the CAT NMS Plan.

<sup>21</sup> *Id.*

<sup>22</sup> See *supra*, note 3.

<sup>23</sup> For a summary of comments, see generally Securities Exchange Act Rel. No. 81067 (June 30, 2017), 82 FR 31656 (July 7, 2017) ("Suspension Order").

<sup>24</sup> Suspension Order.

<sup>25</sup> See Letter from Stuart J. Kaswell, Executive Vice President, Managing Director and General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, SEC (July 28, 2017); Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Brent J. Fields, Secretary, SEC (July 28, 2017); Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J.

In response to the comments on the Original Proposal, the Operating Committee determined to make the following changes to the funding model: (1) Add two additional CAT Fee tiers for Equity Execution Venues; (2) discount the market share of Execution Venue ATSs exclusively trading OTC Equity Securities as well as the market share of the FINRA over-the-counter reporting facility (“ORF”) by the average shares per trade ratio between NMS Stocks and OTC Equity Securities (calculated as 0.17% based on available data from the second quarter of 2017) when calculating the market share of Execution Venue ATS exclusively trading OTC Equity Securities and FINRA; (3) discount Options Market Maker quotes by the trade to quote ratio for options (calculated as 0.01% based on available data for June 2016 through June 2017) when calculating message traffic for Options Market Makers; (4) discount equity market maker quotes by the trade to quote ratio for equities (calculated as 5.43% based on available data for June 2016 through June 2017) when calculating message traffic for equity market makers; (5) decrease the number of tiers for Industry Members (other than the Execution Venue ATSs) from nine to seven; (6) change the allocation of CAT costs between Equity Execution Venues and Options Execution Venues from 75%/25% to 67%/33%; (7) adjust tier percentages and recovery allocations for Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATSs); (8) focus the comparability of CAT Fees on the individual entity level, rather than primarily on the comparability of affiliated entities; (9) commence invoicing of CAT Reporters as promptly as possible following the latest of the operative date of the Consolidated Audit Trail Funding Fees for each of the Participants and the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants; and (10) require the proposed fees to automatically expire two years from the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. On November 8, 2017, the Exchange filed the First Amendment

Fields, Secretary, SEC (July 28, 2017); Letter from Kevin Coleman, General Counsel & Chief Compliance Officer, Belvedere Trading LLC, to Brent J. Fields, Secretary, SEC (July 28, 2017); Letter from W. Hardy Callcott, Sidley Austin LLP, to Brent J. Fields, Secretary, SEC (July 27, 2017); Letter from John Kinahan, Chief Executive Officer, Group One Trading, L.P., to Brent J. Fields, Secretary, SEC (Aug. 10, 2017); and Letter from Joseph Molluso, Executive Vice President, Virtu Financial, to Brent J. Fields, Secretary, SEC (Aug. 18, 2017).

and proposed to amend the Original Proposal to reflect these changes.

The Exchange submits this Second Amendment to revise the proposal as set forth in the First Amendment to discount the OTC Equity Securities market share of all Execution Venue ATSs trading OTC Equity Securities, rather than applying the discount solely to those Execution Venue ATSs that exclusively trade OTC Equity Securities, when calculating the market share of Execution Venue ATS trading OTC Equity Securities. As discussed in the First Amendment:

The Operating Committee determined to discount the market share of Execution Venue ATSs exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF in recognition of the different trading characteristics of the OTC Equity Securities market as compared to the market in NMS Stocks. Many OTC Equity Securities are priced at less than one dollar—and a significant number at less than one penny—per share and low-priced shares tend to trade in larger quantities. Accordingly, a disproportionately large number of shares are involved in transactions involving OTC Equity Securities versus NMS Stocks. Because the proposed fee tiers are based on market share calculated by share volume, Execution Venue ATSs exclusively trading OTC Equity Securities and FINRA would likely be subject to higher tiers than their operations may warrant.<sup>26</sup>

The Operating Committee believes that this argument applies equally to both Execution Venue ATSs exclusively trading OTC Equity Securities and to Execution Venue ATSs that trade OTC Equity Securities as well as other securities. Accordingly, the Exchange proposes to amend paragraph (b)(2) of the Consolidated Audit Trail Funding Fees to apply the discount to all Execution Venue ATSs trading OTC Equity Securities. Specifically, the Exchange proposes to change the parenthetical regarding the OTC Equity Securities discount in paragraph (b)(2) of the proposed fee schedule from “with a discount for Equity ATSs exclusively trading OTC Equity Securities based on the average shares per trade ratio between NMS Stocks and OTC Equity Securities” to “with a discount for OTC Equity Securities market share of Equity ATSs trading OTC Equity Securities based on the average shares per trade ratio between NMS Stocks and OTC Equity Securities.”

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with the provisions of

Section 6(b)(5) of the Act,<sup>27</sup> which require, among other things, that Exchange 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, and Section 6(b)(4) of the Act,<sup>28</sup> which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange believes that the proposed rule change is consistent with the Act, and that the proposed fees are reasonable, equitably allocated and not unfairly discriminatory. In particular, the Exchange believes that the proposed rule change would treat all Equity ATSs trading OTC Equity Securities in a comparable manner when calculating applicable fees. In addition, the fee structure takes into consideration distinctions in securities trading operations of CAT Reporters, including all ATSs trading OTC Equity Securities.

## B. Self-Regulatory Organization’s Statement on Burden on Competition

Section 6(b)(8) of the Act<sup>29</sup> requires that Exchange rules not impose any burden on competition that is not necessary or appropriate. 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. As previously described, the Exchange believes that the proposed rule change fairly and equitably allocates costs among CAT Reporters. In particular, the proposed fee schedule is structured to impose comparable fees on similarly situated CAT Reporters. The Exchange believes that the proposed change would treat all Equity ATSs trading OTC Equity Securities in a comparable manner when calculating applicable fees. In addition, the fee structure takes into consideration distinctions in securities trading operations of CAT Reporters, including all ATSs trading OTC Equity Securities. Moreover, the Operating Committee believes that the proposed change addresses certain competitive concerns raised by commenters related to ATSs trading OTC Equity Securities.

<sup>27</sup> 15 U.S.C. 78f(b)(5).

<sup>28</sup> 15 U.S.C. 78f(b)(4).

<sup>29</sup> 15 U.S.C. 78f(b)(8).

<sup>26</sup> See SR—MAX—2017—18 Amendment No. 1 filed November 7, 2017.



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

Written comments were neither solicited nor received.

### III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal, as amended by Amendment No. 1 and Amendment No. 2, is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MIAX-2017-18 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-MIAX-2017-18. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File

Number SR-MIAX-2017-18, and should be submitted on or before January 5, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>30</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

[FR Doc. 2017-27017 Filed 12-14-17; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82263; File No. SR-NYSEMKT-2017-26]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Amendment No. 2 to Proposed Rule Change Amending the Consolidated Audit Trail Funding Fees

December 11, 2017.

On May 10, 2017, NYSE MKT LLC<sup>1</sup> (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> a proposed rule change to adopt a fee schedule to establish the fees for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail ("CAT NMS Plan"). The proposed rule change was published in the **Federal Register** for comment on May 22, 2017.<sup>4</sup> The Commission received seven comment letters on the proposed rule change,<sup>5</sup> and a response to

<sup>30</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> NYSE MKT LLC has been renamed NYSE American LLC. See Securities Exchange Act Rel. No. 80283 (Mar. 21, 2017), 82 FR 15244 (Mar. 27, 2017).

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> See Securities Exchange Act Release No. 80694 (May 16, 2017), 82 FR 23416 (May 22, 2017) ("Original Proposal").

<sup>5</sup> Since the CAT NMS Plan Participants' proposed rule changes to adopt fees to be charged to Industry Members to fund the consolidated audit trail are substantively identical, the Commission is considering all comments received on the proposed rule changes regardless of the comment file to which they were submitted. See text accompanying note 13 *infra*, for a list of the CAT NMS Plan Participants. See Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Brent J. Fields, Secretary, Commission (dated June 6, 2017), available at: <https://www.sec.gov/comments/sr-batsbzx-2017-38/batsbzx201738-1788188-153228.pdf>; Letter from Patricia L. Cerny and Steven O'Malley, Compliance Consultants, to Brent J. Fields, Secretary, Commission (dated June 12, 2017), available at: <https://www.sec.gov/comments/sr-cboe-2017-040/cboe2017040-1799253-153675.pdf>; Letter from Daniel Zinn, General Counsel, OTC Markets Group Inc., to Eduardo A. Aleman, Assistant Secretary,

comments from the CAT NMS Plan Participants.<sup>6</sup> On June 30, 2017, the Commission temporarily suspended and initiated proceedings to determine whether to approve or disapprove the proposed rule change.<sup>7</sup> The Commission thereafter received seven comment letters,<sup>8</sup> and a response to comments from the Participants.<sup>9</sup> On October 25,

Commission (dated June 13, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-1801717-153703.pdf>; Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission (dated June 22, 2017), available at: <https://www.sec.gov/comments/sr-cboe-2017-040/cboe2017040-1819670-154195.pdf>; Letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, Commission (dated June 23, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-1822454-154283.pdf>; and Letter from Suzanne H. Shatto, Investor, to Commission (dated June 27, 2017), available at: <https://www.sec.gov/comments/sr-batsedgx-2017-22/batsedgx201722-154443.pdf>. The Commission also received a comment letter which is not pertinent to these proposed rule changes. See Letter from Christina Crouch, Smart Ltd., to Brent J. Fields, Secretary, Commission (dated June 5, 2017), available at: <https://www.sec.gov/comments/sr-batsbzx-2017-38/batsbzx201738-1785545-153152.htm>.

<sup>6</sup> See Letter from CAT NMS Plan Participants to Brent J. Fields, Secretary, Commission (dated June 29, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-1832632-154584.pdf>.

<sup>7</sup> See Securities Exchange Act Release No. 81067 (June 30, 2017), 82 FR 31656 (July 7, 2017).

<sup>8</sup> See Letter from W. Hardy Callcott, Partner, Sidley Austin LLP, to Brent J. Fields, Secretary, Commission (dated July 27, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2148338-157737.pdf>; Letter from Kevin Coleman, General Counsel and Chief Compliance Officer, Belvedere Trading LLC, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2148360-157740.pdf>; Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2151228-157745.pdf>; Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2150977-157744.pdf>; Letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2150818-157743.pdf>; Letter from John Kinahan, Chief Executive Officer, Group One Trading, L.P., to Brent J. Fields, Secretary, Commission (dated August 10, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-2214568-160619.pdf>; Letter from Joseph Molluso, Executive Vice President and CFO, Virtu Financial, to Brent J. Fields, Commission (dated August 18, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-2238648-160830.pdf>.

<sup>9</sup> See Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Brent J. Fields, Secretary, Commission (dated November 2, 2017), available at <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2674608-161412.pdf>.

2017, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>10</sup> On November 9, 2017, the Commission extended the time period within which to approve the proposed rule change or disapprove the proposed rule change to January 14, 2018.<sup>11</sup> On November 29, 2017, the Exchange filed Amendment No. 2 to the proposed rule change, as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments from interested persons on Amendment No. 2.

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

The Exchange proposes to amend the NYSE American Equities Price List ("Price List"), and the NYSE American Options Fee Schedule ("Options Fee Schedule"), to adopt the fees for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail (the "CAT NMS Plan" or "Plan").<sup>12</sup> On October 25, 2017, the Exchange filed an amendment to the Original Proposal ("First Amendment"). The Exchange files this proposed rule change (the "Second Amendment") to amend the Original Proposal, as amended by the First Amendment. The proposed change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

<sup>10</sup> Amendment No. 1 to the proposed rule change replaced and superseded the Original Proposal in its entirety. See Securities Exchange Act Release No. 82262 (December 11, 2017).

<sup>11</sup> See Securities Exchange Act Release No. 82049 (November 9, 2017), 82 FR 53549 (November 16, 2017).

<sup>12</sup> Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth herein, the CAT Compliance Rule or in the CAT NMS Plan.

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

##### 1. Purpose

BOX Options Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc. ("FINRA"), Investors' Exchange LLC, Miami International Securities Exchange, LLC, MIAAX PEARL, LLC, NASDAQ BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc. and NYSE National, Inc.<sup>13</sup> (collectively, the "Participants") filed with the Commission, pursuant to Section 11A of the Exchange Act<sup>14</sup> and Rule 608 of Regulation NMS thereunder,<sup>15</sup> the CAT NMS Plan.<sup>16</sup> The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act. The Plan was published for comment in the **Federal Register** on May 17, 2016,<sup>17</sup> and approved by the Commission, as modified, on November 15, 2016.<sup>18</sup> The Plan is designed to create, implement and maintain a consolidated audit trail ("CAT") that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. The Plan accomplishes this by creating CAT NMS, LLC (the "Company"), of which each Participant is a member, to

<sup>13</sup> Note that Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., LLC, C2 Options Exchange, Incorporated, and Chicago Board Options Exchange, Incorporated, have been renamed Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., respectively.

<sup>14</sup> 15 U.S.C. 78k-1.

<sup>15</sup> 17 CFR 242.608.

<sup>16</sup> See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. See Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.

<sup>17</sup> Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

<sup>18</sup> Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) ("Approval Order").

operate the CAT.<sup>19</sup> Under the CAT NMS Plan, the Operating Committee of the Company ("Operating Committee") has discretion to establish funding for the Company to operate the CAT, including establishing fees that the Participants will pay, and establishing fees for Industry Members that will be implemented by the Participants ("CAT Fees").<sup>20</sup> The Participants are required to file with the SEC under Section 19(b) of the Exchange Act any such CAT Fees applicable to Industry Members that the Operating Committee approves.<sup>21</sup> Accordingly, the Exchange submitted the Original Proposal to amend the Price List and the Options Fee Schedule to adopt the Consolidated Audit Trail Funding Fees, which would require Industry Members that are Exchange members to pay the CAT Fees determined by the Operating Committee.

The Commission published the Original Proposal for public comment in the **Federal Register** on May 22, 2017,<sup>22</sup> and received comments in response to the Original Proposal or similar fee filings by other Participants.<sup>23</sup> On June 30, 2017, the Commission suspended, and instituted proceedings to determine whether to approve or disapprove, the Original Proposal.<sup>24</sup> The Commission received seven comment letters in response to those proceedings.<sup>25</sup>

In response to the comments on the Original Proposal, the Operating Committee determined to make the following changes to the funding model:

<sup>19</sup> The Plan also serves as the limited liability company agreement for the Company.

<sup>20</sup> Section 11.1(b) of the CAT NMS Plan.

<sup>21</sup> *Id.*

<sup>22</sup> Securities Exchange Act Rel. No. 80694 (May 16, 2017), 82 FR 23416 (May 22, 2017) (SR-NYSEMKT-2017-26).

<sup>23</sup> For a summary of comments, see generally Securities Exchange Act Rel. No. 81067 (June 30, 2017), 82 FR 31656 (July 7, 2017) ("Suspension Order").

<sup>24</sup> Suspension Order.

<sup>25</sup> See Letter from Stuart J. Kaswell, Executive Vice President, Managing Director and General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, SEC (July 28, 2017) ("MFA Letter"); Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Brent J. Fields, Secretary, SEC (July 28, 2017) ("SIFMA Letter"); Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, SEC (July 28, 2017) ("FIA Principal Traders Group Letter"); Letter from Kevin Coleman, General Counsel & Chief Compliance Officer, Belvedere Trading LLC, to Brent J. Fields, Secretary, SEC (July 28, 2017) ("Belvedere Letter"); Letter from W. Hardy Callcott, Sidley Austin LLP, to Brent J. Fields, Secretary, SEC (July 27, 2017) ("Sidley Letter"); Letter from John Kinahan, Chief Executive Officer, Group One Trading, L.P., to Brent J. Fields, Secretary, SEC (Aug. 10, 2017) ("Group One Letter"); and Letter from Joseph Molluso, Executive Vice President, Virtu Financial, to Brent J. Fields, Secretary, SEC (Aug. 18, 2017) ("Virtu Financial Letter").



(1) Add two additional CAT Fee tiers for Equity Execution Venues; (2) discount the market share of Execution Venue ATSS exclusively trading OTC Equity Securities as well as the market share of the FINRA over-the-counter reporting facility (“ORF”) by the average shares per trade ratio between NMS Stocks and OTC Equity Securities (calculated as 0.17% based on available data from the second quarter of June 2017) when calculating the market share of Execution Venue ATS exclusively trading OTC Equity Securities and FINRA; (3) discount the Options Market Maker quotes by the trade to quote ratio for options (calculated as 0.01% based on available data for June 2016 through June 2017) when calculating message traffic for Options Market Makers; (4) discount equity market maker quotes by the trade to quote ratio for equities (calculated as 5.43% based on available data for June 2016 through June 2017) when calculating message traffic for equity market makers; (5) decrease the number of tiers for Industry Members (other than the Execution Venue ATSS) from nine to seven; (6) change the allocation of CAT costs between Equity Execution Venues and Options Execution Venues from 75%/25% to 67%/33%; (7) adjust tier percentages and recovery allocations for Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATSS); (8) focus the comparability of CAT Fees on the individual entity level, rather than primarily on the comparability of affiliated entities; (9) commence invoicing of CAT Reporters as promptly as possible following the latest of the operative date of the Consolidated Audit Trail Funding Fees for each of the Participants and the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants; and (10) require the proposed fees to automatically expire two years from the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. On October 25, 2017, the Exchange filed the First Amendment and proposed to amend the Original Proposal to reflect these changes.

The Exchange submits this Second Amendment to the revise the proposal as set forth in the First Amendment to discount the OTC Equity Securities market share of all Execution Venue ATSS trading OTC Equity Securities, rather than applying the discount solely to those Execution Venue ATSS that exclusively trade OTC Equity Securities, when calculating the market share of Execution Venue ATS trading OTC

Equity Securities. As discussed in the First Amendment:

The Operating Committee determined to discount the market share of Execution Venue ATSS exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF in recognition of the different trading characteristics of the OTC Equity Securities market as compared to the market in NMS Stocks. Many OTC Equity Securities are priced at less than one dollar—and a significant number at less than one penny—per share and low-priced shares tend to trade in larger quantities. Accordingly, a disproportionately large number of shares are involved in transactions involving OTC Equity Securities versus NMS Stocks. Because the proposed fee tiers are based on market share calculated by share volume, Execution Venue ATSS exclusively trading OTC Equity Securities and FINRA would likely be subject to higher tiers than their operations may warrant.<sup>26</sup>

The Operating Committee believes that this argument applies equally to both Execution Venue ATSS exclusively trading OTC Equity Securities and to Execution Venue ATSS that trade OTC Equity Securities as well as other securities. Accordingly, the Exchange proposes to amend paragraph (b)(2) of the Consolidated Audit Trail Funding Fees to apply the discount to all Execution Venue ATSS trading OTC Equity Securities. Specifically, the Exchange proposes to change the parenthetical regarding the OTC Equity Securities discount in paragraph (b)(2) of the proposed fee schedule from “with a discount for Equity ATSS exclusively trading OTC Equity Securities based on the average shares per trade ratio between NMS Stocks and OTC Equity Securities” to “with a discount for OTC Equity Securities market share of Equity ATSS trading OTC Equity Securities based on the average shares per trade ratio between NMS Stocks and OTC Equity Securities.”

Additionally, the Exchange proposes to delete footnote 45 in Section 3(a) on page 23 of the First Amendment as the footnote is erroneous and was included inadvertently.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)(4) of the Act,<sup>27</sup> because it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using its facilities. The Exchange believes the proposed rule change is also consistent with Section 6(b)(5) of the Act,<sup>28</sup> which

requires, among other things, that the Exchange’s rules 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 believes that the proposed rule change is consistent with the Act, and that the proposed fees are reasonable, equitably allocated and not unfairly discriminatory. In particular, the Exchange believes that the proposed rule change would treat all Equity ATSS trading OTC Equity Securities in a comparable manner when calculating applicable fees. In addition, the proposed fee structure would take into consideration distinctions in securities trading operations of CAT Reporters, including all ATSS trading OTC Equity Securities.

### *B. Self-Regulatory Organization’s Statement on Burden on Competition*

Section 6(b)(8) of the Act<sup>29</sup> require that the Exchange’s rules not impose any burden on competition that is not necessary or appropriate. 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. As previously described, the Exchange believes that the proposed rule change fairly and equitably allocates costs among CAT Reporters. In particular, the proposed rule change is structured to impose comparable fees on similarly situated CAT Reporters. The Exchange believes that the proposed rule change would treat all Equity ATSS trading OTC Equity Securities in a comparable manner when calculating applicable fees. In addition, the proposed rule change would take into consideration distinctions in securities trading operations of CAT Reporters, including all ATSS trading OTC Equity Securities. Moreover, the Operating Committee believes that the proposed rule change addresses certain competitive concerns raised by commenters related to ATSS trading OTC Equity Securities.

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

No written comments were solicited or received with respect to the proposed rule change.

<sup>26</sup> See SR-NYSEMKT–2017–26, Amendment 1, Section 3(a), at page 22.

<sup>27</sup> 15 U.S.C. 78f(b)(4).

<sup>28</sup> 15 U.S.C. 78f(b)(5).

<sup>29</sup> 15 U.S.C. 78f(b)(8).

### III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal, as amended by Amendment No. 1 and Amendment No. 2, is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2017-26 on the subject line.

#### Paper Comments

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

All submissions should refer to File Number SR-NYSEMKT-2017-26. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEMKT-2017-26 and should be submitted on or before January 5, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>30</sup>

**Robert W. Errett,**  
Deputy Secretary.

[FR Doc. 2017-27023 Filed 12-14-17; 8:45 am]

**BILLING CODE 8011-01-P**

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82255; File No. SR-PEARL-2017-20]

#### Self-Regulatory Organizations; MIAX PEARL LLC; Notice of Filing of Amendment No. 2 to a Proposed Rule Change To Amend the Fee Schedule

December 11, 2017.

On May 1, 2017, MIAX PEARL, LLC ("MIAX PEARL" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt a fee schedule to establish the fees for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail ("CAT NMS Plan"). The proposed rule change was published in the **Federal Register** for comment on May 19, 2017.<sup>3</sup> The Commission received seven comment letters on the proposed rule change,<sup>4</sup> and a response to

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 80676 (May 15, 2017), 82 FR 23083 (May 19, 2017) ("Original Proposal").

<sup>4</sup> Since the CAT NMS Plan Participants' proposed rule changes to adopt fees to be charged to Industry Members to fund the consolidated audit trail are substantively identical, the Commission is considering all comments received on the proposed rule changes regardless of the comment file to which they were submitted. See text accompanying note 13 *infra*, for a list of the CAT NMS Plan Participants. See Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Brent J. Fields, Secretary, Commission (dated June 6, 2017), available at: <https://www.sec.gov/comments/sr-batsbzx-2017-38/batsbzx201738-1788188-153228.pdf>; Letter from Patricia L. Cerny and Steven O'Malley, Compliance Consultants, to Brent J. Fields, Secretary, Commission (dated June 12, 2017), available at: <https://www.sec.gov/comments/sr-cboe-2017-040/cboe2017040-1799253-153675.pdf>; Letter from Daniel Zinn, General Counsel, OTC Markets Group Inc., to Eduardo A. Aleman, Assistant Secretary, Commission (dated June 13, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-1801717-153703.pdf>; Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission (dated June 22, 2017), available at: <https://www.sec.gov/comments/sr-cboe-2017-040/cboe2017040-1819670-154195.pdf>; Letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association, to Brent J. Fields, Secretary,

comments from the Participants.<sup>5</sup> On June 30, 2017, the Commission temporarily suspended and initiated proceedings to determine whether to approve or disapprove the proposed rule change.<sup>6</sup> The Commission thereafter received seven comment letters,<sup>7</sup> and a response to comments from the Participants.<sup>8</sup> On November 7, 2017, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>9</sup> On November 9, 2017, the Commission extended the time period within which

Commission (dated June 23, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-1822454-154283.pdf>; and Letter from Suzanne H. Shatto, Investor, to Commission (dated June 27, 2017), available at: <https://www.sec.gov/comments/sr-batsedgx-2017-22/batsedgx201722-154443.pdf>. The Commission also received a comment letter which is not pertinent to these proposed rule changes. See Letter from Christina Crouch, Smart Ltd., to Brent J. Fields, Secretary, Commission (dated June 5, 2017), available at: <https://www.sec.gov/comments/sr-batsbzx-2017-38/batsbzx201738-1785545-153152.htm>.

<sup>5</sup> See Letter from CAT NMS Plan Participants to Brent J. Fields, Secretary, Commission (dated June 29, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-1832632-154584.pdf>.

<sup>6</sup> See Securities Exchange Act Release No. 81067 (June 30, 2017), 82 FR 31656 (July 7, 2017).

<sup>7</sup> See Letter from W. Hardy Callcott, Partner, Sidley Austin LLP, to Brent J. Fields, Secretary, Commission (dated July 27, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2148338-157737.pdf>; Letter from Kevin Coleman, General Counsel and Chief Compliance Officer, Belvedere Trading LLC, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2148360-157740.pdf>; Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2150977-157744.pdf>; Letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2150818-157743.pdf>; Letter from John Kinahan, Chief Executive Officer, Group One Trading, L.P., to Brent J. Fields, Secretary, Commission (dated August 10, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-2214568-160619.pdf>; Letter from Joseph Molluso, Executive Vice President and CFO, Virtu Financial, to Brent J. Fields, Commission (dated August 18, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-2238648-160830.pdf>.

<sup>8</sup> See Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Brent J. Fields, Commission, Secretary (dated November 2, 2017), available at <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2674608-161412.pdf>.

<sup>9</sup> Amendment No. 1 to the proposed rule change replaced and superseded the Original Proposal in its entirety. See Securities Exchange Act Release No. 82254 (December 11, 2017).

<sup>30</sup> 17 CFR 200.30-3(a)(12).

to approve the proposed rule change or disapprove the proposed rule change to January 14, 2018.<sup>10</sup> On December 1, 2017, the Exchange filed Amendment No. 2 to the proposed rule change, as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments from interested persons on Amendment No. 2.

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

On May 1, 2017, MIAX PEARL, LLC ("MIAX PEARL" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change SR-PEARL-2017-20 (the "Original Proposal"),<sup>11</sup> pursuant to which the Exchange proposed to adopt a fee schedule to establish the fees for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail (the "CAT NMS Plan" or "Plan").<sup>12</sup> On November 7, 2017, the Exchange filed an amendment to the Original Proposal ("First Amendment"). The Exchange files this proposed rule change (the "Second Amendment") to amend the Original Proposal as amended by the First Amendment.

The text of the proposed rule change is available on the Exchange's website at <http://www.miaxoptions.com/rule-filings/pearl>, at MIAX's principal office, and at the Commission's Public Reference Room.

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

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

<sup>10</sup> See Securities Exchange Act Release No. 82049 (November 9, 2017), 82 FR 53549 (November 16, 2017).

<sup>11</sup> See Securities Exchange Act Release No. 80676 (May 15, 2017), 82 FR 23083 (May 19, 2017) (SR-PEARL-2017-20).

<sup>12</sup> Unless otherwise specified, capitalized terms used in this fee filing are defined as set forth herein, the CAT Compliance Rule Series, in the CAT NMS Plan, or the Original Proposal.

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

##### 1. Purpose

BOX Options Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc. ("FINRA"), Investors' Exchange LLC, Miami International Securities Exchange, LLC, MIAX PEARL, LLC, NASDAQ BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc. and NYSE National, Inc.<sup>13</sup> (collectively, the "Participants") filed with the Commission, pursuant to Section 11A of the Exchange Act<sup>14</sup> and Rule 608 of Regulation NMS thereunder,<sup>15</sup> the CAT NMS Plan.<sup>16</sup> The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act. The Plan was published for comment in the **Federal Register** on May 17, 2016,<sup>17</sup> and approved by the Commission, as modified, on November 15, 2016.<sup>18</sup> The Plan is designed to create, implement and maintain a consolidated audit trail ("CAT") that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. The Plan accomplishes this by creating CAT NMS, LLC (the "Company"), of which each Participant is a member, to

<sup>13</sup> Note that Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., LLC, C2 Options Exchange, Incorporated, and Chicago Board Options Exchange, Incorporated, have been renamed Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., respectively.

<sup>14</sup> 15 U.S.C. 78k-1.

<sup>15</sup> 17 CFR 242.608.

<sup>16</sup> See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. See Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.

<sup>17</sup> Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

<sup>18</sup> Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) ("Approval Order").

operate the CAT.<sup>19</sup> Under the CAT NMS Plan, the Operating Committee of the Company ("Operating Committee") has discretion to establish funding for the Company to operate the CAT, including establishing fees that the Participants will pay, and establishing fees for Industry Members that will be implemented by the Participants ("CAT Fees").<sup>20</sup> The Participants are required to file with the SEC under Section 19(b) of the Exchange Act any such CAT Fees applicable to Industry Members that the Operating Committee approves.<sup>21</sup> Accordingly, the Exchange submitted the Original Proposal to propose the Consolidated Audit Trail Funding Fees, which would require Industry Members that are Exchange members to pay the CAT Fees determined by the Operating Committee.

The Commission published the Original Proposal for public comment in the **Federal Register** on May 19, 2017,<sup>22</sup> and received comments in response to the Original Proposal or similar fee filings by other Participants.<sup>23</sup> On June 30, 2017, the Commission suspended, and instituted proceedings to determine whether to approve or disapprove, the Original Proposal.<sup>24</sup> The Commission received seven comment letters in response to those proceedings.<sup>25</sup>

In response to the comments on the Original Proposal, the Operating Committee determined to make the following changes to the funding model: (1) Add two additional CAT Fee tiers for Equity Execution Venues; (2) discount the market share of Execution Venue ATs exclusively trading OTC Equity Securities as well as the market share of the FINRA over-the-counter reporting facility ("ORF") by the average shares

<sup>19</sup> The Plan also serves as the limited liability company agreement for the Company.

<sup>20</sup> Section 11.1(b) of the CAT NMS Plan.

<sup>21</sup> *Id.*

<sup>22</sup> See *supra*, note 3.

<sup>23</sup> For a summary of comments, see generally Securities Exchange Act Rel. No. 81067 (June 30, 2017), 82 FR 31656 (July 7, 2017) ("Suspension Order").

<sup>24</sup> Suspension Order.

<sup>25</sup> See Letter from Stuart J. Kaswell, Executive Vice President, Managing Director and General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, SEC (July 28, 2017); Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Brent J. Fields, Secretary, SEC (July 28, 2017); Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, SEC (July 28, 2017); Letter from Kevin Coleman, General Counsel & Chief Compliance Officer, Belvedere Trading LLC, to Brent J. Fields, Secretary, SEC (July 28, 2017); Letter from W. Hardy Callcott, Sidley Austin LLP, to Brent J. Fields, Secretary, SEC (July 27, 2017); Letter from John Kinahan, Chief Executive Officer, Group One Trading, L.P., to Brent J. Fields, Secretary, SEC (Aug. 10, 2017); and Letter from Joseph Molluso, Executive Vice President, Virtu Financial, to Brent J. Fields, Secretary, SEC (Aug. 18, 2017).

per trade ratio between NMS Stocks and OTC Equity Securities (calculated as 0.17% based on available data from the second quarter of 2017) when calculating the market share of Execution Venue ATS exclusively trading OTC Equity Securities and FINRA; (3) discount Options Market Maker quotes by the trade to quote ratio for options (calculated as 0.01% based on available data for June 2016 through June 2017) when calculating message traffic for Options Market Makers; (4) discount equity market maker quotes by the trade to quote ratio for equities (calculated as 5.43% based on available data for June 2016 through June 2017) when calculating message traffic for equity market makers; (5) decrease the number of tiers for Industry Members (other than the Execution Venue ATSs) from nine to seven; (6) change the allocation of CAT costs between Equity Execution Venues and Options Execution Venues from 75%/25% to 67%/33%; (7) adjust tier percentages and recovery allocations for Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATSs); (8) focus the comparability of CAT Fees on the individual entity level, rather than primarily on the comparability of affiliated entities; (9) commence invoicing of CAT Reporters as promptly as possible following the latest of the operative date of the Consolidated Audit Trail Funding Fees for each of the Participants and the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants; and (10) require the proposed fees to automatically expire two years from the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. On November 8, 2017, the Exchange filed the First Amendment and proposed to amend the Original Proposal to reflect these changes.

The Exchange submits this Second Amendment to revise the proposal as set forth in the First Amendment to discount the OTC Equity Securities market share of all Execution Venue ATSs trading OTC Equity Securities, rather than applying the discount solely to those Execution Venue ATSs that exclusively trade OTC Equity Securities, when calculating the market share of Execution Venue ATS trading OTC Equity Securities. As discussed in the First Amendment:

The Operating Committee determined to discount the market share of Execution Venue ATSs exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF in recognition of the different trading characteristics of the OTC Equity Securities market as compared to the market

in NMS Stocks. Many OTC Equity Securities are priced at less than one dollar—and a significant number at less than one penny—per share and low-priced shares tend to trade in larger quantities. Accordingly, a disproportionately large number of shares are involved in transactions involving OTC Equity Securities versus NMS Stocks. Because the proposed fee tiers are based on market share calculated by share volume, Execution Venue ATSs exclusively trading OTC Equity Securities and FINRA would likely be subject to higher tiers than their operations may warrant.<sup>26</sup>

The Operating Committee believes that this argument applies equally to both Execution Venue ATSs exclusively trading OTC Equity Securities and to Execution Venue ATSs that trade OTC Equity Securities as well as other securities. Accordingly, the Exchange proposes to amend paragraph (b)(2) of the Consolidated Audit Trail Funding Fees to apply the discount to all Execution Venue ATSs trading OTC Equity Securities. Specifically, the Exchange proposes to change the parenthetical regarding the OTC Equity Securities discount in paragraph (b)(2) of the proposed fee schedule from “with a discount for Equity ATSs exclusively trading OTC Equity Securities based on the average shares per trade ratio between NMS Stocks and OTC Equity Securities” to “with a discount for OTC Equity Securities market share of Equity ATSs trading OTC Equity Securities based on the average shares per trade ratio between NMS Stocks and OTC Equity Securities.”

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with the provisions of Section 6(b)(5) of the Act,<sup>27</sup> which require, among other things, that Exchange 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, and Section 6(b)(4) of the Act,<sup>28</sup> which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange believes that the proposed rule change is consistent with the Act, and that the proposed fees are reasonable, equitably allocated and not unfairly

<sup>26</sup> See SR-PEARL-2017-20 Amendment No. 1 filed November 7, 2017.

<sup>27</sup> 15 U.S.C. 78f(b)(5).

<sup>28</sup> 15 U.S.C. 78f(b)(4).

discriminatory. In particular, the Exchange believes that the proposed rule change would treat all Equity ATSs trading OTC Equity Securities in a comparable manner when calculating applicable fees. In addition, the fee structure takes into consideration distinctions in securities trading operations of CAT Reporters, including all ATSs trading OTC Equity Securities.

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

Section 6(b)(8) of the Act<sup>29</sup> requires that Exchange rules not impose any burden on competition that is not necessary or appropriate. 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. As previously described, the Exchange believes that the proposed rule change fairly and equitably allocates costs among CAT Reporters. In particular, the proposed fee schedule is structured to impose comparable fees on similarly situated CAT Reporters. The Exchange believes that the proposed change would treat all Equity ATSs trading OTC Equity Securities in a comparable manner when calculating applicable fees. In addition, the fee structure takes into consideration distinctions in securities trading operations of CAT Reporters, including all ATSs trading OTC Equity Securities. Moreover, the Operating Committee believes that the proposed change addresses certain competitive concerns raised by commenters related to ATSs trading OTC Equity Securities.

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

Written comments were neither solicited nor received.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal, as amended by Amendment No. 1 and Amendment No. 2, is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-PEARL-2017-20 on the subject line.

<sup>29</sup> 15 U.S.C. 78f(b)(8).

### 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-PEARL-2017-20. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-PEARL-2017-20, and should be submitted on or before January 5, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>30</sup>

**Robert W. Errett,**  
Deputy Secretary.

[FR Doc. 2017-27015 Filed 12-14-17; 8:45 am]

**BILLING CODE 8011-01-P**

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82287; File No. SR-MRX-2017-04]

#### Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing of Amendment No. 2 to a Proposed Rule Change To Adopt Rule 7004 and Chapter XV, Section 11

December 11, 2017

On May 12, 2017, Nasdaq MRX, LLC ("MRX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt a fee schedule to establish the fees for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail ("CAT NMS Plan"). The proposed rule change was published in the **Federal Register** for comment on May 24, 2017.<sup>3</sup> The Commission received seven comment letters on the proposed rule change,<sup>4</sup>

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 80726 (May 18, 2017), 82 FR 23915 (May 24, 2017) ("Original Proposal").

<sup>4</sup> Since the CAT NMS Plan Participants' proposed rule changes to adopt fees to be charged to Industry Members to fund the consolidated audit trail are substantively identical, the Commission is considering all comments received on the proposed rule changes regardless of the comment file to which they were submitted. See text accompanying notes 13-16 *infra*, for a list of the CAT NMS Plan Participants. See Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Brent J. Fields, Secretary, Commission (dated June 6, 2017), available at: <https://www.sec.gov/comments/sr-batsbx-2017-38/batsbx201738-1788188-153228.pdf>; Letter from Patricia L. Cerny and Steven O'Malley, Compliance Consultants, to Brent J. Fields, Secretary, Commission (dated June 12, 2017), available at: <https://www.sec.gov/comments/sr-cboe-2017-040/cboe2017040-1799253-153675.pdf>; Letter from Daniel Zinn, General Counsel, OTC Markets Group Inc., to Eduardo A. Aleman, Assistant Secretary, Commission (dated June 13, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-1801717-153703.pdf>; Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission (dated June 22, 2017), available at: <https://www.sec.gov/comments/sr-cboe-2017-040/cboe2017040-1819670-154195.pdf>; Letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, Commission (dated June 23, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-1822454-154283.pdf>; and Letter from Suzanne H. Shatto, Investor, to Commission (dated June 27, 2017), available at: <https://www.sec.gov/comments/sr-batsedgx-2017-22/batsedgx201722-154443.pdf>. The Commission also received a comment letter which is not pertinent to these proposed rule changes. See Letter from Christina Crouch, Smart Ltd., to Brent J. Fields, Secretary, Commission (dated June 5, 2017), available at:

and a response to comments from the Participants.<sup>5</sup> On June 30, 2017, the Commission temporarily suspended and initiated proceedings to determine whether to approve or disapprove the proposed rule change.<sup>6</sup> The Commission thereafter received seven comment letters,<sup>7</sup> and a response to comments from the Participants.<sup>8</sup> On November 6, 2017, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>9</sup> On November 9, 2017, the Commission extended the time period within which to approve the proposed rule change or disapprove the proposed rule change to January 14, 2018.<sup>10</sup> On December 6, 2017, the Exchange filed Amendment No. 2 to the proposed rule change, as

<https://www.sec.gov/comments/sr-batsbx-2017-38/batsbx201738-1785545-153152.htm>.

<sup>5</sup> See Letter from CAT NMS Plan Participants to Brent J. Fields, Secretary, Commission (dated June 29, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-1832632-154584.pdf>.

<sup>6</sup> See Securities Exchange Act Release No. 81067 (June 30, 2017), 82 FR 31656 (July 7, 2017).

<sup>7</sup> See Letter from W. Hardy Callcott, Partner, Sidley Austin LLP, to Brent J. Fields, Secretary, Commission (dated July 27, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2148338-157737.pdf>; Letter from Kevin Coleman, General Counsel and Chief Compliance Officer, Belvedere Trading LLC, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2148360-157740.pdf>; Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2151228-157745.pdf>; Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2150977-157744.pdf>; Letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2150818-157743.pdf>; Letter from John Kinahan, Chief Executive Officer, Group One Trading, L.P., to Brent J. Fields, Secretary, Commission (dated August 10, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-2214568-160619.pdf>; Letter from Joseph Molluso, Executive Vice President and CFO, Virtu Financial, to Brent J. Fields, Secretary, Commission (dated August 18, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-2238648-160830.pdf>.

<sup>8</sup> See Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Brent J. Fields, Secretary, Commission (dated November 2, 2017), available at <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2674608-161412.pdf>.

<sup>9</sup> Amendment No. 1 to the proposed rule change replaced and superseded the Original Proposal in its entirety. Amendment No. 1 is available on the Commission's website for MRX at: <https://www.sec.gov/comments/sr-mrx-2017-04/mrx201704-2669635-161443.pdf>.

<sup>10</sup> See Securities Exchange Act Release No. 82049 (November 9, 2017), 82 FR 53549 (November 16, 2017).

<sup>30</sup> 17 CFR 200.30-3(a)(12).

described in Items I and II below, which Items have been prepared by the Exchange.<sup>11</sup> The Commission is publishing this notice to solicit comments from interested persons on Amendment No. 2.

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

On May 12, 2017, Nasdaq MRX, LLC ("MRX" or "Exchange"), filed with the Securities and Exchange Commission ("Commission" or "SEC") proposed rule change SR-MRX-2017-04 (the "Original Proposal"), pursuant to which the Exchange proposed to adopt a fee schedule to establish the fees for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail (the "CAT NMS Plan" or "Plan").<sup>12</sup> On November 6, 2017, the Exchange filed an amendment to the Original Proposal ("Amendment No. 1"), which replaced the Original Proposal in its entirety. The Exchange is now filing this Amendment No. 2 to replace Amendment No. 1 in its entirety. This Amendment No. 2 describes the changes from the Original Proposal.

With this Amendment, the Exchange is including *Exhibit 4*, which reflects the changes to the text of the proposed rule change as set forth in the Original Proposal, and *Exhibit 5*, which reflects all proposed changes to the Exchange's current rule text.

The text of the proposed rule change is available on the Exchange's website at <http://nasdaqmrxcchwallstreet.com/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

<sup>11</sup> Amendment No. 2 replaces and supersedes Amendment No. 1 in its entirety.

<sup>12</sup> Unless otherwise specified, capitalized terms used in this fee filing are defined as set forth herein, the CAT Compliance Rule Series, in the CAT NMS Plan, or the Original Proposal.

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

##### 1. Purpose

BOX Options Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc.,<sup>13</sup> Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc. ("FINRA"), Investors' Exchange LLC, Miami International Securities Exchange, LLC, MIA X PEARL, LLC, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC,<sup>14</sup> Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC,<sup>15</sup> NYSE Arca, Inc. and NYSE National, Inc.<sup>16</sup> (collectively, the "Participants") filed with the Commission, pursuant to Section 11A of the Exchange Act<sup>17</sup> and Rule 608 of Regulation NMS thereunder,<sup>18</sup> the CAT NMS Plan.<sup>19</sup> The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act. The Plan was published for comment in the **Federal Register** on May 17, 2016,<sup>20</sup> and approved by the Commission, as modified, on November

<sup>13</sup> Note that Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., LLC, C2 Options Exchange, Incorporated, and Chicago Board Options Exchange, Incorporated, have been renamed Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., respectively.

<sup>14</sup> ISE Gemini, LLC, ISE Mercury, LLC and International Securities Exchange, LLC have been renamed Nasdaq GEMX, LLC, Nasdaq MRX, LLC, and Nasdaq ISE, LLC, respectively. See Securities Exchange Act Release No. 80248 (March 15, 2017), 82 FR 14547 (March 21, 2017); Securities Exchange Act Release No. 80326 (March 29, 2017), 82 FR 16460 (April 4, 2017); and Securities Exchange Act Release No. 80325 (March 29, 2017), 82 FR 16445 (April 4, 2017).

<sup>15</sup> NYSE MKT LLC has been renamed NYSE American LLC. See Securities Exchange Act Release No. 80283 (March 21, 2017), 82 FR 15244 (March 27, 2017).

<sup>16</sup> National Stock Exchange, Inc. has been renamed NYSE National, Inc. See Securities Exchange Act Release No. 79902 (January 30, 2017), 82 FR 9258 (February 3, 2017).

<sup>17</sup> 15 U.S.C. 78k-1.

<sup>18</sup> 17 CFR 242.608.

<sup>19</sup> See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. See Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.

<sup>20</sup> Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30614 (May 17, 2016).

15, 2016.<sup>21</sup> The Plan is designed to create, implement and maintain a consolidated audit trail ("CAT") that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. The Plan accomplishes this by creating CAT NMS, LLC (the "Company"), of which each Participant is a member, to operate the CAT.<sup>22</sup> Under the CAT NMS Plan, the Operating Committee of the Company ("Operating Committee") has discretion to establish funding for the Company to operate the CAT, including establishing fees that the Participants will pay, and establishing fees for Industry Members that will be implemented by the Participants ("CAT Fees").<sup>23</sup> The Participants are required to file with the SEC under Section 19(b) of the Exchange Act any such CAT Fees applicable to Industry Members that the Operating Committee approves.<sup>24</sup> Accordingly, the Exchange submitted the Original Proposal to propose the Consolidated Audit Trail Funding Fees, which would require Industry Members that are SRO members to pay the CAT Fees determined by the Operating Committee.

The Commission published the Original Proposal for public comment in the **Federal Register** on May 24, 2017,<sup>25</sup> and received comments in response to the Original Proposal or similar fee filings by other Participants.<sup>26</sup> On June 30, 2017, the Commission suspended, and instituted proceedings to determine whether to approve or disapprove, the Original Proposal.<sup>27</sup> The Commission received seven comment letters in response to those proceedings.<sup>28</sup>

<sup>21</sup> Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) ("Approval Order").

<sup>22</sup> The Plan also serves as the limited liability company agreement for the Company.

<sup>23</sup> Section 11.1(b) of the CAT NMS Plan.

<sup>24</sup> *Id.*

<sup>25</sup> See Securities Exchange Act Release No. 80726 (May 18, 2017), 82 FR 23915 (May 24, 2017) (SR-MRX-2017-04).

<sup>26</sup> For a summary of comments, see generally Securities Exchange Act Release No. 81067 (June 30, 2017), 82 FR 31656 (July 7, 2017) ("Suspension Order").

<sup>27</sup> Suspension Order.

<sup>28</sup> See Letter from Stuart J. Kaswell, Executive Vice President, Managing Director and General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, SEC (July 28, 2017) ("MFA Letter"); Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Brent J. Fields, Secretary, SEC (July 28, 2017) ("SIFMA Letter"); Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, SEC (July 28, 2017) ("FIA Principal



In response to the comments on the Original Proposal, the Operating Committee determined to make the following changes to the funding model: (1) Adds two additional CAT Fee tiers for Equity Execution Venues; (2) discounts the OTC Equity Securities market share of Execution Venue ATSs trading OTC Equity Securities as well as the market share of the FINRA over-the-counter reporting facility (“ORF”) by the average shares per trade ratio between NMS Stocks and OTC Equity Securities (calculated as 0.17% based on available data from the second quarter of 2017) when calculating the market share of Execution Venue ATS trading OTC Equity Securities and FINRA; (3) discounts the Options Market Maker quotes by the trade to quote ratio for options (calculated as 0.01% based on available data for June 2016 through June 2017) when calculating message traffic for Options Market Makers; (4) discounts equity market maker quotes by the trade to quote ratio for equities (calculated as 5.43% based on available data for June 2016 through June 2017) when calculating message traffic for equity market makers; (5) decreases the number of tiers for Industry Members (other than the Execution Venue ATSs) from nine to seven; (6) changes the allocation of CAT costs between Equity Execution Venues and Options Execution Venues from 75%/25% to 67%/33%; (7) adjusts tier percentages and recovery allocations for Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATSs); (8) focuses the comparability of CAT Fees on the individual entity level, rather than primarily on the comparability of affiliated entities; (9) commences invoicing of CAT Reporters as promptly as possible following the latest of the operative date of the Consolidated Audit Trail Funding Fees for each of the Participants and the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants; and (10) requires the proposed fees to automatically expire two years from the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. As discussed in detail

Traders Group Letter”); Letter from Kevin Coleman, General Counsel & Chief Compliance Officer, Belvedere Trading LLC, to Brent J. Fields, Secretary, SEC (July 28, 2017) (“Belvedere Letter”); Letter from W. Hardy Callcott, Sidley Austin LLP, to Brent J. Fields, Secretary, SEC (July 27, 2017) (“Sidley Letter”); Letter from John Kinahan, Chief Executive Officer, Group One Trading, L.P., to Brent J. Fields, Secretary, SEC (Aug. 10, 2017) (“Group One Letter”); and Letter from Joseph Molluso, Executive Vice President, Virtu Financial, to Brent J. Fields, Secretary, SEC (Aug. 18, 2017) (“Virtu Financial Letter”).

below, the Exchange proposes to amend the Original Proposal to reflect these changes.<sup>29</sup>

#### (1) Executive Summary

The following provides an executive summary of the CAT funding model approved by the Operating Committee, as well as Industry Members’ rights and obligations related to the payment of CAT Fees calculated pursuant to the CAT funding model, as amended by this Amendment. A detailed description of the CAT funding model and the CAT Fees, as amended by this Amendment, as well as the changes made to the Original Proposal follows this executive summary.

#### (A) CAT Funding Model

- *CAT Costs.* The CAT funding model is designed to establish CAT-specific fees to collectively recover the costs of building and operating the CAT from all CAT Reporters, including Industry Members and Participants. The overall CAT costs used in calculating the CAT Fees in this fee filing are comprised of Plan Processor CAT costs and non-Plan Processor CAT costs incurred, and estimated to be incurred, from November 21, 2016 through November 21, 2017. Although the CAT costs from November 21, 2016 through November 21, 2017 were used in calculating the CAT Fees, the CAT Fees set forth in this fee filing would be in effect until the automatic sunset date, as discussed below. (See Section 3(a)(2)(E) below)

- *Bifurcated Funding Model.* The CAT NMS Plan requires a bifurcated funding model, where costs associated with building and operating the CAT would be borne by (1) Participants and Industry Members that are Execution Venues for Eligible Securities through fixed tier fees based on market share, and (2) Industry Members (other than alternative trading systems (“ATSs”) that execute transactions in Eligible Securities (“Execution Venue ATSs”)) through fixed tier fees based on message traffic for Eligible Securities. (See Section 3(a)(2) below)

- *Industry Member Fees.* Each Industry Member (other than Execution Venue ATSs) will be placed into one of seven tiers of fixed fees, based on “message traffic” in Eligible Securities for a defined period (as discussed below). Prior to the start of CAT reporting, “message traffic” will be comprised of historical equity and equity options orders, cancels, quotes and executions provided by each

exchange and FINRA over the previous three months. After an Industry Member begins reporting to the CAT, “message traffic” will be calculated based on the Industry Member’s Reportable Events reported to the CAT. Industry Members with lower levels of message traffic will pay a lower fee and Industry Members with higher levels of message traffic will pay a higher fee. To avoid disincentives to quoting behavior, Options Market Maker and equity market maker quotes will be discounted when calculating message traffic. (See Section 3(a)(2)(B) below)

- *Execution Venue Fees.* Each Equity Execution Venue will be placed in one of four tiers of fixed fees based on market share, and each Options Execution Venue will be placed in one of two tiers of fixed fees based on market share. Equity Execution Venue market share will be determined by calculating each Equity Execution Venue’s proportion of the total volume of NMS Stock and OTC Equity shares reported by all Equity Execution Venues during the relevant time period. For purposes of calculating market share, the OTC Equity Securities market share of Execution Venue ATSs trading OTC Equity Securities as well as the market share of the FINRA ORF will be discounted. Similarly, market share for Options Execution Venues will be determined by calculating each Options Execution Venue’s proportion of the total volume of Listed Options contracts reported by all Options Execution Venues during the relevant time period. Equity Execution Venues with a larger market share will pay a larger CAT Fee than Equity Execution Venues with a smaller market share. Similarly, Options Execution Venues with a larger market share will pay a larger CAT Fee than Options Execution Venues with a smaller market share. (See Section 3(a)(2)(C) below)

- *Cost Allocation.* For the reasons discussed below, in designing the model, the Operating Committee determined that 75 percent of total costs recovered would be allocated to Industry Members (other than Execution Venue ATSs) and 25 percent would be allocated to Execution Venues. In addition, the Operating Committee determined to allocate 67 percent of Execution Venue costs recovered to Equity Execution Venues and 33 percent to Options Execution Venues. (See Section 3(a)(2)(D) below)

- *Comparability of Fees.* The CAT funding model charges CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable)

<sup>29</sup> As part of this proposal, the Exchange is also changing the numbering of the proposed fees from Item IV to Item V in the Schedule of Fees.

comparable CAT Fees. (See Section 3(a)(2)(F) below)

(B) CAT Fees for Industry Members

- *Fee Schedule.* The quarterly CAT Fees for each tier for Industry Members are set forth in the two fee schedules in the Consolidated Audit Trail Funding Fees, one for Equity ATs and one for Industry Members other than Equity ATs. (See Section 3(a)(3)(B) below)

- *Quarterly Invoices.* Industry Members will be billed quarterly for CAT Fees, with the invoices payable within 30 days. The quarterly invoices will identify within which tier the Industry Member falls. (See Section 3(a)(3)(C) below)

- *Centralized Payment.* Each Industry Member will receive from the Company one invoice for its applicable CAT Fees, not separate invoices from each Participant of which it is a member. Each Industry Member will pay its CAT Fees to the Company via the centralized system for the collection of CAT Fees established by the Operating Committee. (See Section 3(a)(3)(C) below)

- *Billing Commencement.* Industry Members will begin to receive invoices for CAT Fees as promptly as possible following the latest of the operative date of the Consolidated Audit Trail Funding Fees for each of the Participants and the operative date of the Plan amendment adopting CAT Fees for Participants. (See Section 3(a)(2)(G) below)

- *Sunset Provision.* The Consolidated Audit Trail Funding Fees will sunset automatically two years from the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. (See Section 3(a)(2)(F) below)

(2) Description of the CAT Funding Model

Article XI of the CAT NMS Plan requires the Operating Committee to approve the operating budget, including projected costs of developing and operating the CAT for the upcoming year. In addition to a budget, Article XI of the CAT NMS Plan provides that the Operating Committee has discretion to establish funding for the Company, consistent with a bifurcated funding model, where costs associated with building and operating the Central Repository would be borne by (1) Participants and Industry Members that are Execution Venues through fixed tier fees based on market share, and (2) Industry Members (other than Execution Venue ATs) through fixed tier fees based on message traffic. In its order approving the CAT NMS Plan, the Commission determined that the proposed funding model was

“reasonable”<sup>30</sup> and “reflects a reasonable exercise of the Participants’ funding authority to recover the Participants’ costs related to the CAT.”<sup>31</sup>

More specifically, the Commission stated in approving the CAT NMS Plan that “[t]he Commission believes that the proposed funding model is reasonably designed to allocate the costs of the CAT between the Participants and Industry Members.”<sup>32</sup> The Commission further noted the following:

The Commission believes that the proposed funding model reflects a reasonable exercise of the Participants’ funding authority to recover the Participants’ costs related to the CAT. The CAT is a regulatory facility jointly owned by the Participants and . . . the Exchange Act specifically permits the Participants to charge their members fees to fund their self-regulatory obligations. The Commission further believes that the proposed funding model is designed to impose fees reasonably related to the Participants’ self-regulatory obligations because the fees would be directly associated with the costs of establishing and maintaining the CAT, and not unrelated SRO services.<sup>33</sup>

Accordingly, the funding model approved by the Operating Committee imposes fees on both Participants and Industry Members.

As discussed in Appendix C of the CAT NMS Plan, in developing and approving the approved funding model, the Operating Committee considered the advantages and disadvantages of a variety of alternative funding and cost allocation models before selecting the proposed model.<sup>34</sup> After analyzing the various alternatives, the Operating Committee determined that the proposed tiered, fixed fee funding model provides a variety of advantages in comparison to the alternatives.

In particular, the fixed fee model, as opposed to a variable fee model, provides transparency, ease of calculation, ease of billing and other administrative functions, and predictability of a fixed fee. Such factors are crucial to estimating a reliable revenue stream for the Company and for permitting CAT Reporters to reasonably predict their payment obligations for budgeting purposes. Additionally, a strictly variable or metered funding model based on message volume would be far more likely to affect market behavior and place an inappropriate burden on competition.

In addition, reviews from varying time periods of current broker-dealer order and trading data submitted under existing reporting requirements showed a wide range in activity among broker-dealers, with a number of broker-dealers submitting fewer than 1,000 orders per month and other broker-dealers submitting millions and even billions of orders in the same period. Accordingly, the CAT NMS Plan includes a tiered approach to fees. The tiered approach helps ensure that fees are equitably allocated among similarly situated CAT Reporters and furthers the goal of lessening the impact on smaller firms.<sup>35</sup> In addition, in choosing a tiered fee structure, the Operating Committee concluded that the variety of benefits offered by a tiered fee structure, discussed above, outweighed the fact that CAT Reporters in any particular tier would pay different rates per message traffic order event or per market share (e.g., an Industry Member with the largest amount of message traffic in one tier would pay a smaller amount per order event than an Industry Member in the same tier with the least amount of message traffic). Such variation is the natural result of a tiered fee structure.<sup>36</sup> The Operating Committee considered several approaches to developing a tiered model, including defining fee tiers based on such factors as size of firm, message traffic or trading dollar volume. After analyzing the alternatives, it was concluded that the tiering should be based on message traffic which will reflect the relative impact of CAT Reporters on the CAT System.

Accordingly, the CAT NMS Plan contemplates that costs will be allocated across the CAT Reporters on a tiered basis in order to allocate higher costs to those CAT Reporters that contribute more to the costs of creating, implementing and maintaining the CAT and lower costs to those that contribute less.<sup>37</sup> The fees to be assessed at each tier are calculated so as to recoup a proportion of costs appropriate to the message traffic or market share (as applicable) from CAT Reporters in each tier. Therefore, Industry Members generating the most message traffic will be in the higher tiers, and will be charged a higher fee. Industry Members with lower levels of message traffic will be in lower tiers and will be assessed a

<sup>35</sup> Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85006.

<sup>36</sup> Moreover, as the SEC noted in approving the CAT NMS Plan, “[t]he Participants also have offered a reasonable basis for establishing a funding model based on broad tiers, in that it may be easier to implement.” Approval Order at 84796.

<sup>37</sup> Approval Order at 85005.

<sup>30</sup> Approval Order at 84796.

<sup>31</sup> *Id.* at 84794.

<sup>32</sup> *Id.* at 84795.

<sup>33</sup> *Id.* at 84794.

<sup>34</sup> Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85006.



smaller fee for the CAT.<sup>38</sup>

Correspondingly, Execution Venues with the highest market shares will be in the top tier, and will be charged higher fees. Execution Venues with the lowest market shares will be in the lowest tier and will be assessed smaller fees for the CAT.<sup>39</sup>

The CAT NMS Plan states that Industry Members (other than Execution Venue ATs) will be charged based on message traffic, and that Execution Venues will be charged based on market share.<sup>40</sup> While there are multiple factors that contribute to the cost of building, maintaining and using the CAT, processing and storage of incoming message traffic is one of the most significant cost drivers for the CAT.<sup>41</sup> Thus, the CAT NMS Plan provides that the fees payable by Industry Members (other than Execution Venue ATs) will be based on the message traffic generated by such Industry Member.<sup>42</sup>

In contrast to Industry Members, which determine the degree to which they produce message traffic that constitute CAT Reportable Events, the CAT Reportable Events of the Execution Venues are largely derivative of quotations and orders received from Industry Members that they are required to display. The business model for Execution Venues (other than FINRA), however, is focused on executions in their markets. As a result, the Operating Committee believes that it is more equitable to charge Execution Venues based on their market share rather than their message traffic.

Focusing on message traffic would make it more difficult to draw distinctions between large and small Execution Venues and, in particular, between large and small options exchanges. For instance, the Operating Committee analyzed the message traffic of Execution Venues and Industry Members for the period of April 2017 to June 2017 and placed all CAT Reporters into a nine-tier framework (*i.e.*, a single tier may include both Execution Venues and Industry Members). The Operating Committee's analysis found that the majority of exchanges (15 total) were grouped in Tiers 1 and 2. Moreover, virtually all of the options exchanges were in Tiers 1 and 2.<sup>43</sup> Given the resulting concentration of options

exchanges in Tiers 1 and 2 under this approach, the analysis shows that a funding model for Execution Venues based on message traffic would make it more difficult to distinguish between large and small options exchanges, as compared to the proposed fee approach that bases fees for Execution Venues on market share.

The CAT NMS Plan's funding model also is structured to avoid a "reduction in market quality."<sup>44</sup> The tiered, fixed fee funding model is designed to limit the disincentives to providing liquidity to the market. For example, the Operating Committee expects that a firm that has a large volume of quotes would likely be categorized in one of the upper tiers, and would not be assessed a fee for this traffic directly as they would under a more directly metered model. In contrast, strictly variable or metered funding models based on message volume are far more likely to affect market behavior. In approving the CAT NMS Plan, the SEC stated that "[t]he Participants also offered a reasonable basis for establishing a funding model based on broad tiers, in that it may be . . . less likely to have an incremental deterrent effect on liquidity provision."<sup>45</sup>

The funding model also is structured to avoid a reduction market quality because it discounts Options Market Maker and equity market maker quotes when calculating message traffic for Options Market Makers and equity market makers, respectively. As discussed in more detail below, the Operating Committee determined to discount the Options Market Maker quotes by the trade to quote ratio for options when calculating message traffic for Options Market Makers. Similarly, to avoid disincentives to quoting behavior on the equities side as well, the Operating Committee determined to discount equity market maker quotes by the trade to quote ratio for equities when calculating message traffic for equity market makers. The proposed discounts recognize the value of the market makers' quoting activity to the market as a whole.

The CAT NMS Plan is further structured to avoid potential conflicts raised by the Operating Committee determining fees applicable to its own members—the Participants. First, the Company will operate on a "break-even" basis, with fees imposed to cover costs and an appropriate reserve. Any surpluses will be treated as an operational reserve to offset future fees and will not be distributed to the

Participants as profits.<sup>46</sup> To ensure that the Participants' operation of the CAT will not contribute to the funding of their other operations, Section 11.1(c) of the CAT NMS Plan specifically states that "[a]ny surplus of the Company's revenues over its expenses shall be treated as an operational reserve to offset future fees." In addition, as set forth in Article VIII of the CAT NMS Plan, the Company "intends to operate in a manner such that it qualifies as a 'business league' within the meaning of Section 501(c)(6) of the [Internal Revenue] Code." To qualify as a business league, an organization must "not [be] organized for profit and no part of the net earnings of [the organization can] inure[] to the benefit of any private shareholder or individual."<sup>47</sup> As the SEC stated when approving the CAT NMS Plan, "the Commission believes that the Company's application for Section 501(c)(6) business league status addresses issues raised by commenters about the Plan's proposed allocation of profit and loss by mitigating concerns that the Company's earnings could be used to benefit individual Participants."<sup>48</sup> The Internal Revenue Service recently has determined that the Company is exempt from federal income tax under Section 501(c)(6) of the Internal Revenue Code.

The funding model also is structured to take into account distinctions in the securities trading operations of Participants and Industry Members. For example, the Operating Committee designed the model to address the different trading characteristics in the OTC Equity Securities market. Specifically, the Operating Committee proposes to discount the OTC Equity Securities market share of Execution Venue ATs trading OTC Equity Securities as well as the market share of the FINRA ORF by the average shares per trade ratio between NMS Stocks and OTC Equity Securities to adjust for the greater number of shares being traded in the OTC Equity Securities market, which is generally a function of a lower per share price for OTC Equity Securities when compared to NMS Stocks. In addition, the Operating Committee also proposes to discount Options Market Maker and equity market maker message traffic in recognition of their role in the securities markets. Furthermore, the funding model creates separate tiers for Equity and Options Execution Venues due to

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> Section 11.3(a) and (b) of the CAT NMS Plan.

<sup>41</sup> Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85005.

<sup>42</sup> Section 11.3(b) of the CAT NMS Plan.

<sup>43</sup> The Operating Committee notes that this analysis did not place MIAx PEARL in Tier 1 or Tier 2 since the exchange commenced trading on February 6, 2017.

<sup>44</sup> Section 11.2(e) of the CAT NMS Plan.

<sup>45</sup> Approval Order at 84796.

<sup>46</sup> *Id.* at 84792.

<sup>47</sup> 26 U.S.C. 501(c)(6).

<sup>48</sup> Approval Order at 84793.

the different trading characteristics of those markets.

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

A full description of the funding model is set forth below. This description includes the framework for the funding model as set forth in the CAT NMS Plan, as well as the details as to how the funding model will be applied in practice, including the number of fee tiers and the applicable fees for each tier. The complete funding model is described below, including those fees that are to be paid by the Participants. The proposed Consolidated Audit Trail Funding Fees, however, do not apply to the Participants; the proposed Consolidated Audit Trail Funding Fees only apply to Industry Members. The CAT Fees for Participants will be imposed separately by the Operating Committee pursuant to the CAT NMS Plan.

#### (A) Funding Principles

Section 11.2 of the CAT NMS Plan sets forth the principles that the Operating Committee applied in establishing the funding for the Company. The Operating Committee has considered these funding principles as well as the other funding requirements set forth in the CAT NMS Plan and in Rule 613 in developing the proposed funding model. The following are the funding principles in Section 11.2 of the CAT NMS Plan:

- To create transparent, predictable revenue streams for the Company that are aligned with the anticipated costs to build, operate and administer the CAT and other costs of the Company;
- To establish an allocation of the Company's related costs among Participants and Industry Members that is consistent with the Exchange Act, taking into account the timeline for implementation of the CAT and distinctions in the securities trading operations of Participants and Industry Members and their relative impact upon the Company's resources and operations;
- To establish a tiered fee structure in which the fees charged to: (i) CAT Reporters that are Execution Venues, including ATSs, are based upon the level of market share; (ii) Industry Members' non-ATS activities are based upon message traffic; (iii) the CAT Reporters with the most CAT-related

activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venue and/or Industry Members);

- To provide for ease of billing and other administrative functions;
- To avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality; and
- To build financial stability to support the Company as a going concern.

#### (B) Industry Member Tiering

Under Section 11.3(b) of the CAT NMS Plan, the Operating Committee is required to establish fixed fees to be payable by Industry Members, based on message traffic generated by such Industry Member, with the Operating Committee establishing at least five and no more than nine tiers.

The CAT NMS Plan clarifies that the fixed fees payable by Industry Members pursuant to Section 11.3(b) shall, in addition to any other applicable message traffic, include message traffic generated by: (i) An ATS that does not execute orders that is sponsored by such Industry Member; and (ii) routing orders to and from any ATS sponsored by such Industry Member. In addition, the Industry Member fees will apply to Industry Members that act as routing broker-dealers for exchanges. The Industry Member fees will not be applicable, however, to an ATS that qualifies as an Execution Venue, as discussed in more detail in the section on Execution Venue tiering.

In accordance with Section 11.3(b), the Operating Committee approved a tiered fee structure for Industry Members (other than Execution Venue ATSs) as described in this section. In determining the tiers, the Operating Committee considered the funding principles set forth in Section 11.2 of the CAT NMS Plan, seeking to create funding tiers that take into account the relative impact on CAT System resources of different Industry Members, and that establish comparable fees among the CAT Reporters with the most Reportable Events. The Operating Committee has determined that establishing seven tiers results in an allocation of fees that distinguishes between Industry Members with differing levels of message traffic. Thus, each such Industry Member will be placed into one of seven tiers of fixed fees, based on "message traffic" for a defined period (as discussed below).

A seven tier structure was selected to provide a wide range of levels for tiering Industry Members such that Industry Members submitting significantly less message traffic to the CAT would be adequately differentiated from Industry Members submitting substantially more message traffic. The Operating Committee considered historical message traffic from multiple time periods, generated by Industry Members across all exchanges and as submitted to FINRA's Order Audit Trail System ("OATS"), and considered the distribution of firms with similar levels of message traffic, grouping together firms with similar levels of message traffic. Based on this, the Operating Committee determined that seven tiers would group firms with similar levels of message traffic, charging those firms with higher impact on the CAT more, while lowering the burden on Industry Members that have less CAT-related activity. Furthermore, the selection of seven tiers establishes comparable fees among the largest CAT Reporters.

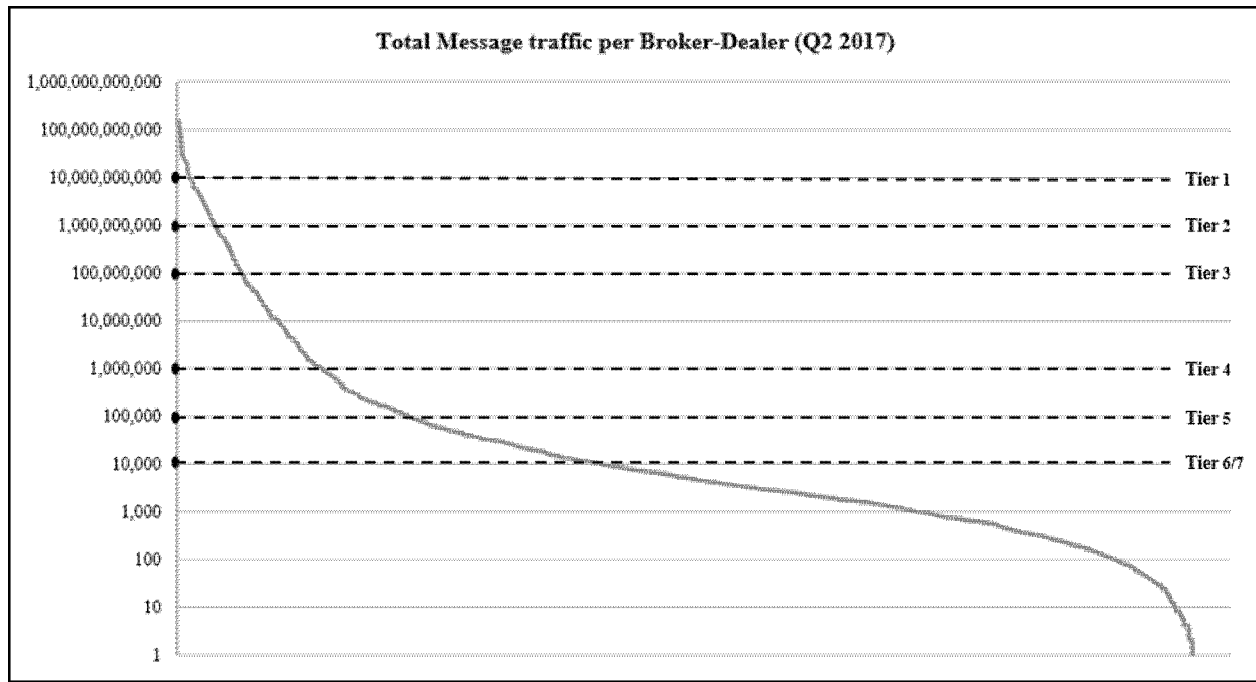
Each Industry Member (other than Execution Venue ATSs) will be ranked by message traffic and tiered by predefined Industry Member percentages (the "Industry Member Percentages"). The Operating Committee determined to use predefined percentages rather than fixed volume thresholds to ensure that the total CAT Fees collected recover the expected CAT costs regardless of changes in the total level of message traffic. To determine the fixed percentage of Industry Members in each tier, the Operating Committee analyzed historical message traffic generated by Industry Members across all exchanges and as submitted to OATS, and considered the distribution of firms with similar levels of message traffic, grouping together firms with similar levels of message traffic. Based on this, the Operating Committee identified seven tiers that would group firms with similar levels of message traffic.

The percentage of costs recovered by each Industry Member tier will be determined by predefined percentage allocations (the "Industry Member Recovery Allocation"). In determining the fixed percentage allocation of costs recovered for each tier, the Operating Committee considered the impact of CAT Reporter message traffic on the CAT System as well as the distribution of total message volume across Industry Members while seeking to maintain comparable fees among the largest CAT Reporters. Accordingly, following the determination of the percentage of Industry Members in each tier, the Operating Committee identified the

percentage of total market volume for each tier based on the historical message traffic upon which Industry Members had been initially ranked. Taking this into account along with the resulting percentage of total recovery, the percentage allocation of costs recovered for each tier were assigned, allocating higher percentages of recovery to tiers with higher levels of message traffic while avoiding any inappropriate burden on competition. Furthermore, by using percentages of Industry Members and costs recovered per tier, the Operating Committee sought to include elasticity within the funding model, allowing the funding model to respond to changes in either the total number of Industry Members or the total level of message traffic.

The following chart illustrates the breakdown of seven Industry Member tiers across the monthly average of total equity and equity options orders, cancels, quotes and executions in the second quarter of 2017 as well as message traffic thresholds between the largest of Industry Member message traffic gaps. The Operating Committee referenced similar distribution illustrations to determine the appropriate division of Industry Member percentages in each tier by considering the grouping of firms with similar levels of message traffic and seeking to identify relative breakpoints in the message traffic between such groupings. In reviewing the chart and its corresponding table, note that while these distribution illustrations were referenced to help differentiate between

Industry Member tiers, the proposed funding model is driven by fixed percentages of Industry Members across tiers to account for fluctuating levels of message traffic over time. This approach also provides financial stability for the CAT by ensuring that the funding model will recover the required amounts regardless of changes in the number of Industry Members or the amount of message traffic. Actual messages in any tier will vary based on the actual traffic in a given measurement period, as well as the number of firms included in the measurement period. The Industry Member Percentages and Industry Member Recovery Allocation for each tier will remain fixed with each Industry Member's tier to be reassigned periodically, as described below in Section 3(a)(2)(I).



Industry Member tier	Approximate message traffic per Industry Member (Q2 2017) (orders, quotes, cancels and executions)
Tier 1	>10,000,000,000
Tier 2	1,000,000,000–10,000,000,000
Tier 3	100,000,000–1,000,000,000
Tier 4	1,000,000–100,000,000
Tier 5	100,000–1,000,000
Tier 6	10,000–100,000
Tier 7	<10,000

Based on the above analysis, the Operating Committee approved the following Industry Member Percentages

and Industry Member Recovery Allocations:

Industry Member tier	Percentage of Industry Members	Percentage of Industry Member Recovery	Percentage of total recovery
Tier 1 .....	0.900	12.00	9.00
Tier 2 .....	2.150	20.50	15.38
Tier 3 .....	2.800	18.50	13.88
Tier 4 .....	7.750	32.00	24.00
Tier 5 .....	8.300	10.00	7.50
Tier 6 .....	18.800	6.00	4.50
Tier 7 .....	59.300	1.00	0.75
Total .....	100	100	75

For the purposes of creating these tiers based on message traffic, the Operating Committee determined to define the term “message traffic” separately for the period before the commencement of CAT reporting and for the period after the start of CAT reporting. The different definition for message traffic is necessary as there will be no Reportable Events as defined in the Plan, prior to the commencement of CAT reporting. Accordingly, prior to the start of CAT reporting, “message traffic” will be comprised of historical equity and equity options orders, cancels, quotes and executions provided by each exchange and FINRA over the previous three months. Prior to the start of CAT reporting, orders would be comprised of the total number of equity and equity options orders received and originated by a member of an exchange or FINRA over the previous three-month period, including principal orders, cancel/replace orders, market maker orders originated by a member of an exchange, and reserve (iceberg) orders as well as executions originated by a member of FINRA, and excluding order rejects, system-modified orders, order routes and implied orders.<sup>49</sup> In addition, prior to the start of CAT reporting, cancels would be comprised of the total number of equity and equity option cancels received and originated by a member of an exchange or FINRA over a three-month period, excluding order modifications (e.g., order updates, order splits, partial cancels) and multiple cancels of a complex order. Furthermore, prior to the start of CAT reporting, quotes would be comprised of information readily available to the exchanges and FINRA, such as the total number of historical equity and equity options quotes received and originated by a member of an exchange or FINRA over the prior three-month period.

<sup>49</sup> Consequently, firms that do not have “message traffic” reported to an exchange or OATS before they are reporting to the CAT would not be subject to a fee until they begin to report information to CAT.

Additionally, prior to the start of CAT reporting, executions would be comprised of the total number of equity and equity option executions received or originated by a member of an exchange or FINRA over a three-month period.

After an Industry Member begins reporting to the CAT, “message traffic” will be calculated based on the Industry Member’s Reportable Events reported to the CAT as will be defined in the Technical Specifications.<sup>50</sup>

Quotes of Options Market Makers and equity market makers will be included in the calculation of total message traffic for those market makers for purposes of tiering under the CAT funding model both prior to CAT reporting and once CAT reporting commences.<sup>51</sup> To address potential concerns regarding burdens on competition or market quality of including quotes in the calculation of message traffic, however, the Operating Committee determined to discount the Options Market Maker quotes by the trade to quote ratio for options when calculating message traffic for Options Market Makers. Based on available data for June 2016 through June 2017, the trade to quote ratio for options is 0.01%. Similarly, to avoid disincentives to quoting behavior on the equities side, the Operating Committee

<sup>50</sup> If an Industry Member (other than an Execution Venue ATS) has no orders, cancels, quotes and executions prior to the commencement of CAT Reporting, or no Reportable Events after CAT reporting commences, then the Industry Member would not have a CAT Fee obligation.

<sup>51</sup> The SEC approved exemptive relief permitting Options Market Maker quotes to be reported to the Central Repository by the relevant Options Exchange in lieu of requiring that such reporting be done by both the Options Exchange and the Options Market Maker, as required by Rule 613 of Regulation NMS. See Securities Exchange Act Release No. 77265 (March 1, 2017), 81 FR 11856 (March 7, 2016). This exemption applies to Options Market Maker quotes for CAT reporting purposes only. Therefore, notwithstanding the reporting exemption provided for Options Market Maker quotes, Options Market Maker quotes will be included in the calculation of total message traffic for Options Market Makers for purposes of tiering under the CAT funding model both prior to CAT reporting and once CAT reporting commences.

determined to discount equity market maker quotes by the trade to quote ratio for equities. Based on available data for June 2016 through June 2017, the trade to quote ratio for equities is 5.43%.<sup>52</sup> The trade to quote ratio for options and the trade to quote ratio for equities will be calculated every three months when tiers are recalculated (as discussed below).

The Operating Committee has determined to calculate fee tiers every three months, on a calendar quarter basis, based on message traffic from the prior three months. Based on its analysis of historical data, the Operating Committee believes that calculating tiers based on three months of data will provide the best balance between reflecting changes in activity by Industry Members while still providing predictability in the tiering for Industry Members. Because fee tiers will be calculated based on message traffic from the prior three months, the Operating Committee will begin calculating message traffic based on an Industry Member’s Reportable Events reported to the CAT once the Industry Member has been reporting to the CAT for three months. Prior to that, fee tiers will be calculated as discussed above with regard to the period prior to CAT reporting.

### (C) Execution Venue Tiering

Under Section 11.3(a) of the CAT NMS Plan, the Operating Committee is required to establish fixed fees payable by Execution Venues. Section 1.1 of the CAT NMS Plan defines an Execution Venue as “a Participant or an alternative trading system (“ATS”) (as defined in Rule 300 of Regulation ATS) that operates pursuant to Rule 301 of

<sup>52</sup> The trade to quote ratios were calculated based on the inverse of the average of the monthly equity SIP and OPRA quote to trade ratios from June 2016–June 2017 that were compiled by the Financial Information Forum using data from Nasdaq and SIAC.

Regulation ATS (excluding any such ATS that does not execute orders).”<sup>53</sup>

The Operating Committee determined that ATSs should be included within the definition of Execution Venue. The Operating Committee believes that it is appropriate to treat ATSs as Execution Venues under the proposed funding model since ATSs have business models that are similar to those of exchanges, and ATSs also compete with exchanges.

Given the differences between Execution Venues that trade NMS Stocks and/or OTC Equity Securities and Execution Venues that trade Listed Options, Section 11.3(a) addresses Execution Venues that trade NMS Stocks and/or OTC Equity Securities separately from Execution Venues that trade Listed Options. Equity and Options Execution Venues are treated separately for two reasons. First, the differing quoting behavior of Equity and Options Execution Venues makes comparison of activity between such Execution Venues difficult. Second, Execution Venue tiers are calculated based on market share of share volume, and it is therefore difficult to compare market share between asset classes (*i.e.*, equity shares versus options contracts). Discussed below is how the funding model treats the two types of Execution Venues.

#### (I) NMS Stocks and OTC Equity Securities

Section 11.3(a)(i) of the CAT NMS Plan states that each Execution Venue that (i) executes transactions or, (ii) in the case of a national securities association, has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange, in NMS Stocks or OTC Equity Securities will pay a fixed fee depending on the market share of that Execution Venue in NMS Stocks and OTC Equity Securities, with the Operating Committee establishing at least two and not more than five tiers of fixed fees, based on an Execution Venue’s NMS Stocks and OTC Equity Securities market share. For these purposes, market share for Execution Venues that execute transactions will be calculated by share volume, and market share for a national securities association that has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange in NMS Stocks or OTC Equity Securities will be

calculated based on share volume of trades reported, provided, however, that the share volume reported to such national securities association by an Execution Venue shall not be included in the calculation of such national security association’s market share.

In accordance with Section 11.3(a)(i) of the CAT NMS Plan, the Operating Committee approved a tiered fee structure for Equity Execution Venues and Option Execution Venues. In determining the Equity Execution Venue Tiers, the Operating Committee considered the funding principles set forth in Section 11.2 of the CAT NMS Plan, seeking to create funding tiers that take into account the relative impact on system resources of different Equity Execution Venues, and that establish comparable fees among the CAT Reporters with the most Reportable Events. Each Equity Execution Venue will be placed into one of four tiers of fixed fees, based on the Execution Venue’s NMS Stocks and OTC Equity Securities market share. In choosing four tiers, the Operating Committee performed an analysis similar to that discussed above with regard to the non-Execution Venue Industry Members to determine the number of tiers for Equity Execution Venues. The Operating Committee determined to establish four tiers for Equity Execution Venues, rather than a larger number of tiers as established for non-Execution Venue Industry Members, because the four tiers were sufficient to distinguish between the smaller number of Equity Execution Venues based on market share. Furthermore, the selection of four tiers serves to help establish comparability among the largest CAT Reporters.

Each Equity Execution Venue will be ranked by market share and tiered by predefined Execution Venue percentages (the “Equity Execution Venue Percentages”). In determining the fixed percentage of Equity Execution Venues in each tier, the Operating Committee reviewed historical market share of share volume for Execution Venues. Equity Execution Venue market shares of share volume were sourced from market statistics made publicly-available by Bats Global Markets, Inc. (“Bats”). ATS market shares of share volume was sourced from market statistics made publicly-available by FINRA. FINRA trade reporting facility (“TRF”) and ORF market share of share volume was sourced from market statistics made publicly available by FINRA. Based on data from FINRA and *otcm Markets.com*, ATSs accounted for 39.12% of the share volume across the TRFs and ORFs during the recent tiering

period. A 39.12/60.88 split was applied to the ATS and non-ATS breakdown of FINRA market share, with FINRA tiered based only on the non-ATS portion of its market share of share volume.

The Operating Committee determined to discount the OTC Equity Securities market share of Execution Venue ATSs trading OTC Equity Securities as well as the market share of the FINRA ORF in recognition of the different trading characteristics of the OTC Equity Securities market as compared to the market in NMS Stocks. Many OTC Equity Securities are priced at less than one dollar—and a significant number at less than one penny—per share and low-priced shares tend to trade in larger quantities. Accordingly, a disproportionately large number of shares are involved in transactions involving OTC Equity Securities versus NMS Stocks. Because the proposed fee tiers are based on market share calculated by share volume, Execution Venue ATSs trading OTC Equity Securities and FINRA would likely be subject to higher tiers than their operations may warrant. To address this potential concern, the Operating Committee determined to discount the OTC Equity Securities market share of Execution Venue ATSs trading OTC Equity Securities and the market share of the FINRA ORF by multiplying such market share by the average shares per trade ratio between NMS Stocks and OTC Equity Securities in order to adjust for the greater number of shares being traded in the OTC Equity Securities market. Based on available data for the second quarter of 2017, the average shares per trade ratio between NMS Stocks and OTC Equity Securities is 0.17%.<sup>54</sup> The average shares per trade ratio between NMS Stocks and OTC Equity Securities will be recalculated every three months when tiers are recalculated.

Based on this, the Operating Committee considered the distribution of Execution Venues, and grouped together Execution Venues with similar levels of market share. The percentage of costs recovered by each Equity Execution Venue tier will be determined by predefined percentage allocations (the “Equity Execution Venue Recovery Allocation”). In determining the fixed percentage allocation of costs to be recovered from each tier, the Operating Committee considered the impact of

<sup>53</sup> Although FINRA does not operate an execution venue, because it is a Participant, it is considered an “Execution Venue” under the Plan for purposes of determining fees.

<sup>54</sup> The average shares per trade ratio for both NMS Stocks and OTC Equity Securities from the second quarter of 2017 was calculated using publicly available market volume data from Bats and OTC Markets Group, and the totals were divided to determine the average number of shares per trade between NMS Stocks and OTC Equity Securities.

CAT Reporter market share activity on the CAT System as well as the distribution of total market volume across Equity Execution Venues while seeking to maintain comparable fees among the largest CAT Reporters. Accordingly, following the determination of the percentage of Execution Venues in each tier, the Operating Committee identified the percentage of total market volume for each tier based on the historical market

share upon which Execution Venues had been initially ranked. Taking this into account along with the resulting percentage of total recovery, the percentage allocation of cost recovery for each tier were assigned, allocating higher percentages of recovery to the tier with a higher level of market share while avoiding any inappropriate burden on competition. Furthermore, by using percentages of Equity Execution Venues and cost recovery per tier, the

Operating Committee sought to include elasticity within the funding model, allowing the funding model to respond to changes in either the total number of Equity Execution Venues or changes in market share.

Based on this analysis, the Operating Committee approved the following Equity Execution Venue Percentages and Recovery Allocations:

• Equity Execution Venue tier	• Percentage of Equity Execution Venues	• Percentage of Execution Venue Recovery	• Percentage of total recovery
• Tier 1 .....	• 25.00	• 33.25	• 8.31
• Tier 2 .....	• 42.00	• 25.73	• 6.43
• Tier 3 .....	• 23.00	• 8.00	• 2.00
Tier 4 .....	• 10.00	• 0.02	• 0.01
• Total .....	• 100	• 67	• 16.75

(II) Listed Options

Section 11.3(a)(ii) of the CAT NMS Plan states that each Execution Venue that executes transactions in Listed Options will pay a fixed fee depending on the Listed Options market share of that Execution Venue, with the Operating Committee establishing at least two and no more than five tiers of fixed fees, based on an Execution Venue's Listed Options market share. For these purposes, market share will be calculated by contract volume.

In accordance with Section 11.3(a)(ii) of the CAT NMS Plan, the Operating Committee approved a tiered fee structure for Options Execution Venues. In determining the tiers, the Operating Committee considered the funding principles set forth in Section 11.2 of the CAT NMS Plan, seeking to create funding tiers that take into account the relative impact on system resources of different Options Execution Venues, and that establish comparable fees among the CAT Reporters with the most Reportable Events. Each Options Execution Venue will be placed into one of two tiers of fixed fees, based on the Execution Venue's Listed Options market share. In choosing two tiers, the Operating Committee performed an analysis similar to that discussed above with regard to Industry Members (other than Execution Venue ATSs) to

determine the number of tiers for Options Execution Venues. The Operating Committee determined to establish two tiers for Options Execution Venues, rather than a larger number, because the two tiers were sufficient to distinguish between the smaller number of Options Execution Venues based on market share. Furthermore, due to the smaller number of Options Execution Venues, the incorporation of additional Options Execution Venue tiers would result in significantly higher fees for Tier 1 Options Execution Venues and reduce comparability between Execution Venues and Industry Members. Furthermore, the selection of two tiers served to establish comparable fees among the largest CAT Reporters.

Each Options Execution Venue will be ranked by market share and tiered by predefined Execution Venue percentages (the "Options Execution Venue Percentages"). To determine the fixed percentage of Options Execution Venues in each tier, the Operating Committee analyzed the historical and publicly available market share of Options Execution Venues to group Options Execution Venues with similar market shares across the tiers. Options Execution Venue market share of share volume were sourced from market statistics made publicly-available by

Bats. The process for developing the Options Execution Venue Percentages was the same as discussed above with regard to Equity Execution Venues.

The percentage of costs to be recovered from each Options Execution Venue tier will be determined by predefined percentage allocations (the "Options Execution Venue Recovery Allocation"). In determining the fixed percentage allocation of cost recovery for each tier, the Operating Committee considered the impact of CAT Reporter market share activity on the CAT System as well as the distribution of total market volume across Options Execution Venues while seeking to maintain comparable fees among the largest CAT Reporters. Furthermore, by using percentages of Options Execution Venues and cost recovery per tier, the Operating Committee sought to include elasticity within the funding model, allowing the funding model to respond to changes in either the total number of Options Execution Venues or changes in market share. The process for developing the Options Execution Venue Recovery Allocation was the same as discussed above with regard to Equity Execution Venues.

Based on this analysis, the Operating Committee approved the following Options Execution Venue Percentages and Recovery Allocations:

Options Execution Venue tier	Percentage of Options Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1 .....	75.00	28.25	7.06
Tier 2 .....	25.00	4.75	1.19

Options Execution Venue tier	Percentage of Options Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Total .....	100	33	8.25

### (III) Market Share/Tier Assignments

The Operating Committee determined that, prior to the start of CAT reporting, market share for Execution Venues would be sourced from publicly-available market data. Options and equity volumes for Participants will be sourced from market data made publicly available by Bats while Execution Venue ATS volumes will be sourced from market data made publicly available by FINRA and OTC Markets. Set forth in the Appendix are two charts, one listing the current Equity Execution Venues, each with its rank and tier, and one listing the current Options Execution Venues, each with its rank and tier.

After the commencement of CAT reporting, market share for Execution Venues will be sourced from data reported to the CAT. Equity Execution Venue market share will be determined by calculating each Equity Execution Venue's proportion of the total volume of NMS Stock and OTC Equity shares reported by all Equity Execution Venues during the relevant time period (with the discounting of OTC Equity Securities market share of Execution Venue ATSs trading OTC Equity Securities as well as the market share of the FINRA ORF, as described above). Similarly, market share for Options Execution Venues will be determined by calculating each Options Execution Venue's proportion of the total volume of Listed Options contracts reported by all Options Execution Venues during the relevant time period.

The Operating Committee has determined to calculate fee tiers for Execution Venues every three months based on market share from the prior three months. Based on its analysis of historical data, the Operating Committee believes calculating tiers based on three months of data will provide the best balance between reflecting changes in activity by Execution Venues while still providing predictability in the tiering for Execution Venues.

### (D) Allocation of Costs

In addition to the funding principles discussed above, including comparability of fees, Section 11.1(c) of the CAT NMS Plan also requires expenses to be fairly and reasonably shared among the Participants and Industry Members. Accordingly, in

developing the proposed fee schedules pursuant to the funding model, the Operating Committee calculated how the CAT costs would be allocated between Industry Members and Execution Venues, and how the portion of CAT costs allocated to Execution Venues would be allocated between Equity Execution Venues and Options Execution Venues. These determinations are described below.

#### (I) Allocation Between Industry Members and Execution Venues

In determining the cost allocation between Industry Members (other than Execution Venue ATSs) and Execution Venues, the Operating Committee analyzed a range of possible splits for revenue recovery from such Industry Members and Execution Venues, including 80%/20%, 75%/25%, 70%/30% and 65%/35% allocations. Based on this analysis, the Operating Committee determined that 75 percent of total costs recovered would be allocated to Industry Members (other than Execution Venue ATSs) and 25 percent would be allocated to Execution Venues. The Operating Committee determined that this 75%/25% division maintained the greatest level of comparability across the funding model. For example, the cost allocation establishes fees for the largest Industry Members (*i.e.*, those Industry Members in Tiers 1) that are comparable to the largest Equity Execution Venues and Options Execution Venues (*i.e.*, those Execution Venues in Tier 1).

Furthermore, the allocation of total CAT cost recovery recognizes the difference in the number of CAT Reporters that are Industry Members versus CAT Reporters that are Execution Venues. Specifically, the cost allocation takes into consideration that there are approximately 23 times more Industry Members expected to report to the CAT than Execution Venues (*e.g.*, an estimated 1541 Industry Members versus 67 Execution Venues as of June 2017).

#### (II) Allocation Between Equity Execution Venues and Options Execution Venues

The Operating Committee also analyzed how the portion of CAT costs allocated to Execution Venues would be allocated between Equity Execution

Venues and Options Execution Venues. In considering this allocation of costs, the Operating Committee analyzed a range of alternative splits for revenue recovered between Equity and Options Execution Venues, including a 70%/30%, 67%/33%, 65%/35%, 50%/50% and 25%/75% split. Based on this analysis, the Operating Committee determined to allocate 67 percent of Execution Venue costs recovered to Equity Execution Venues and 33 percent to Options Execution Venues. The Operating Committee determined that a 67%/33% allocation between Equity and Options Execution Venues maintained the greatest level of fee equitability and comparability based on the current number of Equity and Options Execution Venues. For example, the allocation establishes fees for the larger Equity Execution Venues that are comparable to the larger Options Execution Venues. Specifically, Tier 1 Equity Execution Venues would pay a quarterly fee of \$81,047 and Tier 1 Options Execution Venues would pay a quarterly fee of \$81,379. In addition to fee comparability between Equity Execution Venues and Options Execution Venues, the allocation also establishes equitability between larger (Tier 1) and smaller (Tier 2) Execution Venues based upon the level of market share. Furthermore, the allocation is intended to reflect the relative levels of current equity and options order events.

#### (E) Fee Levels

The Operating Committee determined to establish a CAT-specific fee to collectively recover the costs of building and operating the CAT. Accordingly, under the funding model, the sum of the CAT Fees is designed to recover the total cost of the CAT. The Operating Committee has determined overall CAT costs to be comprised of Plan Processor costs and non-Plan Processor costs, which are estimated to be \$50,700,000 in total for the year beginning November 21, 2016.<sup>55</sup>

The Plan Processor costs relate to costs incurred and to be incurred through November 21, 2017 by the Plan Processor and consist of the Plan Processor's current estimates of average

<sup>55</sup> It is anticipated that CAT-related costs incurred prior to November 21, 2016 will be addressed via a separate filing.

yearly ongoing costs, including development costs, which total \$37,500,000. This amount is based upon the fees due to the Plan Processor pursuant to the Company's agreement with the Plan Processor.

The non-Plan Processor estimated costs incurred and to be incurred by the Company through November 21, 2017 consist of three categories of costs. The first category of such costs are third party support costs, which include legal fees, consulting fees and audit fees from November 21, 2016 until the date of filing as well as estimated third party support costs for the rest of the year. These amount to an estimated

\$5,200,000. The second category of non-Plan Processor costs are estimated cyber-insurance costs for the year. Based on discussions with potential cyber-insurance providers, assuming \$2–5 million cyber-insurance premium on \$100 million coverage, the Company has estimated \$3,000,000 for the annual cost. The final cost figures will be determined following receipt of final underwriter quotes. The third category of non-Plan Processor costs is the CAT operational reserve, which is comprised of three months of ongoing Plan Processor costs (\$9,375,000), third party support costs (\$1,300,000) and cyber-

insurance costs (\$750,000). The Operating Committee aims to accumulate the necessary funds to establish the three-month operating reserve for the Company through the CAT Fees charged to CAT Reporters for the year. On an ongoing basis, the Operating Committee will account for any potential need to replenish the operating reserve or other changes to total cost during its annual budgeting process. The following table summarizes the Plan Processor and non-Plan Processor cost components which comprise the total estimated CAT costs of \$50,700,000 for the covered period.

Cost category	Cost component	Amount
Plan Processor .....	Operational Costs .....	\$37,500,000
Non-Plan Processor .....	Third Party Support Costs .....	5,200,000
	Operational Reserve .....	<sup>56</sup> 5,000,000
	Cyber-insurance Costs .....	3,000,000
Estimated Total .....		50,700,000

Based on these estimated costs and the calculations for the funding model described above, the Operating

Committee determined to impose the following fees:<sup>57</sup>

For Industry Members (other than Execution Venue ATSS):

Tier	Percentage of Industry Members	Quarterly CAT Fee
1 .....	0.900	\$81,483
2 .....	2.150	59,055
3 .....	2.800	40,899
4 .....	7.750	25,566
5 .....	8.300	7,428
6 .....	18.800	1,968
7 .....	59.300	105

For Execution Venues for NMS Stocks and OTC Equity Securities:

Tier	Percentage of Equity Execution Venues	Quarterly CAT Fee
1 .....	25.00	\$81,048
2 .....	42.00	37,062
3 .....	23.00	21,126
4 .....	10.00	129

For Execution Venues for Listed Options:

Tier	Percentage of Options Execution Venues	Quarterly CAT Fee
1 .....	75.00	\$81,381

<sup>56</sup>This \$5,000,000 represents the gradual accumulation of the funds for a target operating reserve of \$11,425,000.

<sup>57</sup>Note that all monthly, quarterly and annual CAT Fees have been rounded to the nearest dollar.



Tier	Percentage of Options Execution Venues	Quarterly CAT Fee
2 .....	25.00	37,629

The Operating Committee has calculated the schedule of effective fees for Industry Members (other than Execution Venue ATs) and Execution

Venues in the following manner. Note that the calculation of CAT Fees assumes 52 Equity Execution Venues, 15 Options Execution Venues and 1,541

Industry Members (other than Execution Venue ATs) as of June 2017.

**CALCULATION OF ANNUAL TIER FEES FOR INDUSTRY MEMBERS ("IM")**

Industry Member tier	Percentage of Industry Members	Percentage of Industry Member Recovery	Percentage of total recovery
Tier 1 .....	0.900	12.00	9.00
Tier 2 .....	2.150	20.50	15.38
Tier 3 .....	2.800	18.50	13.88
Tier 4 .....	7.750	32.00	24.00
Tier 5 .....	8.300	10.00	7.50
Tier 6 .....	18.800	6.00	4.50
Tier 7 .....	59.300	1.00	0.75
<b>Total .....</b>	<b>100</b>	<b>100</b>	<b>75</b>

Industry Member tier	Estimated number of Industry Members
Tier 1 .....	14
Tier 2 .....	33
Tier 3 .....	43
Tier 4 .....	119
Tier 5 .....	128
Tier 6 .....	290
Tier 7 .....	914
<b>Total .....</b>	<b>1,541</b>

**Calculation 1.1 (Calculation of a Tier 1 Industry Member Monthly Fee)**

$$1,541 \text{ [Estimated Tot. IMs]} \times 0.9\% \text{ [% of Tier 1 IMs]} = 14 \text{ [Estimated Tier 1 IMs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 75\% \text{ [IM \% of Tot. Ann. CAT Costs]} \times 12\% \text{ [% of Tier 1 IM Recovery]}}{14 \text{ [Estimated Tier 1 IMs]}} \right) \div 12 \text{ [Months per year]} = \mathbf{\$27,161}$$

**Calculation 1.2 (Calculation of a Tier 2 Industry Member Monthly Fee)**

$$1,541 \text{ [Estimated Tot. IMs]} \times 2.15\% \text{ [% of Tier 2 IMs]} = 33 \text{ [Estimated Tier 2 IMs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 75\% \text{ [IM \% of Tot. Ann. CAT Costs]} \times 20.5\% \text{ [% of Tier 2 IM Recovery]}}{33 \text{ [Estimated Tier 2 IMs]}} \right) \div 12 \text{ [Months per year]} = \mathbf{\$19,685}$$

**Calculation 1.3 (Calculation of a Tier 3 Industry Member Monthly Fee)**

$$1,541 \text{ [Estimated Tot. IMs]} \times 2.125\% \text{ [% of Tier 3 IMs]} = 43 \text{ [Estimated Tier 3 IMs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 75\% \text{ [IM \% of Tot. Ann. CAT Costs]} \times 18.5\% \text{ [% of Tier 3 IM Recovery]}}{43 \text{ [Estimated Tier 3 IMs]}} \right) \div 12 \text{ [Months per year]} = \mathbf{\$13,633}$$

**Calculation 1.4 (Calculation of a Tier 4 Industry Member Monthly Fee)**

$$1,541 \text{ [Estimated Tot. IMs]} \times 7.75\% \text{ [% of Tier 4 IMs]} = 119 \text{ [Estimated Tier 4 IMs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 75\% \text{ [IM \% of Tot. Ann. CAT Costs]} \times 32\% \text{ [% of Tier 4 IM Recovery]}}{119 \text{ [Estimated Tier 4 IMs]}} \right) \div 12 \text{ [Months per year]} = \mathbf{\$8522}$$

**Calculation 1.5 (Calculation of a Tier 5 Industry Member Annual Fee)**

$$1,541 \text{ [Estimated Tot. IMs]} \times 8.3\% \text{ [% of Tier 5 IMs]} = 128 \text{ [Estimated Tier 5 IMs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 75\% \text{ [IM \% of Tot. Ann. CAT Costs]} \times 7.75\% \text{ [% of Tier 5 IM Recovery]}}{128 \text{ [Estimated Tier 5 IMs]}} \right) \div 12 \text{ [Months per year]} = \mathbf{\$2476}$$

**Calculation 1.6 (Calculation of a Tier 6 Industry Member Monthly Fee)**

$$1,541 \text{ [Estimated Tot. IMs]} \times 18.8\% \text{ [% of Tier 6 IMs]} = 290 \text{ [Estimated Tier 6 IMs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 75\% \text{ [IM \% of Tot. Ann. CAT Costs]} \times 6\% \text{ [% of Tier 6 IM Recovery]}}{290 \text{ [Estimated Tier 6 IMs]}} \right) \div 12 \text{ [Months per year]} = \mathbf{\$656}$$

**Calculation 1.7 (Calculation of a Tier 7 Industry Member Monthly Fee)**

$$1,541 \text{ [Estimated Tot. IMs]} \times 59.3\% \text{ [% of Tier 7 IMs]} = 914 \text{ [Estimated Tier 7 IMs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 75\% \text{ [IM \% of Tot. Ann. CAT Costs]} \times 1\% \text{ [% of Tier 7 IM Recovery]}}{914 \text{ [Estimated Tier 7 IMs]}} \right) \div 12 \text{ [Months per year]} = \mathbf{\$35}$$

BILLING CODE 8011-01-C

**CALCULATION OF ANNUAL TIER FEES FOR EQUITY EXECUTION VENUES (“EV”)**

Equity Execution Venue tier	Percentage of Equity Execution Venues	Percentage of Execution Venue Recovery
Tier 1 .....	25.00	33.25
Tier 2 .....	42.00	25.73
Tier 3 .....	23.00	8.00
Tier 4 .....	10.00	49.00
Total .....	100	67

Equity Execution Venue tier	Estimated number of Equity Execution Venues
Tier 1 .....	13
Tier 2 .....	22
Tier 3 .....	12
Tier 4 .....	5
<b>Total</b> .....	<b>52</b>

**Calculation 2.1 (Calculation of a Tier 1 Equity Execution Venue Monthly Fee)**

$$52 \text{ [Estimated Tot. Equity EVs]} \times 25\% \text{ [% of Tier 1 Equity EVs]} = 13 \text{ [Estimated Tier 1 Equity EVs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann.CAT Costs]} \times 33.25\% \text{ [EV \% of Tot.Ann.CAT Costs]} \times 26\% \text{ [% of Tier 1 Equity EV Recovery]}}{13 \text{ [Estimated Tier 1 Equity EVs]}} \right) \div 12 \text{ [Months per year]} = \mathbf{\$27,016}$$

**Calculation 2.2 (Calculation of a Tier 2 Equity Execution Venue Monthly Fee)**

$$52 \text{ [Estimated Tot. Equity EVs]} \times 42\% \text{ [% of Tier 2 Equity EVs]} = 22 \text{ [Estimated Tier 2 Equity EVs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann.CAT Costs]} \times 25\% \text{ [EV \% of Tot.Ann.CAT Costs]} \times 25.73\% \text{ [% of Tier 2 Equity EV Recovery]}}{22 \text{ [Estimated Tier 2 Equity EVs]}} \right) \div 12 \text{ [Months per year]} = \mathbf{\$12,353}$$

**Calculation 2.3 (Calculation of a Tier 3 Equity Execution Venue Monthly Fee)**

$$52 \text{ [Estimated Tot. Equity EVs]} \times 23\% \text{ [% of Tier 2 Equity EVs]} = 12 \text{ [Estimated Tier 2 Equity EVs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann.CAT Costs]} \times 25\% \text{ [EV \% of Tot.Ann.CAT Costs]} \times 8\% \text{ [% of Tier 2 Equity EV Recovery]}}{12 \text{ [Estimated Tier 2 Equity EVs]}} \right) \div 12 \text{ [Months per year]} = \mathbf{\$7,042}$$

**Calculation 2.4 (Calculation of a Tier 4 Equity Execution Venue Monthly Fee)**

$$52 \text{ [Estimated Tot. Equity EVs]} \times 10\% \text{ [% of Tier 2 Equity EVs]} = 5 \text{ [Estimated Tier 2 Equity EVs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann.CAT Costs]} \times 25\% \text{ [EV \% of Tot.Ann.CAT Costs]} \times 0.02\% \text{ [% of Tier 2 Equity EV Recovery]}}{5 \text{ [Estimated Tier 2 Equity EVs]}} \right) \div 12 \text{ [Months per year]} = \mathbf{\$42}$$

**CALCULATION OF ANNUAL TIER FEES FOR OPTIONS EXECUTION VENUES (“EV”)**

Options Execution Venue tier	Percentage of Options Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1 .....	75.00	28.25	7.06
Tier 2 .....	25.00	4.75	1.19
<b>Total</b> .....	<b>100</b>	<b>33</b>	<b>8.25</b>

Options Execution Venue tier	Estimated number of Options Execution Venues
Tier 1 .....	11
Tier 2 .....	4
<b>Total</b> .....	<b>15</b>

**Calculation 3.1 (Calculation of a Tier 1 Options Execution Venue Monthly Fee)**

$$15 \text{ [Estimated Tot. Options EVs]} \times 75\% \text{ [% of Tier 1 Options EVs]} = 11 \text{ [Estimated Tier 1 Options EVs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 25\% \text{ [EV \% of Tot. Ann. CAT Costs]} \times 28.25\% \text{ [% of Tier 1 Options EV Recovery]}}{11 \text{ [Estimated Tier 1 Options EVs]}} \right) \div 12 \text{ [Months per year]} = \$27,127$$

**Calculation 3.2 (Calculation of a Tier 2 Options Execution Venue Annual Fee)**

$$15 \text{ [Estimated Tot. Options EVs]} \times 25\% \text{ [% of Tier 2 Options EVs]} = 4 \text{ [Estimated Tier 2 Options EVs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 25\% \text{ [EV \% of Tot. Ann. CAT Costs]} \times 4.75\% \text{ [% of Tier 2 Options EV Recovery]}}{4 \text{ [Estimated Tier 2 Options EVs]}} \right) \div 12 \text{ [Months per year]} = \$12,543$$

**TRACEABILITY OF TOTAL CAT FEES**

Type	Industry Member tier	Estimated number of members	CAT Fees paid annually	Total recovery
Industry Members .....	Tier 1 .....	14	\$325,932	\$4,563,048
	Tier 2 .....	33	236,220	7,795,260
	Tier 3 .....	43	163,596	7,034,628
	Tier 4 .....	119	102,264	12,169,416
	Tier 5 .....	128	29,712	3,803,136
	Tier 6 .....	290	7,872	2,282,880
	Tier 7 .....	914	420	383,880
Total .....		1,541		38,032,248
Equity Execution Venues .....	Tier 1 .....	13	324,192	4,214,496
	Tier 2 .....	22	148,248	3,261,456
	Tier 3 .....	12	84,504	1,014,048
	Tier 4 .....	5	516	2,580
Total .....		52		8,492,580
Options Execution Venues .....	Tier 1 .....	11	325,524	3,580,764
	Tier 2 .....	4	150,516	602,064
Total .....		15		4,182,828
Total .....				50,700,000
Excess <sup>58</sup> .....				7,656

**(F) Comparability of Fees**

The funding principles require a funding model in which the fees charged to the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venue and/or Industry Members). Accordingly, in creating the model, the Operating Committee sought to establish comparable fees for the top tier of Industry Members (other than Execution Venue ATs), Equity Execution Venues and Options Execution Venues. Specifically, each Tier 1 CAT Reporter would be required

to pay a quarterly fee of approximately \$81,000.

**(G) Billing Onset**

Under Section 11.1(c) of the CAT NMS Plan, to fund the development and implementation of the CAT, the Company shall time the imposition and collection of all fees on Participants and Industry Members in a manner reasonably related to the timing when the Company expects to incur such development and implementation costs. The Company is currently incurring such development and implementation costs and will continue to do so prior to the commencement of CAT reporting and thereafter. In accordance with the CAT NMS Plan, all CAT Reporters, including both Industry Members and Execution Venues (including Participants), will be invoiced as promptly as possible following the latest of the operative date of the Consolidated Audit Trail Funding Fees for each of the

Participants and the operative date of the Plan amendment adopting CAT Fees for Participants.

**(H) Changes to Fee Levels and Tiers**

Section 11.3(d) of the CAT NMS Plan states that “[t]he Operating Committee shall review such fee schedule on at least an annual basis and shall make any changes to such fee schedule that it deems appropriate. The Operating Committee is authorized to review such fee schedule on a more regular basis, but shall not make any changes on more than a semi-annual basis unless, pursuant to a Supermajority Vote, the Operating Committee concludes that such change is necessary for the adequate funding of the Company.” With such reviews, the Operating Committee will review the distribution of Industry Members and Execution Venues across tiers, and make any updates to the percentage of CAT Reporters allocated to each tier as may

<sup>58</sup> The amount in excess of the total CAT costs will contribute to the gradual accumulation of the target operating reserve of \$11.425 million.

be necessary. In addition, the reviews will evaluate the estimated ongoing CAT costs and the level of the operating reserve. To the extent that the total CAT costs decrease, the fees would be adjusted downward, and to the extent that the total CAT costs increase, the fees would be adjusted upward.<sup>59</sup> Furthermore, any surplus of the Company's revenues over its expenses is to be included within the operational reserve to offset future fees. The limitations on more frequent changes to the fee, however, are intended to provide budgeting certainty for the CAT Reporters and the Company.<sup>60</sup> To the extent that the Operating Committee approves changes to the number of tiers in the funding model or the fees assigned to each tier, then the Operating Committee will file such changes with the SEC pursuant to Rule 608 of the Exchange Act, and the Participants will file such changes with the SEC pursuant to Section 19(b) of the Exchange Act and Rule 19b-4 thereunder, and any such changes will become effective in accordance with the requirements of those provisions.

(J) Initial and Periodic Tier Reassignments

The Operating Committee has determined to calculate fee tiers every three months based on market share or message traffic, as applicable, from the prior three months. For the initial tier assignments, the Company will calculate the relevant tier for each CAT Reporter using the three months of data prior to the commencement date. As with the initial tier assignment, for the tri-monthly reassignments, the Company will calculate the relevant tier using the three months of data prior to the relevant tri-monthly date. Any movement of CAT Reporters between tiers will not change the criteria for each tier or the fee amount corresponding to each tier.

In performing the tri-monthly reassignments, the assignment of CAT Reporters in each assigned tier is relative. Therefore, a CAT Reporter's assigned tier will depend, not only on its own message traffic or market share, but also on the message traffic/market share across all CAT Reporters. For example, the percentage of Industry Members (other than Execution Venue ATSS) in each tier is relative such that such Industry Member's assigned tier

will depend on message traffic generated across all CAT Reporters as well as the total number of CAT Reporters. The Operating Committee will inform CAT Reporters of their assigned tier every three months following the periodic tiering process, as the funding model will compare an individual CAT Reporter's activity to that of other CAT Reporters in the marketplace.

The following demonstrates a tier reassignment. In accordance with the funding model, the top 75% of Options Execution Venues in market share are categorized as Tier 1 while the bottom 25% of Options Execution Venues in market share are categorized as Tier 2. In the sample scenario below, Options Execution Venue L is initially categorized as a Tier 2 Options Execution Venue in Period A due to its market share. When market share is recalculated for Period B, the market share of Execution Venue L increases, and it is therefore subsequently reranked and reassigned to Tier 1 in Period B. Correspondingly, Options Execution Venue K, initially a Tier 1 Options Execution Venue in Period A, is reassigned to Tier 2 in Period B due to decreases in its market share.

Period A			Period B		
Options Execution Venue	Market share rank	Tier	Options Execution Venue	Market share rank	Tier
Options Execution Venue A	1	1	Options Execution Venue A	1	1
Options Execution Venue B	2	1	Options Execution Venue B	2	1
Options Execution Venue C	3	1	Options Execution Venue C	3	1
Options Execution Venue D	4	1	Options Execution Venue D	4	1
Options Execution Venue E	5	1	Options Execution Venue E	5	1
Options Execution Venue F	6	1	Options Execution Venue F	6	1
Options Execution Venue G	7	1	Options Execution Venue I	7	1
Options Execution Venue H	8	1	Options Execution Venue H	8	1
Options Execution Venue I	9	1	Options Execution Venue G	9	1
Options Execution Venue J	10	1	Options Execution Venue J	10	1
Options Execution Venue K	11	1	Options Execution Venue L	11	1
Options Execution Venue L	12	2	Options Execution Venue K	12	2
Options Execution Venue M	13	2	Options Execution Venue N	13	2
Options Execution Venue N	14	2	Options Execution Venue M	14	2
Options Execution Venue O	15	2	Options Execution Venue O	15	2

For each periodic tier reassignment, the Operating Committee will review the new tier assignments, particularly those assignments for CAT Reporters that shift from the lowest tier to a higher tier. This review is intended to evaluate whether potential changes to the market or CAT Reporters (e.g., dissolution of a large CAT Reporter) adversely affect the tier reassignments.

(J) Sunset Provision

The Operating Committee developed the proposed funding model by analyzing currently available historical data. Such historical data, however, is not as comprehensive as data that will be submitted to the CAT. Accordingly, the Operating Committee believes that it will be appropriate to revisit the funding model once CAT Reporters

have actual experience with the funding model. Accordingly, the Operating Committee determined to include an automatic sunset provision for the proposed fees. Specifically, the Operating Committee determined that the CAT Fees should automatically expire two years after the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. The Operating Committee intends to monitor

<sup>59</sup>The CAT Fees are designed to recover the costs associated with the CAT. Accordingly, CAT Fees would not be affected by increases or decreases in other non-CAT expenses incurred by the

Participants, such as any changes in costs related to the retirement of existing regulatory systems, such as OATS.

<sup>60</sup>Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85006.

the operation of the funding model during this two year period and to evaluate its effectiveness during that period. Such a process will inform the Operating Committee’s approach to funding the CAT after the two year period.

(3) Proposed CAT Fee Schedule

The Exchange proposes the Consolidated Audit Trail Funding Fees to impose the CAT Fees determined by the Operating Committee on the Exchange’s members. The proposed fee schedule has four sections, covering definitions, the fee schedule for CAT Fees, the timing and manner of payments, and the automatic sunseting of the CAT Fees. Each of these sections is discussed in detail below.

(A) Definitions

Paragraph (a) of the proposed fee schedule sets forth the definitions for the proposed fee schedule. Paragraph (a)(1) states that, for purposes of the Consolidated Audit Trail Funding Fees, the terms “CAT”, “CAT NMS Plan,” “Industry Member,” “NMS Stock,” “OTC Equity Security”, “Options Market Maker”, and “Participant” are defined as set forth in Rule 900 (Consolidated Audit Trail—Definitions).

The proposed fee schedule imposes different fees on Equity ATSs and Industry Members that are not Equity ATSs. Accordingly, the proposed fee schedule defines the term “Equity ATS.” First, paragraph (a)(2) defines an “ATS” to mean an alternative trading system as defined in Rule 300(a) of Regulation ATS under the Securities Exchange Act of 1934, as amended, that operates pursuant to Rule 301 of Regulation ATS. This is the same definition of an ATS as set forth in Section 1.1 of the CAT NMS Plan in the definition of an “Execution Venue.” Then, paragraph (a)(4) defines an “Equity ATS” as an ATS that executes transactions in NMS Stocks and/or OTC Equity Securities.

Paragraph (a)(3) of the proposed fee schedule defines the term “CAT Fee” to mean the Consolidated Audit Trail Funding Fee(s) to be paid by Industry Members as set forth in paragraph (b) in the proposed fee schedule.

Finally, Paragraph (a)(6) defines an “Execution Venue” as a Participant or an ATS (excluding any such ATS that does not execute orders). This definition is the same substantive definition as set forth in Section 1.1 of the CAT NMS Plan. Paragraph (a)(5) defines an “Equity Execution Venue” as an Execution Venue that trades NMS Stocks and/or OTC Equity Securities.

(B) Fee Schedule

The Exchange proposes to impose the CAT Fees applicable to its Industry Members through paragraph (b) of the proposed fee schedule. Paragraph (b)(1) of the proposed fee schedule sets forth the CAT Fees applicable to Industry Members other than Equity ATSs. Specifically, paragraph (b)(1) states that the Company will assign each Industry Member (other than an Equity ATS) to a fee tier once every quarter, where such tier assignment is calculated by ranking each Industry Member based on its total message traffic (with discounts for equity market maker quotes and Options Market Maker quotes based on the trade to quote ratio for equities and options, respectively) for the three months prior to the quarterly tier calculation day and assigning each Industry Member to a tier based on that ranking and predefined Industry Member percentages. The Industry Members with the highest total quarterly message traffic will be ranked in Tier 1, and the Industry Members with lowest quarterly message traffic will be ranked in Tier 7. Each quarter, each Industry Member (other than an Equity ATS) shall pay the following CAT Fee corresponding to the tier assigned by the Company for such Industry Member for that quarter:

Tier	Percentage of Industry Members	Quarterly CAT Fee
1 .....	0.900	\$81,483
2 .....	2.150	59,055
3 .....	2.800	40,899
4 .....	7.750	25,566
5 .....	8.300	7,428
6 .....	18.800	1,968
7 .....	59.300	105

Paragraph (b)(2) of the proposed fee schedule sets forth the CAT Fees applicable to Equity ATSs.<sup>61</sup> These are the same fees that Participants that trade NMS Stocks and/or OTC Equity Securities will pay. Specifically, paragraph (b)(2) states that the Company will assign each Equity ATS to a fee tier once every quarter, where such tier assignment is calculated by ranking each Equity Execution Venue based on its total market share of NMS Stocks and OTC Equity Securities (with a discount for the OTC Equity Securities market share of Equity ATSs trading OTC Equity Securities based on the average shares per trade ratio between NMS Stocks and OTC Equity Securities) for the three months prior to the quarterly

<sup>61</sup> Note that no fee schedule is provided for Execution Venue ATSs that execute transactions in Listed Options, as no such Execution Venue ATSs currently exist due to trading restrictions related to Listed Options.

tier calculation day and assigning each Equity ATS to a tier based on that ranking and predefined Equity Execution Venue percentages. The Equity ATSs with the higher total quarterly market share will be ranked in Tier 1, and the Equity ATSs with the lowest quarterly market share will be ranked in Tier 4. Specifically, paragraph (b)(2) states that, each quarter, each Equity ATS shall pay the following CAT Fee corresponding to the tier assigned by the Company for such Equity ATS for that quarter:

Tier	Percentage of Equity Execution Venues	Quarterly CAT Fee
1 .....	25.00	\$81,048
2 .....	42.00	37,062
3 .....	23.00	21,126
4 .....	10.00	129

(C) Timing and Manner of Payment

Section 11.4 of the CAT NMS Plan states that the Operating Committee shall establish a system for the collection of fees authorized under the CAT NMS Plan. The Operating Committee may include such collection responsibility as a function of the Plan Processor or another administrator. To implement the payment process to be adopted by the Operating Committee, paragraph (c)(1) of the proposed fee schedule states that the Company will provide each Industry Member with one invoice each quarter for its CAT Fees as determined pursuant to paragraph (b) of the proposed fee schedule, regardless of whether the Industry Member is a member of multiple self-regulatory organizations. Paragraph (c)(1) further states that each Industry Member will pay its CAT Fees to the Company via the centralized system for the collection of CAT Fees established by the Company in the manner prescribed by the Company. The Exchange will provide Industry Members with details regarding the manner of payment of CAT Fees by *Regulatory Notice*.

All CAT fees will be billed and collected centrally through the Company via the Plan Processor. Although each Participant will adopt its own fee schedule regarding CAT Fees, no CAT Fees or portion thereof will be collected by the individual Participants. Each Industry Member will receive from the Company one invoice for its applicable CAT fees, not separate invoices from each Participant of which it is a member. The Industry Members will pay the CAT Fees to the Company via the centralized system for the

collection of CAT fees established by the Company.<sup>62</sup>

Section 11.4 of the CAT NMS Plan also states that Participants shall require each Industry Member to pay all applicable authorized CAT Fees within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). Section 11.4 further states that, if an Industry Member fails to pay any such fee when due, such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (i) The Prime Rate plus 300 basis points; or (ii) the maximum rate permitted by applicable law. Therefore, in accordance with Section 11.4 of the CAT NMS Plan, the Exchange proposed to adopt paragraph (c)(2) of the proposed fee schedule. Paragraph (c)(2) of the proposed fee schedule states that each Industry Member shall pay CAT Fees within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If an Industry Member fails to pay any such fee when due, such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (i) The Prime Rate plus 300 basis points; or (ii) the maximum rate permitted by applicable law.

#### (D) Sunset Provision

The Operating Committee has determined to require that the CAT Fees automatically sunset two years from the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. Accordingly, the Exchange proposes paragraph (d) of the fee schedule, which states that “[t]hese Consolidated Audit Trailing Funding Fees will automatically expire two years after the operative date of the amendment of the CAT NMS Plan that adopts CAT fees for the Participants.”

#### (4) Changes to Prior CAT Fee Plan Amendment

The proposed funding model set forth in this Amendment is a revised version of the Original Proposal. The Commission received a number of comment letters in response to the Original Proposal.<sup>63</sup> The SEC suspended the Original Proposal and instituted proceedings to determine whether to

approve or disapprove it.<sup>64</sup> Pursuant to those proceedings, additional comment letters were submitted regarding the proposed funding model.<sup>65</sup> In developing this Amendment, the Operating Committee carefully considered these comments and made a number of changes to the Original Proposal to address these comments where appropriate.

This Amendment makes the following changes to the Original Proposal: (1) Adds two additional CAT Fee tiers for Equity Execution Venues; (2) discounts the OTC Equity Securities market share of Execution Venue ATSS trading OTC Equity Securities as well as the market share of the FINRA ORF by the average shares per trade ratio between NMS Stocks and OTC Equity Securities (calculated as 0.17% based on available data from the second quarter of 2017) when calculating the market share of Execution Venue ATSS trading OTC Equity Securities and FINRA; (3) discounts the Options Market Maker quotes by the trade to quote ratio for options (calculated as 0.01% based on available data for June 2016 through June 2017) when calculating message traffic for Options Market Makers; (4) discounts equity market maker quotes by the trade to quote ratio for equities (calculated as 5.43% based on available data for June 2016 through June 2017) when calculating message traffic for equity market makers; (5) decreases the number of tiers for Industry Members (other than the Execution Venue ATSS) from nine to seven; (6) changes the allocation of CAT costs between Equity Execution Venues and Options Execution Venues from 75%/25% to 67%/33%; (7) adjusts tier percentages and recovery allocations for Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATSS); (8) focuses the comparability of CAT Fees on the individual entity level, rather than primarily on the comparability of affiliated entities; (9) commences invoicing of CAT Reporters as promptly as possible following the latest of the operative date of the Consolidated Audit Trail Funding Fees for each of the Participants and the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants; and (10) requires the proposed fees to automatically expire two years from the operative date of the CAT NMS Plan amendment adopting CAT Fees for the Participants.

#### (A) Equity Execution Venues

##### (i) Small Equity Execution Venues

In the Original Proposal, the Operating Committee proposed to establish two fee tiers for Equity Execution Venues. The Commission and commenters raised the concern that, by establishing only two tiers, smaller Equity Execution Venues (e.g., those Equity ATSS representing less than 1% of NMS market share) would be placed in the same fee tier as larger Equity Execution Venues, thereby imposing an undue or inappropriate burden on competition.<sup>66</sup> To address this concern, the Operating Committee proposes to add two additional tiers for Equity Execution Venues, a third tier for smaller Equity Execution Venues and a fourth tier for the smallest Equity Execution Venues.

Specifically, the Original Proposal had two tiers of Equity Execution Venues. Tier 1 required the largest Equity Execution Venues to pay a quarterly fee of \$63,375. Based on available data, these largest Equity Execution Venues were those that had equity market share of share volume greater than or equal to 1%.<sup>67</sup> Tier 2 required the remaining smaller Equity Execution Venues to pay a quarterly fee of \$38,820.

To address concerns about the potential for the \$38,820 quarterly fee to impose an undue burden on smaller Equity Execution Venues, the Operating Committee determined to move to a four tier structure for Equity Execution Venues. Tier 1 would continue to include the largest Equity Execution Venues by share volume (that is, based on currently available data, those with market share of equity share volume greater than or equal to one percent), and these Equity Execution Venues would be required to pay a quarterly fee of \$81,048. The Operating Committee determined to divide the original Tier 2 into three tiers. The new Tier 2 Equity Execution Venues, which would include the next largest Equity Execution Venues by equity share volume, would be required to pay a quarterly fee of \$37,062. The new Tier

<sup>66</sup> See Suspension Order at 31664; SIFMA Letter at 3.

<sup>67</sup> Note that while these equity market share thresholds were referenced as data points to help differentiate between Equity Execution Venue tiers, the proposed funding model is directly driven not by market share thresholds, but rather by fixed percentages of Equity Execution Venues across tiers to account for fluctuating levels of market share across time. Actual market share in any tier will vary based on the actual market activity in a given measurement period, as well as the number of Equity Execution Venues included in the measurement period.

<sup>62</sup> Section 11.4 of the CAT NMS Plan.

<sup>63</sup> For a description of the comments submitted in response to the Original Proposal, see Suspension Order.

<sup>64</sup> Suspension Order.

<sup>65</sup> See MFA Letter; SIFMA Letter; FIA Principal Traders Group Letter; Belvedere Letter; Sidley Letter; Group One Letter; and Virtu Financial Letter.

3 Equity Execution Venues would be required to pay a quarterly fee of \$21,126. The new Tier 4 Equity Execution Venues, which would include the smallest Equity Execution Venues by share volume, would be required to pay a quarterly fee of \$129.

In developing the proposed four tier structure, the Operating Committee considered keeping the existing two tiers, as well as shifting to three, four or five Equity Execution Venue tiers (the maximum number of tiers permitted under the Plan), to address the concerns regarding small Equity Execution Venues. For each of the two, three, four and five tier alternatives, the Operating Committee considered the assignment of various percentages of Equity Execution Venues to each tier as well as various percentage of Equity Execution Venue recovery allocations for each alternative. As discussed below in more detail, each of these options was considered in the context of the full model, as changes in each variable in the model affect other variables in the model when allocating the total CAT costs among CAT Reporters. The Operating Committee determined that the four tier alternative addressed the spectrum of different Equity Execution Venues. The Operating Committee determined that neither a two tier structure nor a three tier structure sufficiently accounted for the range of market shares of smaller Equity Execution Venues. The Operating Committee also determined that, given the limited number of Equity Execution Venues, that a fifth tier was unnecessary to address the range of market shares of the Equity Execution Venues.

By increasing the number of tiers for Equity Execution Venues and reducing the proposed CAT Fees for the smaller Equity Execution Venues, the Operating Committee believes that the proposed fees for Equity Execution Venues would not impose an undue or inappropriate burden on competition under Section 6 or Section 15A of the Exchange Act. Moreover, the Operating Committee believes that the proposed fees appropriately take into account the distinctions in the securities trading operations of different Equity Execution Venues, as required under the funding principles of the CAT NMS Plan.<sup>68</sup> The larger number of tiers more closely tracks the variety of sizes of equity share volume of Equity Execution Venues. In addition, the reduction in the fees for the smaller Equity Execution Venues recognizes the potential burden of larger fees on smaller entities. In particular, the very small quarterly fee of \$129 for

Tier 4 Equity Execution Venues reflects the fact that certain Equity Execution Venues have a very small share volume due to their typically more focused business models.

Accordingly, with this Amendment, the Exchange proposes to amend paragraph (b)(2) of the proposed fee schedule to add the two additional tiers for Equity Execution Venues, to establish the percentages and fees for Tiers 3 and 4 as described, and to revise the percentages and fees for Tiers 1 and 2 as described.

(ii) Execution Venues for OTC Equity Securities

In the Original Proposal, the Operating Committee proposed to group Execution Venues for OTC Equity Securities and Execution Venues for NMS Stocks in the same tier structure. The Commission and commenters raised concerns as to whether this determination to place Execution Venues for OTC Equity Securities in the same tier structure as Execution Venues for NMS Stocks would result in an undue or inappropriate burden on competition, recognizing that the application of share volume may lead to different outcomes as applied to OTC Equity Securities and NMS Stocks.<sup>69</sup> To address this concern, the Operating Committee proposes to discount the OTC Equity Securities market share of Execution Venue ATSs trading OTC Equity Securities as well as the market share of the FINRA ORF by the average shares per trade ratio between NMS Stocks and OTC Equity Securities (0.17% for the second quarter of 2017) in order to adjust for the greater number of shares being traded in the OTC Equity Securities market, which is generally a function of a lower per share price for OTC Equity Securities when compared to NMS Stocks.

As commenters noted, many OTC Equity Securities are priced at less than one dollar—and a significant number at less than one penny—and low-priced shares tend to trade in larger quantities. Accordingly, a disproportionately large number of shares are involved in transactions involving OTC Equity Securities versus NMS Stocks, which has the effect of overstating an Execution Venue's true market share when the Execution Venue is involved in the trading of OTC Equity Securities. Because the proposed fee tiers are based on market share calculated by share volume, Execution Venue ATSs trading OTC Equity Securities and FINRA may be subject to higher tiers than their

operations may warrant.<sup>70</sup> The Operating Committee proposes to address this concern in two ways. First, the Operating Committee proposes to increase the number of Equity Execution Venue tiers, as discussed above. Second, the Operating Committee determined to discount the OTC Equity Securities market share of Execution Venue ATSs trading OTC Equity Securities as well as the market share of the FINRA ORF when calculating their tier placement. Because the disparity in share volume between Execution Venues trading in OTC Equity Securities and NMS Stocks is based on the different number of shares per trade for OTC Equity Securities and NMS Stocks, the Operating Committee believes that discounting the OTC Equity Securities share volume of such Execution Venue ATSs as well as the market share of the FINRA ORF would address the difference in shares per trade for OTC Equity Securities and NMS Stocks. Specifically, the Operating Committee proposes to impose a discount based on the objective measure of the average shares per trade ratio between NMS Stocks and OTC Equity Securities. Based on available data from the second quarter of 2017, the average shares per trade ratio between NMS Stocks and OTC Equity Securities is 0.17%.

The practical effect of applying such a discount for trading in OTC Equity Securities is to shift Execution Venue ATSs trading OTC Equity Securities to tiers for smaller Execution Venues and with lower fees. For example, under the Original Proposal, one Execution Venue ATS trading OTC Equity Securities was placed in the first CAT Fee tier, which had a quarterly fee of \$63,375. With the imposition of the proposed tier changes and the discount, this ATS would be ranked in Tier 3 and would owe a quarterly fee of \$21,126.

In developing the proposed discount for Equity Execution Venue ATSs trading OTC Equity Securities and FINRA, the Operating Committee evaluated different alternatives to address the concerns related to OTC Equity Securities, including creating a separate tier structure for Execution Venues trading OTC Equity Securities (like the separate tier for Options Execution Venues) as well as the proposed discounting method for Execution Venue ATSs trading OTC Equity Securities and FINRA. For these alternatives, the Operating Committee considered how each alternative would affect the recovery allocations. In addition, each of these options was considered in the context of the full

<sup>68</sup> Section 11.2(b) of the CAT NMS Plan.

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

<sup>70</sup> Suspension Order at 31664–5.



model, as changes in each variable in the model affect other variables in the model when allocating the total CAT costs among CAT Reporters. The Operating Committee did not adopt a separate tier structure for Equity Execution Venues trading OTC Equity Securities as they determined that the proposed discount approach appropriately addresses the concern. The Operating Committee determined to adopt the proposed discount because it directly relates to the concern regarding the trading patterns and operations in the OTC Equity Securities markets, and is an objective discounting method.

By increasing the number of tiers for Equity Execution Venues and imposing a discount on the market share of share volume calculation for trading in OTC Equity Securities, the Operating Committee believes that the proposed fees for Equity Execution Venues would not impose an undue or inappropriate burden on competition under Section 6 or Section 15A of the Exchange Act. Moreover, the Operating Committee believes that the proposed fees appropriately take into account the distinctions in the securities trading operations of different Equity Execution Venues, as required under the funding principles of the CAT NMS Plan.<sup>71</sup> As discussed above, the larger number of tiers more closely tracks the variety of sizes of equity share volume of Equity Execution Venues. In addition, the proposed discount recognizes the different types of trading operations at Equity Execution Venues trading OTC Equity Securities versus those trading NMS Stocks, thereby more closely matching the relative revenue generation by Equity Execution Venues trading OTC Equity Securities to their CAT Fees.

Accordingly, with this Amendment, the Exchange proposes to amend paragraph (b)(2) of the proposed fee schedule to indicate that the OTC Equity Securities market share for Equity ATSs trading OTC Equity Securities as well as the market share of the FINRA ORF would be discounted. In addition, as discussed above, to address concerns related to smaller ATSs, including those that trade OTC Equity Securities, the Exchange proposes to amend paragraph (b)(2) of the proposed fee schedule to add two additional tiers for Equity Execution Venues, to establish the percentages and fees for Tiers 3 and 4 as described, and to revise the percentages and fees for Tiers 1 and 2 as described.

<sup>71</sup> Section 11.2(b) of the CAT NMS Plan.

#### (B) Market Makers

In the Original Proposal, the Operating Committee proposed to include both Options Market Maker quotes and equities market maker quotes in the calculation of total message traffic for such market makers for purposes of tiering for Industry Members (other than Execution Venue ATSs). The Commission and commenters raised questions as to whether the proposed treatment of Options Market Maker quotes may result in an undue or inappropriate burden on competition or may lead to a reduction in market quality.<sup>72</sup> To address this concern, the Operating Committee determined to discount the Options Market Maker quotes by the trade to quote ratio for options when calculating message traffic for Options Market Makers. Similarly, to avoid disincentives to quoting behavior on the equities side as well, the Operating Committee determined to discount equity market maker quotes by the trade to quote ratio for equities when calculating message traffic for equities market makers.

In the Original Proposal, market maker quotes were treated the same as other message traffic for purposes of tiering for Industry Members (other than Execution Venue ATSs). Commenters noted, however, that charging Industry Members on the basis of message traffic will impact market makers disproportionately because of their continuous quoting obligations. Moreover, in the context of options market makers, message traffic would include bids and offers for every listed options strikes and series, which are not an issue for equities.<sup>73</sup> The Operating Committee proposes to address this concern in two ways. First, the Operating Committee proposes to discount Options Market Maker quotes when calculating the Options Market Makers' tier placement. Specifically, the Operating Committee proposes to impose a discount based on the objective measure of the trade to quote ratio for options. Based on available data from June 2016 through June 2017, the trade to quote ratio for options is 0.01%. Second, the Operating Committee proposes to discount equities market maker quotes when calculating the equities market makers' tier placement. Specifically, the Operating Committee proposes to impose a discount based on the

<sup>72</sup> See Suspension Order at 31663-4; SIFMA Letter at 4-6; FIA Principal Traders Group Letter at 3; Sidley Letter at 2-6; Group One Letter at 2-6; and Belvedere Letter at 2.

<sup>73</sup> Suspension Order at 31664.

objective measure of the trade to quote ratio for equities. Based on available data for June 2016 through June 2017, this trade to quote ratio for equities is 5.43%.

The practical effect of applying such discounts for quoting activity is to shift market makers' calculated message traffic lower, leading to the potential shift to tiers for lower message traffic and reduced fees. Such an approach would move sixteen Industry Member CAT Reporters that are market makers to a lower tier than in the Original Proposal. For example, under the Original Proposal, Broker-Dealer Firm ABC was placed in the first CAT Fee tier, which had a quarterly fee of \$101,004. With the imposition of the proposed tier changes and the discount, Broker-Dealer Firm ABC, an options market maker, would be ranked in Tier 3 and would owe a quarterly fee of \$40,899.

In developing the proposed market maker discounts, the Operating Committee considered various discounts for Options Market Makers and equity market makers, including discounts of 50%, 25%, 0.00002%, as well as the 5.43% for option market makers and 0.01% for equity market makers. Each of these options were considered in the context of the full model, as changes in each variable in the model affect other variables in the model when allocating the total CAT costs among CAT Reporters. The Operating Committee determined to adopt the proposed discount because it directly relates to the concern regarding the quoting requirement, is an objective discounting method, and has the desired potential to shift market makers to lower fee tiers.

By imposing a discount on Options Market Makers and equities market makers' quoting traffic for the calculation of message traffic, the Operating Committee believes that the proposed fees for market makers would not impose an undue or inappropriate burden on competition under Section 6 or Section 15A of the Exchange Act. Moreover, the Operating Committee believes that the proposed fees appropriately take into account the distinctions in the securities trading operations of different Industry Members, and avoid disincentives, such as a reduction in market quality, as required under the funding principles of the CAT NMS Plan.<sup>74</sup> The proposed discounts recognize the different types of trading operations presented by Options Market Makers and equities market makers, as well as the value of

<sup>74</sup> Section 11.2(b) of the CAT NMS Plan.

the market makers' quoting activity to the market as a whole. Accordingly, the Operating Committee believes that the proposed discounts will not impact the ability of small Options Market Makers or equities market makers to provide liquidity.

Accordingly, with this Amendment, the Exchange proposes to amend paragraph (b)(1) of the proposed fee schedule to indicate that the message traffic related to equity market maker quotes and Options Market Maker quotes would be discounted. In addition, the Exchange proposes to define the term "Options Market Maker" in paragraph (a)(1) of the proposed fee schedule.

#### (C) Comparability/Allocation of Costs

Under the Original Proposal, 75% of CAT costs were allocated to Industry Members (other than Execution Venue ATSs) and 25% of CAT costs were allocated to Execution Venues. This cost allocation sought to maintain the greatest level of comparability across the funding model, where comparability considered affiliations among or between CAT Reporters. The Commission and commenters expressed concerns regarding whether the proposed 75%/25% allocation of CAT costs is consistent with the Plan's funding principles and the Exchange Act, including whether the allocation places a burden on competition or reduces market quality. The Commission and commenters also questioned whether the approach of accounting for affiliations among CAT Reporters in setting CAT Fees disadvantages non-affiliated CAT Reporters or otherwise burdens competition in the market for trading services.<sup>75</sup>

In response to these concerns, the Operating Committee determined to revise the proposed funding model to focus the comparability of CAT Fees on the individual entity level, rather than primarily on the comparability of affiliated entities. In light of the interconnected nature of the various aspects of the funding model, the Operating Committee determined to revise various aspects of the model to enhance comparability at the individual entity level. Specifically, to achieve such comparability, the Operating Committee determined to (1) decrease the number of tiers for Industry Members (other than Execution Venue ATSs) from nine to seven; (2) change the allocation of CAT costs between Equity

Execution Venues and Options Execution Venues from 75%/25% to 67%/33%; and (3) adjust tier percentages and recovery allocations for Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATSs). With these changes, the proposed funding model provides fee comparability for the largest individual entities, with the largest Industry Members (other than Execution Venue ATSs), Equity Execution Venues and Options Execution Venues each paying a CAT Fee of approximately \$81,000 each quarter.

#### (i) Number of Industry Member Tiers

In the Original Proposal, the proposed funding model had nine tiers for Industry Members (other than Execution Venue ATSs). The Operating Committee determined that reducing the number of tiers from nine tiers to seven tiers (and adjusting the predefined Industry Member Percentages as well) continues to provide a fair allocation of fees among Industry Members and appropriately distinguishes between Industry Members with differing levels of message traffic. In reaching this conclusion, the Operating Committee considered historical message traffic generated by Industry Members across all exchanges and as submitted to FINRA's OATS, and considered the distribution of firms with similar levels of message traffic, grouping together firms with similar levels of message traffic. Based on this, the Operating Committee determined that seven tiers would group firms with similar levels of message traffic, while also achieving greater comparability in the model for the individual CAT Reporters with the greatest market share or message traffic.

In developing the proposed seven tier structure, the Operating Committee considered remaining at nine tiers, as well as reducing the number of tiers down to seven when considering how to address the concerns raised regarding comparability. For each of the alternatives, the Operating Committee considered the assignment of various percentages of Industry Members to each tier as well as various percentages of Industry Member recovery allocations for each alternative. Each of these options was considered in the context of its effects on the full funding model, as changes in each variable in the model affect other variables in the model when allocating the total CAT costs among CAT Reporters. The Operating Committee determined that the seven tier alternative provided the most fee comparability at the individual entity level for the largest CAT Reporters,

while both providing logical breaks in tiering for Industry Members with different levels of message traffic and a sufficient number of tiers to provide for the full spectrum of different levels of message traffic for all Industry Members.

#### (ii) Allocation of CAT Costs Between Equity and Options Execution Venues

The Operating Committee also determined to adjust the allocation of CAT costs between Equity Execution Venues and Options Execution Venues to enhance comparability at the individual entity level. In the Original Proposal, 75% of Execution Venue CAT costs were allocated to Equity Execution Venues, and 25% of Execution Venue CAT costs were allocated to Options Execution Venues. To achieve the goal of increased comparability at the individual entity level, the Operating Committee analyzed a range of alternative splits for revenue recovery between Equity and Options Execution Venues, along with other changes in the proposed funding model. Based on this analysis, the Operating Committee determined to allocate 67 percent of Execution Venue costs recovered to Equity Execution Venues and 33 percent to Options Execution Venues. The Operating Committee determined that a 67/33 allocation between Equity and Options Execution Venues enhances the level of fee comparability for the largest CAT Reporters. Specifically, the largest Equity and Options Execution Venues would pay a quarterly CAT Fee of approximately \$81,000.

In developing the proposed allocation of CAT costs between Equity and Options Execution Venues, the Operating Committee considered various different options for such allocation, including keeping the original 75%/25% allocation, as well as shifting to a 70%/30%, 67%/33%, or 57.75%/42.25% allocation. For each of the alternatives, the Operating Committee considered the effect each allocation would have on the assignment of various percentages of Equity Execution Venues to each tier as well as various percentages of Equity Execution Venue recovery allocations for each alternative. Moreover, each of these options was considered in the context of the full model, as changes in each variable in the model affect other variables in the model when allocating the total CAT costs among CAT Reporters. The Operating Committee determined that the 67%/33% allocation between Equity and Options Execution Venues provided the greatest level of fee comparability at the individual entity level for the largest

<sup>75</sup> See Suspension Order at 31662-3; SIFMA Letter at 3; Sidley Letter at 6-7; Group One Letter at 2; and Belvedere Letter at 2.

CAT Reporters, while still providing for appropriate fee levels across all tiers for all CAT Reporters.

(iii) Allocation of Costs Between Execution Venues and Industry Members

The Operating Committee determined to allocate 25% of CAT costs to Execution Venues and 75% to Industry Members (other than Execution Venue ATs), as it had in the Original Proposal. The Operating Committee determined that this 75%/25% allocation, along with the other changes proposed above, led to the most comparable fees for the largest Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATs). The largest Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATs) would each pay a quarterly CAT Fee of approximately \$81,000.

As a preliminary matter, the Operating Committee determined that it is appropriate to allocate most of the costs to create, implement and maintain the CAT to Industry Members for several reasons. First, there are many more broker-dealers expected to report to the CAT than Participants (*i.e.*, 1,541 broker-dealer CAT Reporters versus 22 Participants). Second, since most of the costs to process CAT reportable data is generated by Industry Members, Industry Members could be expected to contribute toward such costs. Finally, as noted by the SEC, the CAT “substantially enhance[s] the ability of the SROs and the Commission to oversee today’s securities markets,”<sup>76</sup> thereby benefitting all market participants. After making this determination, the Operating Committee analyzed several different cost allocations, as discussed further below, and determined that an allocation where 75% of the CAT costs should be borne by the Industry Members (other than Execution Venue ATs) and 25% should be paid by Execution Venues was most appropriate and led to the greatest comparability of CAT Fees for the largest CAT Reporters.

In developing the proposed allocation of CAT costs between Execution Venues and Industry Members (other than Execution Venue ATs), the Operating Committee considered various different options for such allocation, including keeping the original 75%/25% allocation, as well as shifting to an 80%/20%, 70%/30%, or 65%/35%

allocation. Each of these options was considered in the context of the full model, including the effect on each of the changes discussed above, as changes in each variable in the model affect other variables in the model when allocating the total CAT costs among CAT Reporters. In particular, for each of the alternatives, the Operating Committee considered the effect each allocation had on the assignment of various percentages of Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATs) to each relevant tier as well as various percentages of recovery allocations for each tier. The Operating Committee determined that the 75%/25% allocation between Execution Venues and Industry Members (other than Execution Venue ATs) provided the greatest level of fee comparability at the individual entity level for the largest CAT Reporters, while still providing for appropriate fee levels across all tiers for all CAT Reporters.

(iv) Affiliations

The funding principles set forth in Section 11.2 of the Plan require that the fees charged to CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venue and/or Industry Members). The proposed funding model satisfies this requirement. As discussed above, under the proposed funding model, the largest Equity Execution Venues, Options Execution Venues, and Industry Members (other than Execution Venue ATs) pay approximately the same fee. Moreover, the Operating Committee believes that the proposed funding model takes into consideration affiliations between or among CAT Reporters as complexes with multiple CAT Reporters will pay the appropriate fee based on the proposed fee schedule for each of the CAT Reporters in the complex. For example, a complex with a Tier 1 Equity Execution Venue and Tier 2 Industry Member will pay the same as another complex with a Tier 1 Equity Execution Venue and Tier 2 Industry Member.

(v) Fee Schedule Changes

Accordingly, with this Amendment, the Exchange proposes to amend paragraphs (b)(1) and (2) of the proposed fee schedule to reflect the changes discussed in this section. Specifically, the Exchange proposes to amend paragraph (b)(1) and (2) of the

proposed fee schedule to update the number of tiers, and the fees and percentages assigned to each tier to reflect the described changes.

(D) Market Share/Message Traffic

In the Original Proposal, the Operating Committee proposed to charge Execution Venues based on market share and Industry Members (other than Execution Venue ATs) based on message traffic. Commenters questioned the use of the two different metrics for calculating CAT Fees.<sup>77</sup> The Operating Committee continues to believe that the proposed use of market share and message traffic satisfies the requirements of the Exchange Act and the funding principles set forth in the CAT NMS Plan. Accordingly, the proposed funding model continues to charge Execution Venues based on market share and Industry Members (other than Execution Venue ATs) based on message traffic.

In drafting the Plan and the Original Proposal, the Operating Committee expressed the view that the correlation between message traffic and size does not apply to Execution Venues, which they described as producing similar amounts of message traffic regardless of size. The Operating Committee believed that charging Execution Venues based on message traffic would result in both large and small Execution Venues paying comparable fees, which would be inequitable, so the Operating Committee determined that it would be more appropriate to treat Execution Venues differently from Industry Members in the funding model. Upon a more detailed analysis of available data, however, the Operating Committee noted that Execution Venues have varying levels of message traffic. Nevertheless, the Operating Committee continues to believe that a bifurcated funding model—where Industry Members (other than Execution Venue ATs) are charged fees based on message traffic and Execution Venues are charged based on market share—complies with the Plan and meets the standards of the Exchange Act for the reasons set forth below.

Charging Industry Members based on message traffic is the most equitable means for establishing fees for Industry Members (other than Execution Venue ATs). This approach will assess fees to Industry Members that create larger volumes of message traffic that are relatively higher than those fees charged to Industry Members that create smaller volumes of message traffic. Since

<sup>76</sup> Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722, 45726 (August 1, 2012) (“Rule 613 Adopting Release”).

<sup>77</sup> Suspension Order at 31663; FIA Principal Traders Group Letter at 2.

message traffic, along with fixed costs of the Plan Processor, is a key component of the costs of operating the CAT, message traffic is an appropriate criterion for placing Industry Members in a particular fee tier.

The Operating Committee also believes that it is appropriate to charge Execution Venues CAT Fees based on their market share. In contrast to Industry Members (other than Execution Venue ATs), which determine the degree to which they produce the message traffic that constitutes CAT Reportable Events, the CAT Reportable Events of Execution Venues are largely derivative of quotations and orders received from Industry Members that the Execution Venues are required to display. The business model for Execution Venues, however, is focused on executions in their markets. As a result, the Operating Committee believes that it is more equitable to charge Execution Venues based on their market share rather than their message traffic.

Similarly, focusing on message traffic would make it more difficult to draw distinctions between large and small exchanges, including options exchanges in particular. For instance, the Operating Committee analyzed the message traffic of Execution Venues and Industry Members for the period of April 2017 to June 2017 and placed all CAT Reporters into a nine-tier framework (*i.e.*, a single tier may include both Execution Venues and Industry Members). The Operating Committee's analysis found that the majority of exchanges (15 total) were grouped in Tiers 1 and 2. Moreover, virtually all of the options exchanges were in Tiers 1 and 2.<sup>78</sup> Given the concentration of options exchanges in Tiers 1 and 2, the Operating Committee believes that using a funding model based purely on message traffic would make it more difficult to distinguish between large and small options exchanges, as compared to the proposed bifurcated fee approach.

In addition, the Operating Committee also believes that it is appropriate to treat ATs as Execution Venues under the proposed funding model since ATs have business models that are similar to those of exchanges, and ATs also compete with exchanges. For these reasons, the Operating Committee believes that charging Execution Venues based on market share is more appropriate and equitable than charging

Execution Venues based on message traffic.

#### (E) Time Limit

In the Original Proposal, the Operating Committee did not impose any time limit on the application of the proposed CAT Fees. As discussed above, the Operating Committee developed the proposed funding model by analyzing currently available historical data. Such historical data, however, is not as comprehensive as data that will be submitted to the CAT. Accordingly, the Operating Committee believes that it will be appropriate to revisit the funding model once CAT Reporters have actual experience with the funding model. Accordingly, the Operating Committee proposes to include a sunset provision in the proposed fee model. The proposed CAT Fees will sunset two years after the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. Specifically, the Exchange proposes to add paragraph (d) of the proposed fee schedule to include this sunset provision. Such a provision will provide the Operating Committee and other market participants with the opportunity to reevaluate the performance of the proposed funding model.

#### (F) Tier Structure/Decreasing Cost per Unit

In the Original Proposal, the Operating Committee determined to use a tiered fee structure. The Commission and commenters questioned whether the decreasing cost per additional unit (of message traffic in the case of Industry Members, or of share volume in the case of Execution Venues) in the proposed fee schedules burdens competition by disadvantaging small Industry Members and Execution Venues and/or by creating barriers to entry in the market for trading services and/or the market for broker-dealer services.<sup>79</sup>

The Operating Committee does not believe that decreasing cost per additional unit in the proposed fee schedules places an unfair competitive burden on Small Industry Members and Execution Venues. While the cost per unit of message traffic or share volume necessarily will decrease as volume increases in any tiered fee model using fixed fee percentages and, as a result, Small Industry Members and small Execution Venues may pay a larger fee per message or share, this comment fails to take account of the substantial differences in the absolute fees paid by

Small Industry Members and small Execution Venues as opposed to large Industry Members and large Execution Venues. For example, under the fee proposals, Tier 7 Industry Members would pay a quarterly fee of \$105, while Tier 1 Industry Members would pay a quarterly fee of \$81,483. Similarly, a Tier 4 Equity Execution Venue would pay a quarterly fee of \$129, while a Tier 1 Equity Execution Venue would pay a quarterly fee of \$81,048. Thus, Small Industry Members and small Execution Venues are not disadvantaged in terms of the total fees that they actually pay. In contrast to a tiered model using fixed fee percentages, the Operating Committee believes that strictly variable or metered funding models based on message traffic or share volume would be more likely to affect market behavior and may present administrative challenges (*e.g.*, the costs to calculate and monitor fees may exceed the fees charged to the smallest CAT Reporters).

#### (G) Other Alternatives Considered

In addition to the various funding model alternatives discussed above regarding discounts, number of tiers and allocation percentages, the Operating Committee also discussed other possible funding models. For example, the Operating Committee considered allocating the total CAT costs equally among each of the Participants, and then permitting each Participant to charge its own members as it deems appropriate.<sup>80</sup> The Operating Committee determined that such an approach raised a variety of issues, including the likely inconsistency of the ensuing charges, potential for lack of transparency, and the impracticality of multiple SROs submitting invoices for CAT charges. The Operating Committee therefore determined that the proposed funding model was preferable to this alternative.

#### (H) Industry Member Input

Commenters expressed concern regarding the level of Industry Member input into the development of the proposed funding model, and certain commenters have recommended a greater role in the governance of the CAT.<sup>81</sup> The Participants previously addressed this concern in its letters responding to comments on the Plan and the CAT Fees.<sup>82</sup> As discussed in

<sup>80</sup> See FIA Principal Traders Group Letter at 2; Belvedere Letter at 4.

<sup>81</sup> See Suspension Order at 31662; MFA Letter at 1-2.

<sup>82</sup> Letter from Participants to Brent J. Fields, Secretary, SEC (Sept. 23, 2016) ("Plan Response Letter"); Letter from CAT NMS Plan Participants to

<sup>78</sup> The Participants note that this analysis did not place MIAX PEARL in Tier 1 or Tier 2 since the exchange commenced trading on February 6, 2017.

<sup>79</sup> Suspension Order at 31667.

those letters, the Participants discussed the funding model with the Development Advisory Group (“DAG”), the advisory group formed to assist in the development of the Plan, during its original development.<sup>83</sup> Moreover, Industry Members currently have a voice in the affairs of the Operating Committee and operation of the CAT generally through the Advisory Committee established pursuant to Rule 613(b)(7) and Section 4.13 of the Plan. The Advisory Committee attends all meetings of the Operating Committee, as well as meetings of various subcommittees and working groups, and provides valuable and critical input for the Participants’ and Operating Committee’s consideration. The Operating Committee continues to believe that that Industry Members have an appropriate voice regarding the funding of the Company.

#### (I) Conflicts of Interest

Commenters also raised concerns regarding Participant conflicts of interest in setting the CAT Fees.<sup>84</sup> The Participants previously responded to this concern in both the Plan Response Letter and the Fee Rule Response Letter.<sup>85</sup> As discussed in those letters, the Plan, as approved by the SEC, adopts various measures to protect against the potential conflicts issues raised by the Participants’ fee-setting authority. Such measures include the operation of the Company as a not for profit business league and on a break-even basis, and the requirement that the Participants file all CAT Fees under Section 19(b) of the Exchange Act. The Operating Committee continues to believe that these measures adequately protect against concerns regarding conflicts of interest in setting fees, and that additional measures, such as an independent third party to evaluate an appropriate CAT Fee, are unnecessary.

#### (J) Fee Transparency

Commenters also argued that they could not adequately assess whether the CAT Fees were fair and equitable because the Operating Committee has not provided details as to what the Participants are receiving in return for the CAT Fees.<sup>86</sup> The Operating Committee provided a detailed

discussion of the proposed funding model in the Plan, including the expenses to be covered by the CAT Fees. In addition, the agreement between the Company and the Plan Processor sets forth a comprehensive set of services to be provided to the Company with regard to the CAT. Such services include, without limitation: User support services (e.g., a help desk); tools to allow each CAT Reporter to monitor and correct their submissions; a comprehensive compliance program to monitor CAT Reporters’ adherence to Rule 613; publication of detailed Technical Specifications for Industry Members and Participants; performing data linkage functions; creating comprehensive data security and confidentiality safeguards; creating query functionality for regulatory users (i.e., the Participants, and the SEC and SEC staff); and performing billing and collection functions. The Operating Committee further notes that the services provided by the Plan Processor and the costs related thereto were subject to a bidding process.

#### (K) Funding Authority

Commenters also questioned the authority of the Operating Committee to impose CAT Fees on Industry Members.<sup>87</sup> The Participants previously responded to this same comment in the Plan Response Letter and the Fee Rule Response Letter.<sup>88</sup> As the Participants previously noted, SEC Rule 613 specifically contemplates broker-dealers contributing to the funding of the CAT. In addition, as noted by the SEC, the CAT “substantially enhance[s] the ability of the SROs and the Commission to oversee today’s securities markets,”<sup>89</sup> thereby benefitting all market participants. Therefore, the Operating Committee continues to believe that it is equitable for both Participants and Industry Members to contribute to funding the cost of the CAT.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>90</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>91</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, is not designed to permit unfair

discrimination between customers, issuers, brokers, or dealers, and is 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. As discussed above, the SEC approved the bifurcated, tiered, fixed fee funding model in the CAT NMS Plan, finding it was reasonable and that it equitably allocated fees among Participants and Industry Members. The Exchange believes that the proposed tiered fees adopted pursuant to the funding model approved by the SEC in the CAT NMS Plan are reasonable, equitably allocated and not unfairly discriminatory.

The Exchange believes that this proposal is consistent with the Act because it implements, interprets or clarifies the provisions of the Plan, and is designed to assist the Exchange and its Industry Members 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.”<sup>92</sup> To the extent that this proposal implements, interprets or clarifies the Plan and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

The Exchange believes that the proposed tiered fees are reasonable. First, the total CAT Fees to be collected would be directly associated with the costs of establishing and maintaining the CAT, where such costs include Plan Processor costs and costs related to insurance, third party services and the operational reserve. The CAT Fees would not cover Participant services unrelated to the CAT. In addition, any surplus CAT Fees cannot be distributed to the individual Participants; such surpluses must be used as a reserve to offset future fees. Given the direct relationship between the fees and the CAT costs, the Exchange believes that the total level of the CAT Fees is reasonable.

In addition, the Exchange believes that the proposed CAT Fees are reasonably designed to allocate the total costs of the CAT equitably between and among the Participants and Industry Members, and are therefore not unfairly

Brent J. Fields, Secretary, SEC (June 29, 2017) (“Fee Rule Response Letter”).

<sup>83</sup> Fee Rule Response Letter at 2; Plan Response Letter at 18.

<sup>84</sup> See Suspension Order at 31662; FIA Principal Traders Group at 3.

<sup>85</sup> See Plan Response Letter at 16, 17; Fee Rule Response Letter at 10–12.

<sup>86</sup> See FIA Principal Traders Group at 3; SIFMA Letter at 3.

<sup>87</sup> See Suspension Order at 31661–2; SIFMA Letter at 2.

<sup>88</sup> See Plan Response Letter at 9–10; Fee Rule Response Letter at 3–4.

<sup>89</sup> Rule 613 Adopting Release at 45726.

<sup>90</sup> 15 U.S.C. 78f(b).

<sup>91</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>92</sup> Approval Order at 84697.

discriminatory. As discussed in detail above, the proposed tiered fees impose comparable fees on similarly situated CAT Reporters. For example, those with a larger impact on the CAT (measured via message traffic or market share) pay higher fees, whereas CAT Reporters with a smaller impact pay lower fees. Correspondingly, the tiered structure lessens the impact on smaller CAT Reporters by imposing smaller fees on those CAT Reporters with less market share or message traffic. In addition, the fee structure takes into consideration distinctions in securities trading operations of CAT Reporters, including ATSSs trading OTC Equity Securities, and equity and options market makers.

Moreover, the Exchange believes that the division of the total CAT costs between Industry Members and Execution Venues, and the division of the Execution Venue portion of total costs between Equity and Options Execution Venues, is reasonably designed to allocate CAT costs among CAT Reporters. The 75%/25% division between Industry Members (other than Execution Venue ATSSs) and Execution Venues maintains the greatest level of comparability across the funding model. For example, the cost allocation establishes fees for the largest Industry Members (*i.e.*, those Industry Members in Tiers 1) that are comparable to the largest Equity Execution Venues and Options Execution Venues (*i.e.*, those Execution Venues in Tier 1). Furthermore, the allocation of total CAT cost recovery recognizes the difference in the number of CAT Reporters that are Industry Members (other than Execution Venue ATSSs) versus CAT Reporters that are Execution Venues. Similarly, the 67%/33% allocation between Equity and Options Execution Venues also helps to provide fee comparability for the largest CAT Reporters.

Finally, the Exchange 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 fixed fee. Such factors are crucial to estimating a reliable revenue stream for the Company and for permitting CAT Reporters to reasonably predict their payment obligations for budgeting purposes.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change implements provisions of the

CAT NMS Plan approved by the Commission, and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. Similarly, all national securities exchanges and FINRA are proposing this proposed fee schedule 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 exchanges and FINRA.

Moreover, as previously described, the Exchange believes that the proposed rule change fairly and equitably allocates costs among CAT Reporters. In particular, the proposed fee schedule is structured to impose comparable fees on similarly situated CAT Reporters, and lessen the impact on smaller CAT Reporters. CAT Reporters with similar levels of CAT activity will pay similar fees. For example, Industry Members (other than Execution Venue ATSSs) with higher levels of message traffic will pay higher fees, and those with lower levels of message traffic will pay lower fees. Similarly, Execution Venue ATSSs and other Execution Venues with larger market share will pay higher fees, and those with lower levels of market share will pay lower fees. Therefore, given that there is generally a relationship between message traffic and/or market share to the CAT Reporter's size, smaller CAT Reporters generally pay less than larger CAT Reporters. Accordingly, the Exchange does not believe that the CAT Fees would have a disproportionate effect on smaller or larger CAT Reporters. In addition, ATSSs and exchanges will pay the same fees based on market share. Therefore, the Exchange does not believe that the fees will impose any burden on the competition between ATSSs and exchanges. Accordingly, the Exchange believes that the proposed fees will minimize the potential for adverse effects on competition between CAT Reporters in the market.

Furthermore, the tiered, fixed fee funding model limits the disincentives to providing liquidity to the market. Therefore, the proposed fees are structured to limit burdens on competitive quoting and other liquidity provision in the market.

In addition, the Operating Committee believes that the proposed changes to the Original Proposal, as discussed above in detail, address certain competitive concerns raised by commenters, including concerns related to, among other things, smaller ATSSs, ATSSs trading OTC Equity Securities, market making quoting and fee comparability. As discussed above, the

Operating Committee believes that the proposals address the competitive concerns raised by commenters.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has set forth responses to comments received regarding the Original Proposal in Section 3(a)(4) above.

#### **III. Solicitation of Comments on Amendment No. 2**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 2 is consistent with the Act. In particular, the Commission seeks comment on the following:

##### *Allocation of Costs*

(1) Commenters' views as to whether the allocation of CAT costs is consistent with the funding principle expressed in the CAT NMS Plan that requires the Operating Committee to "avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality."<sup>93</sup>

(2) Commenters' views as to whether the allocation of 25% of CAT costs to the Execution Venues (including all the Participants) and 75% to Industry Members, will incentivize or disincentivize the Participants to effectively and efficiently manage the CAT costs incurred by the Participants since they will only bear 25% of such costs.

(3) Commenters' views on the determination to allocate 75% of all costs incurred by the Participants from November 21, 2016 to November 21, 2017 to Industry Members (other than Execution Venue ATSSs), when such costs are development and build costs and when Industry Member reporting is scheduled to commence a year later, including views on whether such "fees, costs and expenses . . . [are] fairly and reasonably shared among the Participants and Industry Members" in accordance with the CAT NMS Plan.<sup>94</sup>

(4) Commenters' views on whether an analysis of the ratio of the expected Industry Member-reported CAT messages to the expected SRO-reported CAT messages should be the basis for determining the allocation of costs between Industry Members and Execution Venues.<sup>95</sup>

<sup>93</sup> Section 11.2(e) of the CAT NMS Plan.

<sup>94</sup> Section 11.1(c) of the CAT NMS Plan.

<sup>95</sup> The Notice for the CAT NMS Plan did not provide a comprehensive count of audit trail

(5) Any additional data analysis on the allocation of CAT costs, including any existing supporting evidence.

#### Comparability

(6) Commenters' views on the shift in the standard used to assess the comparability of CAT Fees, with the emphasis now on comparability of individual entities instead of affiliated entities, including views as to whether this shift is consistent with the funding principle expressed in the CAT NMS Plan that requires the Operating Committee to establish a fee structure in which the fees charged to "CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venues and/or Industry Members)." <sup>96</sup>

(7) Commenters' views as to whether the reduction in the number of tiers for Industry Members (other than Execution Venue ATs) from nine to seven, the revised allocation of CAT costs between Equity Execution Venues and Options Execution Venues from a 75%/25% split to a 67%/33% split, and the adjustment of all tier percentages and recovery allocations achieves comparability across individual entities, and whether these changes should have resulted in a change to the allocation of 75% of total CAT costs to Industry Members (other than Execution Venue ATs) and 25% of such costs to Execution Venues.

#### Discounts

(8) Commenters' views as to whether the discounts for options market-makers, equities market-makers, and Equity ATs trading OTC Equity Securities are clear, reasonable, and consistent with the funding principle expressed in the CAT NMS Plan that requires the Operating Committee to "avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality," <sup>97</sup> including views as to whether the discounts for market-makers limit any potential disincentives to act as a market-maker and/or to provide liquidity due to CAT fees.

message traffic from different regulatory data sources, but the Commission did estimate the ratio of all SRO audit trail messages to OATS audit trail messages to be 1.9431. See Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30613, 30721 n.919 and accompanying text (May 17, 2016).

<sup>96</sup> Section 11.2(c) of the CAT NMS Plan.

<sup>97</sup> Section 11.2(e) of the CAT NMS Plan.

#### Calculation of Costs and Imposition of CAT Fees

(9) Commenters' views as to whether the amendment provides sufficient information regarding the amount of costs incurred from November 21, 2016 to November 21, 2017, particularly, how those costs were calculated, how those costs relate to the proposed CAT Fees, and how costs incurred after November 21, 2017 will be assessed upon Industry Members and Execution Venues;

(10) Commenters' views as to whether the timing of the imposition and collection of CAT Fees on Execution Venues and Industry Members is reasonably related to the timing of when the Company expects to incur such development and implementation costs. <sup>98</sup>

(11) Commenters' views on dividing CAT costs equally among each of the Participants, and then each Participant charging its own members as it deems appropriate, taking into consideration the possibility of inconsistency in charges, the potential for lack of transparency, and the impracticality of multiple SROs submitting invoices for CAT charges.

#### Burden on Competition and Barriers to Entry

(12) Commenters' views as to whether the allocation of 75% of CAT costs to Industry Members (other than Execution Venue ATs) imposes any burdens on competition to Industry Members, including views on what baseline competitive landscape the Commission should consider when analyzing the proposed allocation of CAT costs.

(13) Commenters' views on the burdens on competition, including the relevant markets and services and the impact of such burdens on the baseline competitive landscape in those relevant markets and services.

(14) Commenters' views on any potential burdens imposed by the fees on competition between and among CAT Reporters, including views on which baseline markets and services the fees could have competitive effects on and whether the fees are designed to minimize such effects.

(15) Commenters' general views on the impact of the proposed fees on economies of scale and barriers to entry.

(16) Commenters' views on the baseline economies of scale and barriers to entry for Industry Members and Execution Venues and the relevant markets and services over which these economies of scale and barriers to entry exist.

<sup>98</sup> Section 11.1(c) of the CAT NMS Plan.

(17) Commenters' views as to whether a tiered fee structure necessarily results in less active tiers paying more per unit than those in more active tiers, thus creating economies of scale, with supporting information if possible.

(18) Commenters' views as to how the level of the fees for the least active tiers would or would not affect barriers to entry.

(19) Commenters' views on whether the difference between the cost per unit (messages or market share) in less active tiers compared to the cost per unit in more active tiers creates regulatory economies of scale that favor larger competitors and, if so:

(a) How those economies of scale compare to operational economies of scale; and

(b) Whether those economies of scale reduce or increase the current advantages enjoyed by larger competitors or otherwise alter the competitive landscape.

(20) Commenters' views on whether the fees could affect competition between and among national securities exchanges and FINRA, in light of the fact that implementation of the fees does not require the unanimous consent of all such entities, and, specifically:

(a) Whether any of the national securities exchanges or FINRA are disadvantaged by the fees; and

(b) If so, whether any such disadvantages would be of a magnitude that would alter the competitive landscape.

(21) Commenters' views on any potential burden imposed by the fees on competitive quoting and other liquidity provision in the market, including, specifically:

(a) Commenters' views on the kinds of disincentives that discourage liquidity provision and/or disincentives that the Commission should consider in its analysis;

(b) Commenters' views as to whether the fees could disincentivize the provision of liquidity; and

(c) Commenters' views as to whether the fees limit any disincentives to provide liquidity.

(22) Commenters' views as to whether the amendment adequately responds to and/or addresses comments received on related filings.

#### Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MRX-2017-04 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-MRX-2017-04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MRX-2017-04, and should be submitted on or before January 5, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>99</sup>

**Robert W. Errett,**  
Deputy Secretary.

[FR Doc. 2017-26988 Filed 12-14-17; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-82272; File No. SR-CBOE-2017-040]

**Self-Regulatory Organizations; Cboe Exchange Inc.; Notice of Filing of Amendment No. 1 to a Proposed Rule Change To Establish the Fees for Industry Members Related to the National Market System Plan Governing the Consolidated Audit Trail**

December 11, 2017.

On May 16, 2017, Chicago Board Options Exchange, Incorporated, n/k/a Cboe Exchange Inc. ("Exchange" or "SRO") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt a fee schedule to establish the fees for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail ("CAT NMS Plan"). The proposed rule change was published in the **Federal Register** for comment on June 1, 2017.<sup>3</sup> The Commission received seven comment letters on the proposed rule change,<sup>4</sup>

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 80785 (May 26, 2017), 82 FR 25404 (June 1, 2017) ("Original Proposal").

<sup>4</sup> Since the CAT NMS Plan Participants' proposed rule changes to adopt fees to be charged to Industry Members to fund the consolidated audit trail are substantively identical, the Commission is considering all comments received on the proposed rule changes regardless of the comment file to which they were submitted. See text accompanying notes 12-15 *infra*, for a list of the CAT NMS Plan Participants. See Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Brent J. Fields, Secretary, Commission (dated June 6, 2017), available at: <https://www.sec.gov/comments/sr-batsbzx-2017-38/batsbzx201738-1788188-153228.pdf>; Letter from Patricia L. Cerny and Steven O'Malley, Compliance Consultants, to Brent J. Fields, Secretary, Commission (dated June 12, 2017), available at: <https://www.sec.gov/comments/sr-cboe-2017-040/cboe2017040-1799253-153675.pdf>; Letter from Daniel Zinn, General Counsel, OTC Markets Group Inc., to Eduardo A. Aleman, Assistant Secretary, Commission (dated June 13, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-1801717-153703.pdf>; Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission (dated June 22, 2017), available at: <https://www.sec.gov/comments/sr-cboe-2017-040/cboe2017040-1819670-154195.pdf>; Letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, Commission (dated June 23, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-1822454-154283.pdf>; and Letter from Suzanne H. Shatto, Investor, to Commission (dated June 27, 2017), available at: <https://www.sec.gov/comments/sr-batsedgx-2017-22/batsedgx201722->

and a response to comments from the Participants.<sup>5</sup> On June 30, 2017, the Commission temporarily suspended and initiated proceedings to determine whether to approve or disapprove the proposed rule change.<sup>6</sup> The Commission thereafter received seven comment letters,<sup>7</sup> and a response to comments from the Participants.<sup>8</sup> On November 3, 2017, the Exchange filed Amendment No. 1 to the proposed rule change, as described in Items I and II below, which Items have been prepared by the Exchange.<sup>9</sup> On November 9, 2017, the Commission extended the time period within which to approve the proposed rule change or disapprove the proposed

<sup>5</sup> 154443.pdf. The Commission also received a comment letter which is not pertinent to these proposed rule changes. See Letter from Christina Crouch, Smart Ltd., to Brent J. Fields, Secretary, Commission (dated June 5, 2017), available at: <https://www.sec.gov/comments/sr-batsbzx-2017-38/batsbzx201738-1785545-153152.htm>.

<sup>6</sup> See Letter from CAT NMS Plan Participants to Brent J. Fields, Secretary, Commission (dated June 29, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-1832632-154584.pdf>.

<sup>7</sup> See Securities Exchange Act Release No. 81067 (June 30, 2017), 82 FR 31656 (July 7, 2017).

<sup>8</sup> See Letter from W. Hardy Callcott, Partner, Sidley Austin LLP, to Brent J. Fields, Secretary, Commission (dated July 27, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2148338-157737.pdf>; Letter from Kevin Coleman, General Counsel and Chief Compliance Officer, Belvedere Trading LLC, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2148360-157740.pdf>; Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2151228-157745.pdf>; Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2150977-157744.pdf>; Letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2150818-157743.pdf>; Letter from John Kinahan, Chief Executive Officer, Group One Trading, L.P., to Brent J. Fields, Secretary, Commission (dated August 10, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-2214568-160619.pdf>; Letter from Joseph Molluso, Executive Vice President and CFO, Virtu Financial, to Brent J. Fields, Secretary, Commission (dated August 18, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-2238648-160830.pdf>.

<sup>9</sup> See Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Brent J. Fields, Secretary, Commission (dated November 2, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2674608-161412.pdf>.

<sup>99</sup> Amendment No. 1 to the proposed rule change replaces and supersedes the Original Proposal in its entirety.



rule change to January 14, 2018.<sup>10</sup> The Commission is publishing this notice to solicit comments from interested persons on Amendment No. 1.<sup>11</sup>

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

The Exchange proposes to amend its Fees Schedule to establish the fees for Industry Members related to the CAT NMS Plan.

The text of the proposed rule change is also available on the Exchange's website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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

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

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

##### 1. Purpose

BOX Options Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc.,<sup>12</sup> Chicago Stock Exchange, Inc.,

<sup>10</sup> See Securities Exchange Act Release No. 82049 (November 9, 2017), 82 FR 53549 (November 16, 2017).

<sup>11</sup> The Commission notes that on December 7, 2017, the Exchange filed Amendment No. 2 to the proposed rule change. Amendment No. 2 is a partial amendment to the proposed rule change, as amended by Amendment No. 1. Amendment No. 2 proposes to change the parenthetical regarding the OTC Equity Securities discount in paragraph (b)(2) of the proposed fee schedule from "with a discount for Equity ATSs exclusively trading OTC Equity Securities based on the average shares per trade ratio between NMS Stocks and OTC Equity Securities" to "with a discount for OTC Equity Securities market share of Equity ATSs trading OTC Equity Securities based on the average shares per trade ratio between NMS Stocks and OTC Equity Securities." See Securities Exchange Act Release No. 34-82273 (December 11, 2017).

<sup>12</sup> Note that Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., LLC, C2 Options Exchange,

Financial Industry Regulatory Authority, Inc. ("FINRA"), Investors' Exchange LLC, Miami International Securities Exchange, LLC, MIAx PEARL, LLC, NASDAQ BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC,<sup>13</sup> NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC,<sup>14</sup> NYSE Arca, Inc. and NYSE National, Inc.<sup>15</sup> (collectively, the "Participants") filed with the Commission, pursuant to Section 11A of the Exchange Act<sup>16</sup> and Rule 608 of Regulation NMS thereunder,<sup>17</sup> the CAT NMS Plan.<sup>18</sup> The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act. The Plan was published for comment in the **Federal Register** on May 17, 2016,<sup>19</sup> and approved by the Commission, as modified, on November 15, 2016.<sup>20</sup> The Plan is designed to create, implement and maintain a consolidated audit trail ("CAT") that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. The Plan accomplishes this by creating CAT NMS, LLC (the "Company"), of which each Participant is a member, to

Incorporated, and Chicago Board Options Exchange, Incorporated, have been renamed Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., respectively.

<sup>13</sup> ISE Gemini, LLC, ISE Mercury, LLC and International Securities Exchange, LLC have been renamed Nasdaq GEMX, LLC, Nasdaq MRX, LLC, and Nasdaq ISE, LLC, respectively. See Securities Exchange Act Rel. No. 80248 (Mar. 15, 2017), 82 FR 14547 (Mar. 21, 2017); Securities Exchange Act Rel. No. 80326 (Mar. 29, 2017), 82 FR 16460 (Apr. 4, 2017); and Securities Exchange Act Rel. No. 80325 (Mar. 29, 2017), 82 FR 16445 (Apr. 4, 2017).

<sup>14</sup> NYSE MKT LLC has been renamed NYSE American LLC. See Securities Exchange Act Rel. No. 80283 (Mar. 21, 2017), 82 FR 15244 (Mar. 27, 2017).

<sup>15</sup> National Stock Exchange, Inc. has been renamed NYSE National, Inc. See Securities Exchange Act Rel. No. 79902 (Jan. 30, 2017), 82 FR 9258 (Feb. 3, 2017).

<sup>16</sup> 15 U.S.C. 78k-1.

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

<sup>18</sup> See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. See Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.

<sup>19</sup> Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

<sup>20</sup> Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) ("Approval Order").

operate the CAT.<sup>21</sup> Under the CAT NMS Plan, the Operating Committee of the Company ("Operating Committee") has discretion to establish funding for the Company to operate the CAT, including establishing fees that the Participants will pay, and establishing fees for Industry Members that will be implemented by the Participants ("CAT Fees").<sup>22</sup> The Participants are required to file with the SEC under Section 19(b) of the Exchange Act any such CAT Fees applicable to Industry Members that the Operating Committee approves.<sup>23</sup> Accordingly, SRO submitted the Original Proposal to propose the Consolidated Audit Trail Funding Fees, which would require Industry Members that are SRO members to pay the CAT Fees determined by the Operating Committee.

The Commission published the Original Proposal for public comment in the **Federal Register** on June 1, 2017,<sup>24</sup> and received comments in response to the Original Proposal or similar fee filings by other Participants.<sup>25</sup> On June 30, 2017, the Commission suspended, and instituted proceedings to determine whether to approve or disapprove, the Original Proposal.<sup>26</sup> The Commission received seven comment letters in response to those proceedings.<sup>27</sup>

In response to the comments on the Original Proposal, the Operating Committee determined to make the following changes to the funding model: (1) Adds two additional CAT Fee tiers for Equity Execution Venues; (2)

<sup>21</sup> The Plan also serves as the limited liability company agreement for the Company.

<sup>22</sup> Section 11.1(b) of the CAT NMS Plan.

<sup>23</sup> *Id.*

<sup>24</sup> Securities Exchange Act Rel. No. 80785 (May 26, 2017), 82 FR 25404 (June 1, 2017) (SR-CBOE-2017-040).

<sup>25</sup> For a summary of comments, see generally Securities Exchange Act Rel. No. 81067 (June 30, 2017), 82 FR 31656 (July 7, 2017) ("Suspension Order").

<sup>26</sup> Suspension Order.

<sup>27</sup> See Letter from Stuart J. Kaswell, Executive Vice President, Managing Director and General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, SEC (July 28, 2017) ("MFA Letter"); Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Brent J. Fields, Secretary, SEC (July 28, 2017) ("SIFMA Letter"); Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, SEC (July 28, 2017) ("FIA Principal Traders Group Letter"); Letter from Kevin Coleman, General Counsel & Chief Compliance Officer, Belvedere Trading LLC, to Brent J. Fields, Secretary, SEC (July 28, 2017) ("Belvedere Letter"); Letter from W. Hardy Callcott, Sidley Austin LLP, to Brent J. Fields, Secretary, SEC (July 27, 2017) ("Sidley Letter"); Letter from John Kinahan, Chief Executive Officer, Group One Trading, L.P., to Brent J. Fields, Secretary, SEC (Aug. 10, 2017) ("Group One Letter"); and Letter from Joseph Molluso, Executive Vice President, Virtu Financial, to Brent J. Fields, Secretary, SEC (Aug. 18, 2017) ("Virtu Financial Letter").

discounts the market share of Execution Venue ATSS exclusively trading OTC Equity Securities as well as the market share of the FINRA over-the-counter reporting facility (“ORF”) by the average shares per trade ratio between NMS Stocks and OTC Equity Securities (calculated as 0.17% based on available data from the second quarter of 2017) when calculating the market share of Execution Venue ATS exclusively trading OTC Equity Securities and FINRA; (3) discounts the Options Market Maker quotes by the trade to quote ratio for options (calculated as 0.01% based on available data for June 2016 through June 2017) when calculating message traffic for Options Market Makers; (4) discounts equity market maker quotes by the trade to quote ratio for equities (calculated as 5.43% based on available data for June 2016 through June 2017) when calculating message traffic for equity market makers; (5) decreases the number of tiers for Industry Members (other than the Execution Venue ATSS) from nine to seven; (6) changes the allocation of CAT costs between Equity Execution Venues and Options Execution Venues from 75%/25% to 67%/33%; (7) adjusts tier percentages and recovery allocations for Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATSS); (8) focuses the comparability of CAT Fees on the individual entity level, rather than primarily on the comparability of affiliated entities; (9) commences invoicing of CAT Reporters as promptly as possible following the latest of the operative date of the Consolidated Audit Trail Funding Fees for each of the Participants and the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants; and (10) requires the proposed fees to automatically expire two years from the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. As discussed in detail below, SRO proposes to amend the Original Proposal to reflect these changes.

#### (1) Executive Summary

The following provides an executive summary of the CAT funding model approved by the Operating Committee, as well as Industry Members’ rights and obligations related to the payment of CAT Fees calculated pursuant to the CAT funding model, as amended by this Amendment. A detailed description of the CAT funding model and the CAT Fees, as amended by this Amendment, as well as the changes made to the

Original Proposal follows this executive summary.

#### (A) CAT Funding Model

- *CAT Costs.* The CAT funding model is designed to establish CAT-specific fees to collectively recover the costs of building and operating the CAT from all CAT Reporters, including Industry Members and Participants. The overall CAT costs used in calculating the CAT Fees in this fee filing are comprised of Plan Processor CAT costs and non-Plan Processor CAT costs incurred, and estimated to be incurred, from November 21, 2016 through November 21, 2017. Although the CAT costs from November 21, 2016 through November 21, 2017 were used in calculating the CAT Fees, the CAT Fees set forth in this fee filing would be in effect until the automatic sunset date, as discussed below. (See Section 3(a)(2)(E) below)

- *Bifurcated Funding Model.* The CAT NMS Plan requires a bifurcated funding model, where costs associated with building and operating the CAT would be borne by (1) Participants and Industry Members that are Execution Venues for Eligible Securities through fixed tier fees based on market share, and (2) Industry Members (other than alternative trading systems (“ATSS”) that execute transactions in Eligible Securities (“Execution Venue ATSS”)) through fixed tier fees based on message traffic for Eligible Securities. (See Section 3(a)(2) below)

- *Industry Member Fees.* Each Industry Member (other than Execution Venue ATSS) will be placed into one of seven tiers of fixed fees, based on “message traffic” in Eligible Securities for a defined period (as discussed below). Prior to the start of CAT reporting, “message traffic” will be comprised of historical equity and equity options orders, cancels, quotes and executions provided by each exchange and FINRA over the previous three months. After an Industry Member begins reporting to the CAT, “message traffic” will be calculated based on the Industry Member’s Reportable Events reported to the CAT. Industry Members with lower levels of message traffic will pay a lower fee and Industry Members with higher levels of message traffic will pay a higher fee. To avoid disincentives to quoting behavior, Options Market Maker and equity market maker quotes will be discounted when calculating message traffic. (See Section 3(a)(2)(B) below)

- *Execution Venue Fees.* Each Equity Execution Venue will be placed in one of four tiers of fixed fees based on market share, and each Options Execution Venue will be placed in one

of two tiers of fixed fees based on market share. Equity Execution Venue market share will be determined by calculating each Equity Execution Venue’s proportion of the total volume of NMS Stock and OTC Equity shares reported by all Equity Execution Venues during the relevant time period. For purposes of calculating market share, the market share of Execution Venue ATSS exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF will be discounted. Similarly, market share for Options Execution Venues will be determined by calculating each Options Execution Venue’s proportion of the total volume of Listed Options contracts reported by all Options Execution Venues during the relevant time period. Equity Execution Venues with a larger market share will pay a larger CAT Fee than Equity Execution Venues with a smaller market share. Similarly, Options Execution Venues with a larger market share will pay a larger CAT Fee than Options Execution Venues with a smaller market share. (See Section 3(a)(2)(C) below)

- *Cost Allocation.* For the reasons discussed below, in designing the model, the Operating Committee determined that 75 percent of total costs recovered would be allocated to Industry Members (other than Execution Venue ATSS) and 25 percent would be allocated to Execution Venues. In addition, the Operating Committee determined to allocate 67 percent of Execution Venue costs recovered to Equity Execution Venues and 33 percent to Options Execution Venues. (See Section 3(a)(2)(D) below)

- *Comparability of Fees.* The CAT funding model charges CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) comparable CAT Fees. (See Section 3(a)(2)(F) below)

#### (B) CAT Fees for Industry Members

- *Fee Schedule.* The quarterly CAT Fees for each tier for Industry Members are set forth in the two fee schedules in the Consolidated Audit Trail Funding Fees, one for Equity ATSS and one for Industry Members other than Equity ATSS. (See Section 3(a)(3)(B) below)

- *Quarterly Invoices.* Industry Members will be billed quarterly for CAT Fees, with the invoices payable within 30 days. The quarterly invoices will identify within which tier the Industry Member falls. (See Section 3(a)(3)(C) below)

- *Centralized Payment.* Each Industry Member will receive from the Company one invoice for its applicable CAT Fees,

not separate invoices from each Participant of which it is a member. Each Industry Member will pay its CAT Fees to the Company via the centralized system for the collection of CAT Fees established by the Operating Committee. (See Section 3(a)(3)(C) below)

- *Billing Commencement.* Industry Members will begin to receive invoices for CAT Fees as promptly as possible following the latest of the operative date of the Consolidated Audit Trail Funding Fees for each of the Participants and the operative date of the Plan amendment adopting CAT Fees for Participants. (See Section 3(a)(2)(G) below)

- *Sunset Provision.* The Consolidated Audit Trail Funding Fees will sunset automatically two years from the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. (See Section 3(a)(2)(J) below)

## (2) Description of the CAT Funding Model

Article XI of the CAT NMS Plan requires the Operating Committee to approve the operating budget, including projected costs of developing and operating the CAT for the upcoming year. In addition to a budget, Article XI of the CAT NMS Plan provides that the Operating Committee has discretion to establish funding for the Company, consistent with a bifurcated funding model, where costs associated with building and operating the Central Repository would be borne by (1) Participants and Industry Members that are Execution Venues through fixed tier fees based on market share, and (2) Industry Members (other than Execution Venue ATs) through fixed tier fees based on message traffic. In its order approving the CAT NMS Plan, the Commission determined that the proposed funding model was “reasonable”<sup>28</sup> and “reflects a reasonable exercise of the Participants’ funding authority to recover the Participants’ costs related to the CAT.”<sup>29</sup>

More specifically, the Commission stated in approving the CAT NMS Plan that “[t]he Commission believes that the proposed funding model is reasonably designed to allocate the costs of the CAT between the Participants and Industry Members.”<sup>30</sup> The Commission further noted the following:

The Commission believes that the proposed funding model reflects a reasonable exercise of the Participants’ funding authority to recover the Participants’ costs

related to the CAT. The CAT is a regulatory facility jointly owned by the Participants and . . . the Exchange Act specifically permits the Participants to charge their members fees to fund their self-regulatory obligations. The Commission further believes that the proposed funding model is designed to impose fees reasonably related to the Participants’ self-regulatory obligations because the fees would be directly associated with the costs of establishing and maintaining the CAT, and not unrelated SRO services.<sup>31</sup>

Accordingly, the funding model approved by the Operating Committee imposes fees on both Participants and Industry Members.

As discussed in Appendix C of the CAT NMS Plan, in developing and approving the approved funding model, the Operating Committee considered the advantages and disadvantages of a variety of alternative funding and cost allocation models before selecting the proposed model.<sup>32</sup> After analyzing the various alternatives, the Operating Committee determined that the proposed tiered, fixed fee funding model provides a variety of advantages in comparison to the alternatives.

In particular, the fixed fee model, as opposed to a variable fee model, provides transparency, ease of calculation, ease of billing and other administrative functions, and predictability of a fixed fee. Such factors are crucial to estimating a reliable revenue stream for the Company and for permitting CAT Reporters to reasonably predict their payment obligations for budgeting purposes. Additionally, a strictly variable or metered funding model based on message volume would be far more likely to affect market behavior and place an inappropriate burden on competition.

In addition, reviews from varying time periods of current broker-dealer order and trading data submitted under existing reporting requirements showed a wide range in activity among broker-dealers, with a number of broker-dealers submitting fewer than 1,000 orders per month and other broker-dealers submitting millions and even billions of orders in the same period. Accordingly, the CAT NMS Plan includes a tiered approach to fees. The tiered approach helps ensure that fees are equitably allocated among similarly situated CAT Reporters and furthers the goal of lessening the impact on smaller firms.<sup>33</sup> In addition, in choosing a tiered fee structure, the Operating Committee

concluded that the variety of benefits offered by a tiered fee structure, discussed above, outweighed the fact that CAT Reporters in any particular tier would pay different rates per message traffic order event or per market share (e.g., an Industry Member with the largest amount of message traffic in one tier would pay a smaller amount per order event than an Industry Member in the same tier with the least amount of message traffic). Such variation is the natural result of a tiered fee structure.<sup>34</sup> The Operating Committee considered several approaches to developing a tiered model, including defining fee tiers based on such factors as size of firm, message traffic or trading dollar volume. After analyzing the alternatives, it was concluded that the tiering should be based on message traffic which will reflect the relative impact of CAT Reporters on the CAT System.

Accordingly, the CAT NMS Plan contemplates that costs will be allocated across the CAT Reporters on a tiered basis in order to allocate higher costs to those CAT Reporters that contribute more to the costs of creating, implementing and maintaining the CAT and lower costs to those that contribute less.<sup>35</sup> The fees to be assessed at each tier are calculated so as to recoup a proportion of costs appropriate to the message traffic or market share (as applicable) from CAT Reporters in each tier. Therefore, Industry Members generating the most message traffic will be in the higher tiers, and will be charged a higher fee. Industry Members with lower levels of message traffic will be in lower tiers and will be assessed a smaller fee for the CAT.<sup>36</sup> Correspondingly, Execution Venues with the highest market shares will be in the top tier, and will be charged higher fees. Execution Venues with the lowest market shares will be in the lowest tier and will be assessed smaller fees for the CAT.<sup>37</sup>

The CAT NMS Plan states that Industry Members (other than Execution Venue ATs) will be charged based on message traffic, and that Execution Venues will be charged based on market share.<sup>38</sup> While there are multiple factors that contribute to the cost of building, maintaining and using the CAT, processing and storage of incoming message traffic is one of the most

<sup>34</sup> Moreover, as the SEC noted in approving the CAT NMS Plan, “[t]he Participants also have offered a reasonable basis for establishing a funding model based on broad tiers, in that it may be easier to implement.” Approval Order at 84796.

<sup>35</sup> Approval Order at 85005.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Section 11.3(a) and (b) of the CAT NMS Plan.

<sup>31</sup> *Id.* at 84794.

<sup>32</sup> Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85006.

<sup>33</sup> Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85006.

<sup>28</sup> Approval Order at 84796.

<sup>29</sup> *Id.* at 84794.

<sup>30</sup> *Id.* at 84795.

significant cost drivers for the CAT.<sup>39</sup> Thus, the CAT NMS Plan provides that the fees payable by Industry Members (other than Execution Venue ATSS) will be based on the message traffic generated by such Industry Member.<sup>40</sup>

In contrast to Industry Members, which determine the degree to which they produce message traffic that constitute CAT Reportable Events, the CAT Reportable Events of the Execution Venues are largely derivative of quotations and orders received from Industry Members that they are required to display. The business model for Execution Venues (other than FINRA), however, is focused on executions in their markets. As a result, the Operating Committee believes that it is more equitable to charge Execution Venues based on their market share rather than their message traffic.

Focusing on message traffic would make it more difficult to draw distinctions between large and small Execution Venues and, in particular, between large and small options exchanges. For instance, the Operating Committee analyzed the message traffic of Execution Venues and Industry Members for the period of April 2017 to June 2017 and placed all CAT Reporters into a nine-tier framework (*i.e.*, a single tier may include both Execution Venues and Industry Members). The Operating Committee's analysis found that the majority of exchanges (15 total) were grouped in Tiers 1 and 2. Moreover, virtually all of the options exchanges were in Tiers 1 and 2.<sup>41</sup> Given the resulting concentration of options exchanges in Tiers 1 and 2 under this approach, the analysis shows that a funding model for Execution Venues based on message traffic would make it more difficult to distinguish between large and small options exchanges, as compared to the proposed fee approach that bases fees for Execution Venues on market share.

The CAT NMS Plan's funding model also is structured to avoid a "reduction in market quality."<sup>42</sup> The tiered, fixed fee funding model is designed to limit the disincentives to providing liquidity to the market. For example, the Operating Committee expects that a firm that has a large volume of quotes would likely be categorized in one of the upper tiers, and would not be assessed a fee for this traffic directly as they would

under a more directly metered model. In contrast, strictly variable or metered funding models based on message volume are far more likely to affect market behavior. In approving the CAT NMS Plan, the SEC stated that "[t]he Participants also offered a reasonable basis for establishing a funding model based on broad tiers, in that it may be . . . less likely to have an incremental deterrent effect on liquidity provision."<sup>43</sup>

The funding model also is structured to avoid a reduction market quality because it discounts Options Market Maker and equity market maker quotes when calculating message traffic for Options Market Makers and equity market makers, respectively. As discussed in more detail below, the Operating Committee determined to discount the Options Market Maker quotes by the trade to quote ratio for options when calculating message traffic for Options Market Makers. Similarly, to avoid disincentives to quoting behavior on the equities side as well, the Operating Committee determined to discount equity market maker quotes by the trade to quote ratio for equities when calculating message traffic for equity market makers. The proposed discounts recognize the value of the market makers' quoting activity to the market as a whole.

The CAT NMS Plan is further structured to avoid potential conflicts raised by the Operating Committee determining fees applicable to its own members—the Participants. First, the Company will operate on a "break-even" basis, with fees imposed to cover costs and an appropriate reserve. Any surpluses will be treated as an operational reserve to offset future fees and will not be distributed to the Participants as profits.<sup>44</sup> To ensure that the Participants' operation of the CAT will not contribute to the funding of their other operations, Section 11.1(c) of the CAT NMS Plan specifically states that "[a]ny surplus of the Company's revenues over its expenses shall be treated as an operational reserve to offset future fees." In addition, as set forth in Article VIII of the CAT NMS Plan, the Company "intends to operate in a manner such that it qualifies as a 'business league' within the meaning of Section 501(c)(6) of the [Internal Revenue] Code." To qualify as a business league, an organization must "not [be] organized for profit and no part of the net earnings of [the organization can] inure[] to the benefit of any private shareholder or

individual."<sup>45</sup> As the SEC stated when approving the CAT NMS Plan, "the Commission believes that the Company's application for Section 501(c)(6) business league status addresses issues raised by commenters about the Plan's proposed allocation of profit and loss by mitigating concerns that the Company's earnings could be used to benefit individual Participants."<sup>46</sup> The Internal Revenue Service recently has determined that the Company is exempt from federal income tax under Section 501(c)(6) of the Internal Revenue Code.

The funding model also is structured to take into account distinctions in the securities trading operations of Participants and Industry Members. For example, the Operating Committee designed the model to address the different trading characteristics in the OTC Equity Securities market. Specifically, the Operating Committee proposes to discount the market share of Execution Venue ATSS exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF by the average shares per trade ratio between NMS Stocks and OTC Equity Securities to adjust for the greater number of shares being traded in the OTC Equity Securities market, which is generally a function of a lower per share price for OTC Equity Securities when compared to NMS Stocks. In addition, the Operating Committee also proposes to discount Options Market Maker and equity market maker message traffic in recognition of their role in the securities markets. Furthermore, the funding model creates separate tiers for Equity and Options Execution Venues due to the different trading characteristics of those markets.

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

A full description of the funding model is set forth below. This description includes the framework for the funding model as set forth in the CAT NMS Plan, as well as the details as to how the funding model will be applied in practice, including the number of fee tiers and the applicable fees for each tier. The complete funding model is described below, including those fees that are to be paid by the Participants. The proposed

<sup>39</sup> Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85005.

<sup>40</sup> Section 11.3(b) of the CAT NMS Plan.

<sup>41</sup> The Operating Committee notes that this analysis did not place MIAx PEARL in Tier 1 or Tier 2 since the exchange commenced trading on February 6, 2017.

<sup>42</sup> Section 11.2(e) of the CAT NMS Plan.

<sup>43</sup> Approval Order at 84796.

<sup>44</sup> *Id.* at 84792.

<sup>45</sup> 26 U.S.C. 501(c)(6).

<sup>46</sup> Approval Order at 84793.

Consolidated Audit Trail Funding Fees, however, do not apply to the Participants; the proposed Consolidated Audit Trail Funding Fees only apply to Industry Members. The CAT Fees for Participants will be imposed separately by the Operating Committee pursuant to the CAT NMS Plan.

#### (A) Funding Principles

Section 11.2 of the CAT NMS Plan sets forth the principles that the Operating Committee applied in establishing the funding for the Company. The Operating Committee has considered these funding principles as well as the other funding requirements set forth in the CAT NMS Plan and in Rule 613 in developing the proposed funding model. The following are the funding principles in Section 11.2 of the CAT NMS Plan:

- To create transparent, predictable revenue streams for the Company that are aligned with the anticipated costs to build, operate and administer the CAT and other costs of the Company;
- To establish an allocation of the Company's related costs among Participants and Industry Members that is consistent with the Exchange Act, taking into account the timeline for implementation of the CAT and distinctions in the securities trading operations of Participants and Industry Members and their relative impact upon the Company's resources and operations;
- To establish a tiered fee structure in which the fees charged to: (i) CAT Reporters that are Execution Venues, including ATSs, are based upon the level of market share; (ii) Industry Members' non-ATS activities are based upon message traffic; (iii) the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venue and/or Industry Members);
- To provide for ease of billing and other administrative functions;
- To avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality; and
- To build financial stability to support the Company as a going concern.

#### (B) Industry Member Tiering

Under Section 11.3(b) of the CAT NMS Plan, the Operating Committee is required to establish fixed fees to be payable by Industry Members, based on

message traffic generated by such Industry Member, with the Operating Committee establishing at least five and no more than nine tiers.

The CAT NMS Plan clarifies that the fixed fees payable by Industry Members pursuant to Section 11.3(b) shall, in addition to any other applicable message traffic, include message traffic generated by: (i) An ATS that does not execute orders that is sponsored by such Industry Member; and (ii) routing orders to and from any ATS sponsored by such Industry Member. In addition, the Industry Member fees will apply to Industry Members that act as routing broker-dealers for exchanges. The Industry Member fees will not be applicable, however, to an ATS that qualifies as an Execution Venue, as discussed in more detail in the section on Execution Venue tiering.

In accordance with Section 11.3(b), the Operating Committee approved a tiered fee structure for Industry Members (other than Execution Venue ATSs) as described in this section. In determining the tiers, the Operating Committee considered the funding principles set forth in Section 11.2 of the CAT NMS Plan, seeking to create funding tiers that take into account the relative impact on CAT System resources of different Industry Members, and that establish comparable fees among the CAT Reporters with the most Reportable Events. The Operating Committee has determined that establishing seven tiers results in an allocation of fees that distinguishes between Industry Members with differing levels of message traffic. Thus, each such Industry Member will be placed into one of seven tiers of fixed fees, based on "message traffic" for a defined period (as discussed below).

A seven tier structure was selected to provide a wide range of levels for tiering Industry Members such that Industry Members submitting significantly less message traffic to the CAT would be adequately differentiated from Industry Members submitting substantially more message traffic. The Operating Committee considered historical message traffic from multiple time periods, generated by Industry Members across all exchanges and as submitted to FINRA's Order Audit Trail System ("OATS"), and considered the distribution of firms with similar levels of message traffic, grouping together firms with similar levels of message traffic. Based on this, the Operating Committee determined that seven tiers would group firms with similar levels of message traffic, charging those firms with higher impact on the CAT more, while lowering the burden on Industry

Members that have less CAT-related activity. Furthermore, the selection of seven tiers establishes comparable fees among the largest CAT Reporters.

Each Industry Member (other than Execution Venue ATSs) will be ranked by message traffic and tiered by predefined Industry Member percentages (the "Industry Member Percentages"). The Operating Committee determined to use predefined percentages rather than fixed volume thresholds to ensure that the total CAT Fees collected recover the expected CAT costs regardless of changes in the total level of message traffic. To determine the fixed percentage of Industry Members in each tier, the Operating Committee analyzed historical message traffic generated by Industry Members across all exchanges and as submitted to OATS, and considered the distribution of firms with similar levels of message traffic, grouping together firms with similar levels of message traffic. Based on this, the Operating Committee identified seven tiers that would group firms with similar levels of message traffic.

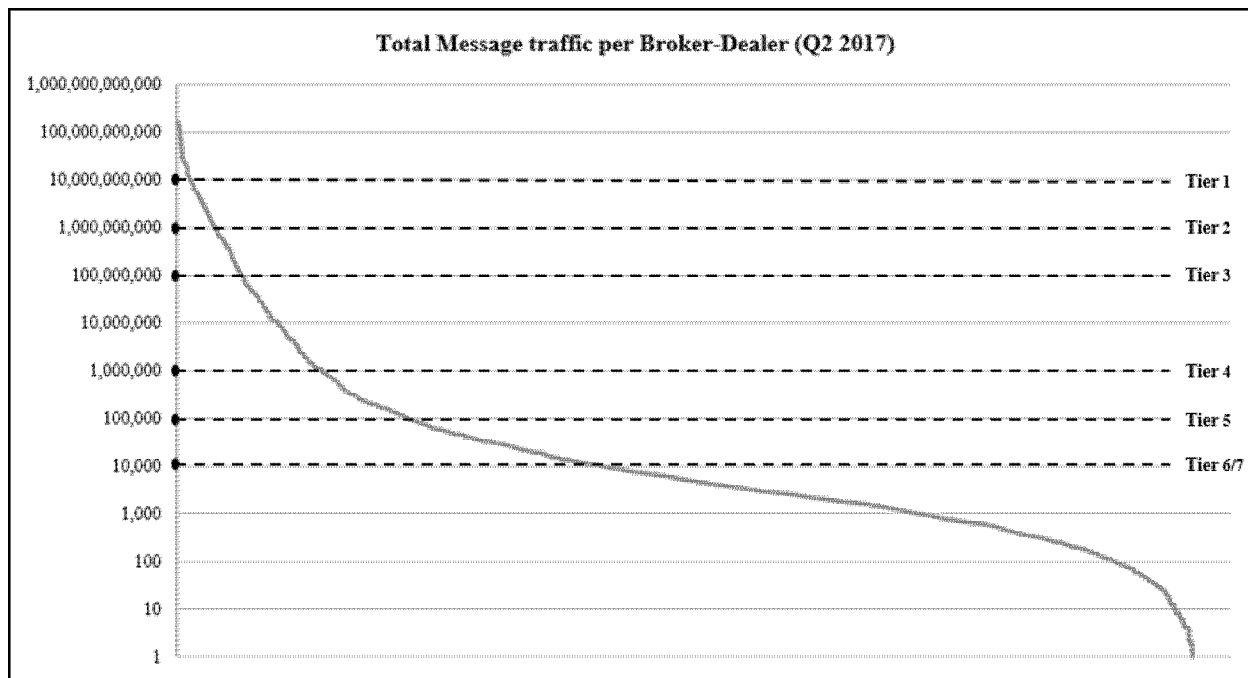
The percentage of costs recovered by each Industry Member tier will be determined by predefined percentage allocations (the "Industry Member Recovery Allocation"). In determining the fixed percentage allocation of costs recovered for each tier, the Operating Committee considered the impact of CAT Reporter message traffic on the CAT System as well as the distribution of total message volume across Industry Members while seeking to maintain comparable fees among the largest CAT Reporters. Accordingly, following the determination of the percentage of Industry Members in each tier, the Operating Committee identified the percentage of total market volume for each tier based on the historical message traffic upon which Industry Members had been initially ranked. Taking this into account along with the resulting percentage of total recovery, the percentage allocation of costs recovered for each tier were assigned, allocating higher percentages of recovery to tiers with higher levels of message traffic while avoiding any inappropriate burden on competition. Furthermore, by using percentages of Industry Members and costs recovered per tier, the Operating Committee sought to include elasticity within the funding model, allowing the funding model to respond to changes in either the total number of Industry Members or the total level of message traffic.

The following chart illustrates the breakdown of seven Industry Member tiers across the monthly average of total

equity and equity options orders, cancels, quotes and executions in the second quarter of 2017 as well as message traffic thresholds between the largest of Industry Member message traffic gaps. The Operating Committee referenced similar distribution illustrations to determine the appropriate division of Industry Member percentages in each tier by considering the grouping of firms with similar levels of message traffic and seeking to identify relative breakpoints

in the message traffic between such groupings. In reviewing the chart and its corresponding table, note that while these distribution illustrations were referenced to help differentiate between Industry Member tiers, the proposed funding model is driven by fixed percentages of Industry Members across tiers to account for fluctuating levels of message traffic over time. This approach also provides financial stability for the CAT by ensuring that the funding model will recover the required amounts

regardless of changes in the number of Industry Members or the amount of message traffic. Actual messages in any tier will vary based on the actual traffic in a given measurement period, as well as the number of firms included in the measurement period. The Industry Member Percentages and Industry Member Recovery Allocation for each tier will remain fixed with each Industry Member's tier to be reassigned periodically, as described below in Section 3(a)(2)(I).



Industry Member tier	Approximate message traffic per Industry Member (Q2 2017) (orders, quotes, cancels and executions)
Tier 1	>10,000,000,000
Tier 2	1,000,000,000–10,000,000,000
Tier 3	100,000,000–1,000,000,000
Tier 4	1,000,000–100,000,000
Tier 5	100,000–1,000,000
Tier 6	10,000–100,000
Tier 7	<10,000

Based on the above analysis, the Operating Committee approved the following Industry Member Percentages

and Industry Member Recovery Allocations:

Industry Member tier	Percentage of Industry Members	Percentage of Industry Member Recovery	Percentage of total recovery
Tier 1	0.900	12.00	9.00
Tier 2	2.150	20.50	15.38
Tier 3	2.800	18.50	13.88
Tier 4	7.750	32.00	24.00
Tier 5	8.300	10.00	7.50

Industry Member tier	Percentage of Industry Members	Percentage of Industry Member Recovery	Percentage of total recovery
Tier 6 .....	18.800	6.00	4.50
Tier 7 .....	59.300	1.00	0.75
Total .....	100	100	75

For the purposes of creating these tiers based on message traffic, the Operating Committee determined to define the term “message traffic” separately for the period before the commencement of CAT reporting and for the period after the start of CAT reporting. The different definition for message traffic is necessary as there will be no Reportable Events as defined in the Plan, prior to the commencement of CAT reporting. Accordingly, prior to the start of CAT reporting, “message traffic” will be comprised of historical equity and equity options orders, cancels, quotes and executions provided by each exchange and FINRA over the previous three months. Prior to the start of CAT reporting, orders would be comprised of the total number of equity and equity options orders received and originated by a member of an exchange or FINRA over the previous three-month period, including principal orders, cancel/replace orders, market maker orders originated by a member of an exchange, and reserve (iceberg) orders as well as executions originated by a member of FINRA, and excluding order rejects, system-modified orders, order routes and implied orders.<sup>47</sup> In addition, prior to the start of CAT reporting, cancels would be comprised of the total number of equity and equity option cancels received and originated by a member of an exchange or FINRA over a three-month period, excluding order modifications (e.g., order updates, order splits, partial cancels) and multiple cancels of a complex order. Furthermore, prior to the start of CAT reporting, quotes would be comprised of information readily available to the exchanges and FINRA, such as the total number of historical equity and equity options quotes received and originated by a member of an exchange or FINRA over the prior three-month period. Additionally, prior to the start of CAT reporting, executions would be comprised of the total number of equity and equity option executions received or originated by a member of an

<sup>47</sup> Consequently, firms that do not have “message traffic” reported to an exchange or OATS before they are reporting to the CAT would not be subject to a fee until they begin to report information to CAT.

exchange or FINRA over a three-month period.

After an Industry Member begins reporting to the CAT, “message traffic” will be calculated based on the Industry Member’s Reportable Events reported to the CAT as will be defined in the Technical Specifications.<sup>48</sup>

Quotes of Options Market Makers and equity market makers will be included in the calculation of total message traffic for those market makers for purposes of tiering under the CAT funding model both prior to CAT reporting and once CAT reporting commences.<sup>49</sup> To address potential concerns regarding burdens on competition or market quality of including quotes in the calculation of message traffic, however, the Operating Committee determined to discount the Options Market Maker quotes by the trade to quote ratio for options when calculating message traffic for Options Market Makers. Based on available data for June 2016 through June 2017, the trade to quote ratio for options is 0.01%. Similarly, to avoid disincentives to quoting behavior on the equities side, the Operating Committee determined to discount equity market maker quotes by the trade to quote ratio for equities. Based on available data for June 2016 through June 2017, the trade to quote ratio for equities is 5.43%.<sup>50</sup>

<sup>48</sup> If an Industry Member (other than an Execution Venue ATS) has no orders, cancels, quotes and executions prior to the commencement of CAT Reporting, or no Reportable Events after CAT reporting commences, then the Industry Member would not have a CAT Fee obligation.

<sup>49</sup> The SEC approved exemptive relief permitting Options Market Maker quotes to be reported to the Central Repository by the relevant Options Exchange in lieu of requiring that such reporting be done by both the Options Exchange and the Options Market Maker, as required by Rule 613 of Regulation NMS. See Securities Exchange Act Rel. No. 77265 (Mar. 1, 2017, 81 FR 11856 (Mar. 7, 2016)). This exemption applies to Options Market Maker quotes for CAT reporting purposes only. Therefore, notwithstanding the reporting exemption provided for Options Market Maker quotes, Options Market Maker quotes will be included in the calculation of total message traffic for Options Market Makers for purposes of tiering under the CAT funding model both prior to CAT reporting and once CAT reporting commences.

<sup>50</sup> The trade to quote ratios were calculated based on the inverse of the average of the monthly equity SIP and OPRA quote to trade ratios from June 2016–June 2017 that were compiled by the Financial Information Forum using data from NASDAQ and SIA.

The trade to quote ratio for options and the trade to quote ratio for equities will be calculated every three months when tiers are recalculated (as discussed below).

The Operating Committee has determined to calculate fee tiers every three months, on a calendar quarter basis, based on message traffic from the prior three months. Based on its analysis of historical data, the Operating Committee believes that calculating tiers based on three months of data will provide the best balance between reflecting changes in activity by Industry Members while still providing predictability in the tiering for Industry Members. Because fee tiers will be calculated based on message traffic from the prior three months, the Operating Committee will begin calculating message traffic based on an Industry Member’s Reportable Events reported to the CAT once the Industry Member has been reporting to the CAT for three months. Prior to that, fee tiers will be calculated as discussed above with regard to the period prior to CAT reporting.

### (C) Execution Venue Tiering

Under Section 11.3(a) of the CAT NMS Plan, the Operating Committee is required to establish fixed fees payable by Execution Venues. Section 1.1 of the CAT NMS Plan defines an Execution Venue as “a Participant or an alternative trading system (“ATS”) (as defined in Rule 300 of Regulation ATS) that operates pursuant to Rule 301 of Regulation ATS (excluding any such ATS that does not execute orders).”<sup>51</sup>

The Operating Committee determined that ATSs should be included within the definition of Execution Venue. The Operating Committee believes that it is appropriate to treat ATSs as Execution Venues under the proposed funding model since ATSs have business models that are similar to those of exchanges, and ATSs also compete with exchanges.

Given the differences between Execution Venues that trade NMS Stocks and/or OTC Equity Securities

<sup>51</sup> Although FINRA does not operate an execution venue, because it is a Participant, it is considered an “Execution Venue” under the Plan for purposes of determining fees.



and Execution Venues that trade Listed Options, Section 11.3(a) addresses Execution Venues that trade NMS Stocks and/or OTC Equity Securities separately from Execution Venues that trade Listed Options. Equity and Options Execution Venues are treated separately for two reasons. First, the differing quoting behavior of Equity and Options Execution Venues makes comparison of activity between such Execution Venues difficult. Second, Execution Venue tiers are calculated based on market share of share volume, and it is therefore difficult to compare market share between asset classes (*i.e.*, equity shares versus options contracts). Discussed below is how the funding model treats the two types of Execution Venues.

#### (I) NMS Stocks and OTC Equity Securities

Section 11.3(a)(i) of the CAT NMS Plan states that each Execution Venue that (i) executes transactions or, (ii) in the case of a national securities association, has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange, in NMS Stocks or OTC Equity Securities will pay a fixed fee depending on the market share of that Execution Venue in NMS Stocks and OTC Equity Securities, with the Operating Committee establishing at least two and not more than five tiers of fixed fees, based on an Execution Venue's NMS Stocks and OTC Equity Securities market share. For these purposes, market share for Execution Venues that execute transactions will be calculated by share volume, and market share for a national securities association that has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange in NMS Stocks or OTC Equity Securities will be calculated based on share volume of trades reported, provided, however, that the share volume reported to such national securities association by an Execution Venue shall not be included in the calculation of such national security association's market share.

In accordance with Section 11.3(a)(i) of the CAT NMS Plan, the Operating Committee approved a tiered fee structure for Equity Execution Venues and Option Execution Venues. In determining the Equity Execution Venue Tiers, the Operating Committee considered the funding principles set forth in Section 11.2 of the CAT NMS Plan, seeking to create funding tiers that take into account the relative impact on system resources of different Equity

Execution Venues, and that establish comparable fees among the CAT Reporters with the most Reportable Events. Each Equity Execution Venue will be placed into one of four tiers of fixed fees, based on the Execution Venue's NMS Stocks and OTC Equity Securities market share. In choosing four tiers, the Operating Committee performed an analysis similar to that discussed above with regard to the non-Execution Venue Industry Members to determine the number of tiers for Equity Execution Venues. The Operating Committee determined to establish four tiers for Equity Execution Venues, rather than a larger number of tiers as established for non-Execution Venue Industry Members, because the four tiers were sufficient to distinguish between the smaller number of Equity Execution Venues based on market share. Furthermore, the selection of four tiers serves to help establish comparability among the largest CAT Reporters.

Each Equity Execution Venue will be ranked by market share and tiered by predefined Execution Venue percentages, (the "Equity Execution Venue Percentages"). In determining the fixed percentage of Equity Execution Venues in each tier, the Operating Committee reviewed historical market share of share volume for Execution Venues. Equity Execution Venue market shares of share volume were sourced from market statistics made publicly-available by Bats Global Markets, Inc. ("Bats"). ATS market shares of share volume was sourced from market statistics made publicly-available by FINRA. FINRA trade reporting facility ("TRF") and ORF market share of share volume was sourced from market statistics made publicly available by FINRA. Based on data from FINRA and [otcm Markets.com](http://otcm Markets.com), ATSs accounted for 39.12% of the share volume across the TRFs and ORFs during the recent tiering period. A 39.12/60.88 split was applied to the ATS and non-ATS breakdown of FINRA market share, with FINRA tiered based only on the non-ATS portion of its market share of share volume.

The Operating Committee determined to discount the market share of Execution Venue ATSs exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF in recognition of the different trading characteristics of the OTC Equity Securities market as compared to the market in NMS Stocks. Many OTC Equity Securities are priced at less than one dollar—and a significant number at less than one penny—per share and low-priced shares tend to trade in larger quantities. Accordingly, a

disproportionately large number of shares are involved in transactions involving OTC Equity Securities versus NMS Stocks. Because the proposed fee tiers are based on market share calculated by share volume, Execution Venue ATSs exclusively trading OTC Equity Securities and FINRA would likely be subject to higher tiers than their operations may warrant. To address this potential concern, the Operating Committee determined to discount the market share of Execution Venue ATSs exclusively trading OTC Equity Securities and the market share of the FINRA ORF by multiplying such market share by the average shares per trade ratio between NMS Stocks and OTC Equity Securities in order to adjust for the greater number of shares being traded in the OTC Equity Securities market. Based on available data for the second quarter of 2017, the average shares per trade ratio between NMS Stocks and OTC Equity Securities is 0.17%.<sup>52</sup> The average shares per trade ratio between NMS Stocks and OTC Equity Securities will be recalculated every three months when tiers are recalculated.

Based on this, the Operating Committee considered the distribution of Execution Venues, and grouped together Execution Venues with similar levels of market share. The percentage of costs recovered by each Equity Execution Venue tier will be determined by predefined percentage allocations (the "Equity Execution Venue Recovery Allocation"). In determining the fixed percentage allocation of costs to be recovered from each tier, the Operating Committee considered the impact of CAT Reporter market share activity on the CAT System as well as the distribution of total market volume across Equity Execution Venues while seeking to maintain comparable fees among the largest CAT Reporters. Accordingly, following the determination of the percentage of Execution Venues in each tier, the Operating Committee identified the percentage of total market volume for each tier based on the historical market share upon which Execution Venues had been initially ranked. Taking this into account along with the resulting percentage of total recovery, the percentage allocation of cost recovery for each tier were assigned, allocating higher percentages of recovery to the

<sup>52</sup> The average shares per trade ratio for both NMS Stocks and OTC Equity Securities from the second quarter of 2017 was calculated using publicly available market volume data from Bats and OTC Markets Group, and the totals were divided to determine the average number of shares per trade between NMS Stocks and OTC Equity Securities.



tier with a higher level of market share while avoiding any inappropriate burden on competition. Furthermore, by using percentages of Equity Execution Venues and cost recovery per tier, the Operating Committee sought to include

elasticity within the funding model, allowing the funding model to respond to changes in either the total number of Equity Execution Venues or changes in market share.

Based on this analysis, the Operating Committee approved the following Equity Execution Venue Percentages and Recovery Allocations:

Equity Execution Venue tier	Percentage of Equity Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1 .....	25.00	33.25	8.31
Tier 2 .....	42.00	25.73	6.43
Tier 3 .....	23.00	8.00	2.00
Tier 4 .....	10.00	0.02	0.01
Total .....	100	67	16.75

(II) Listed Options

Section 11.3(a)(ii) of the CAT NMS Plan states that each Execution Venue that executes transactions in Listed Options will pay a fixed fee depending on the Listed Options market share of that Execution Venue, with the Operating Committee establishing at least two and no more than five tiers of fixed fees, based on an Execution Venue's Listed Options market share. For these purposes, market share will be calculated by contract volume.

In accordance with Section 11.3(a)(ii) of the CAT NMS Plan, the Operating Committee approved a tiered fee structure for Options Execution Venues. In determining the tiers, the Operating Committee considered the funding principles set forth in Section 11.2 of the CAT NMS Plan, seeking to create funding tiers that take into account the relative impact on system resources of different Options Execution Venues, and that establish comparable fees among the CAT Reporters with the most Reportable Events. Each Options Execution Venue will be placed into one of two tiers of fixed fees, based on the Execution Venue's Listed Options market share. In choosing two tiers, the Operating Committee performed an analysis similar to that discussed above with regard to Industry Members (other than Execution Venue ATSS) to

determine the number of tiers for Options Execution Venues. The Operating Committee determined to establish two tiers for Options Execution Venues, rather than a larger number, because the two tiers were sufficient to distinguish between the smaller number of Options Execution Venues based on market share. Furthermore, due to the smaller number of Options Execution Venues, the incorporation of additional Options Execution Venue tiers would result in significantly higher fees for Tier 1 Options Execution Venues and reduce comparability between Execution Venues and Industry Members. Furthermore, the selection of two tiers served to establish comparable fees among the largest CAT Reporters.

Each Options Execution Venue will be ranked by market share and tiered by predefined Execution Venue percentages, (the "Options Execution Venue Percentages"). To determine the fixed percentage of Options Execution Venues in each tier, the Operating Committee analyzed the historical and publicly available market share of Options Execution Venues to group Options Execution Venues with similar market shares across the tiers. Options Execution Venue market share of share volume were sourced from market statistics made publicly-available by

Bats. The process for developing the Options Execution Venue Percentages was the same as discussed above with regard to Equity Execution Venues.

The percentage of costs to be recovered from each Options Execution Venue tier will be determined by predefined percentage allocations (the "Options Execution Venue Recovery Allocation"). In determining the fixed percentage allocation of cost recovery for each tier, the Operating Committee considered the impact of CAT Reporter market share activity on the CAT System as well as the distribution of total market volume across Options Execution Venues while seeking to maintain comparable fees among the largest CAT Reporters. Furthermore, by using percentages of Options Execution Venues and cost recovery per tier, the Operating Committee sought to include elasticity within the funding model, allowing the funding model to respond to changes in either the total number of Options Execution Venues or changes in market share. The process for developing the Options Execution Venue Recovery Allocation was the same as discussed above with regard to Equity Execution Venues.

Based on this analysis, the Operating Committee approved the following Options Execution Venue Percentages and Recovery Allocations:

Options Execution Venue tier	Percentage of Options Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1 .....	75.00	28.25	7.06
Tier 2 .....	25.00	4.75	1.19
Total .....	100	33	8.25

(III) Market Share/Tier Assignments

The Operating Committee determined that, prior to the start of CAT reporting,

market share for Execution Venues would be sourced from publicly-available market data. Options and

equity volumes for Participants will be sourced from market data made publicly available by Bats while Execution

Venue ATS volumes will be sourced from market data made publicly available by FINRA and OTC Markets. Set forth in the Appendix are two charts, one listing the current Equity Execution Venues, each with its rank and tier, and one listing the current Options Execution Venues, each with its rank and tier.

After the commencement of CAT reporting, market share for Execution Venues will be sourced from data reported to the CAT. Equity Execution Venue market share will be determined by calculating each Equity Execution Venue's proportion of the total volume of NMS Stock and OTC Equity shares reported by all Equity Execution Venues during the relevant time period (with the discounting of market share of Execution Venue ATSs exclusively trading OTC Equity Securities, as described above). Similarly, market share for Options Execution Venues will be determined by calculating each Options Execution Venue's proportion of the total volume of Listed Options contracts reported by all Options Execution Venues during the relevant time period.

The Operating Committee has determined to calculate fee tiers for Execution Venues every three months based on market share from the prior three months. Based on its analysis of historical data, the Operating Committee believes calculating tiers based on three months of data will provide the best balance between reflecting changes in activity by Execution Venues while still providing predictability in the tiering for Execution Venues.

#### (D) Allocation of Costs

In addition to the funding principles discussed above, including comparability of fees, Section 11.1(c) of the CAT NMS Plan also requires expenses to be fairly and reasonably shared among the Participants and Industry Members. Accordingly, in developing the proposed fee schedules pursuant to the funding model, the Operating Committee calculated how the CAT costs would be allocated between Industry Members and Execution Venues, and how the portion of CAT costs allocated to Execution Venues would be allocated between Equity Execution Venues and Options Execution Venues. These determinations are described below.

#### (I) Allocation Between Industry Members and Execution Venues

In determining the cost allocation between Industry Members (other than Execution Venue ATSs) and Execution Venues, the Operating Committee

analyzed a range of possible splits for revenue recovery from such Industry Members and Execution Venues, including 80%/20%, 75%/25%, 70%/30% and 65%/35% allocations. Based on this analysis, the Operating Committee determined that 75 percent of total costs recovered would be allocated to Industry Members (other than Execution Venue ATSs) and 25 percent would be allocated to Execution Venues. The Operating Committee determined that this 75%/25% division maintained the greatest level of comparability across the funding model. For example, the cost allocation establishes fees for the largest Industry Members (*i.e.*, those Industry Members in Tiers 1) that are comparable to the largest Equity Execution Venues and Options Execution Venues (*i.e.*, those Execution Venues in Tier 1).

Furthermore, the allocation of total CAT cost recovery recognizes the difference in the number of CAT Reporters that are Industry Members versus CAT Reporters that are Execution Venues. Specifically, the cost allocation takes into consideration that there are approximately 23 times more Industry Members expected to report to the CAT than Execution Venues (*e.g.*, an estimated 1541 Industry Members versus 67 Execution Venues as of June 2017).

#### (II) Allocation Between Equity Execution Venues and Options Execution Venues

The Operating Committee also analyzed how the portion of CAT costs allocated to Execution Venues would be allocated between Equity Execution Venues and Options Execution Venues. In considering this allocation of costs, the Operating Committee analyzed a range of alternative splits for revenue recovered between Equity and Options Execution Venues, including a 70%/30%, 67%/33%, 65%/35%, 50%/50% and 25%/75% split. Based on this analysis, the Operating Committee determined to allocate 67 percent of Execution Venue costs recovered to Equity Execution Venues and 33 percent to Options Execution Venues. The Operating Committee determined that a 67%/33% allocation between Equity and Options Execution Venues maintained the greatest level of fee equitability and comparability based on the current number of Equity and Options Execution Venues. For example, the allocation establishes fees for the larger Equity Execution Venues that are comparable to the larger Options Execution Venues. Specifically, Tier 1 Equity Execution Venues would pay a quarterly fee of \$81,047 and Tier

1 Options Execution Venues would pay a quarterly fee of \$81,379. In addition to fee comparability between Equity Execution Venues and Options Execution Venues, the allocation also establishes equitability between larger (Tier 1) and smaller (Tier 2) Execution Venues based upon the level of market share. Furthermore, the allocation is intended to reflect the relative levels of current equity and options order events.

#### (E) Fee Levels

The Operating Committee determined to establish a CAT-specific fee to collectively recover the costs of building and operating the CAT. Accordingly, under the funding model, the sum of the CAT Fees is designed to recover the total cost of the CAT. The Operating Committee has determined overall CAT costs to be comprised of Plan Processor costs and non-Plan Processor costs, which are estimated to be \$50,700,000 in total for the year beginning November 21, 2016.<sup>53</sup>

The Plan Processor costs relate to costs incurred and to be incurred through November 21, 2017 by the Plan Processor and consist of the Plan Processor's current estimates of average yearly ongoing costs, including development costs, which total \$37,500,000. This amount is based upon the fees due to the Plan Processor pursuant to the Company's agreement with the Plan Processor.

The non-Plan Processor estimated costs incurred and to be incurred by the Company through November 21, 2017 consist of three categories of costs. The first category of such costs are third party support costs, which include legal fees, consulting fees and audit fees from November 21, 2016 until the date of filing as well as estimated third party support costs for the rest of the year. These amount to an estimated \$5,200,000. The second category of non-Plan Processor costs are estimated cyber-insurance costs for the year. Based on discussions with potential cyber-insurance providers, assuming \$2–5 million cyber-insurance premium on \$100 million coverage, the Company has estimated \$3,000,000 for the annual cost. The final cost figures will be determined following receipt of final underwriter quotes. The third category of non-Plan Processor costs is the CAT operational reserve, which is comprised of three months of ongoing Plan Processor costs (\$9,375,000), third party support costs (\$1,300,000) and cyber-insurance costs (\$750,000). The

<sup>53</sup> It is anticipated that CAT-related costs incurred prior to November 21, 2016 will be addressed via a separate filing.

Operating Committee aims to accumulate the necessary funds to establish the three-month operating reserve for the Company through the CAT Fees charged to CAT Reporters for

the year. On an ongoing basis, the Operating Committee will account for any potential need to replenish the operating reserve or other changes to total cost during its annual budgeting

process. The following table summarizes the Plan Processor and non-Plan Processor cost components which comprise the total estimated CAT costs of \$50,700,000 for the covered period.

Cost category	Cost component	Amount
Plan Processor .....	Operational Costs .....	\$37,500,000
	Third Party Support Costs .....	5,200,000
Non-Plan Processor .....	Operational Reserve .....	<sup>54</sup> 5,000,000
	Cyber-insurance Costs .....	3,000,000
Estimated Total .....		50,700,000

Based on these estimated costs and the calculations for the funding model described above, the Operating Committee determined to impose the following fees:<sup>55</sup>

For Industry Members (other than Execution Venue ATSS):

Tier	Percentage of Industry Members	Quarterly CAT Fee
1 .....	0.900	\$81,483
2 .....	2.150	59,055
3 .....	2.800	40,899
4 .....	7.750	25,566
5 .....	8.300	7,428
6 .....	18.800	1,968
7 .....	59.300	105

For Execution Venues for NMS Stocks and OTC Equity Securities:

Tier	Percentage of Equity Execution Venues	Quarterly CAT Fee
1 .....	25.00	\$81,048
2 .....	42.00	37,062
3 .....	23.00	21,126
4 .....	10.00	129

For Execution Venues for Listed Options:

Tier	Percentage of Options Execution Venues	Quarterly CAT Fee
1 .....	75.00	\$81,381
2 .....	25.00	37,629

The Operating Committee has calculated the schedule of effective fees for Industry Members (other than Execution Venue ATSS) and Execution Venues in the following manner. Note that the calculation of CAT Fees assumes 52 Equity Execution Venues, 15 Options Execution Venues and 1,541 Industry Members (other than Execution Venue ATSS) as of June 2017.

CALCULATION OF ANNUAL TIER FEES FOR INDUSTRY MEMBERS ("IM")

Industry Member tier	Percentage of Industry Members	Percentage of Industry Member Recovery	Percentage of total recovery
Tier 1 .....	0.900	12.00	9.00
Tier 2 .....	2.150	20.50	15.38
Tier 3 .....	2.800	18.50	13.88
Tier 4 .....	7.750	32.00	24.00
Tier 5 .....	8.300	10.00	7.50
Tier 6 .....	18.800	6.00	4.50
Tier 7 .....	59.300	1.00	0.75
Total .....	100	100	75

Industry Member tier	Estimated number of Industry Members
Tier 1 .....	14
Tier 2 .....	33
Tier 3 .....	43
Tier 4 .....	119
Tier 5 .....	128
Tier 6 .....	290
Tier 7 .....	914
Total .....	1,541

BILLING CODE 8011-01-P

<sup>54</sup> This \$5,000,000 represents the gradual accumulation of the funds for a target operating reserve of \$11,425,000.

<sup>55</sup> Note that all monthly, quarterly and annual CAT Fees have been rounded to the nearest dollar.

**Calculation 1.1 (Calculation of a Tier 1 Industry Member Monthly Fee)**

1,541 [Estimated Tot. IMs] × 0.9% [% of Tier 1 IMs] = 14 [Estimated Tier 1 IMs]

$$\left( \frac{\$50,700,000 [\text{Tot. Ann. CAT Costs}] \times 75\% [\text{IM \% of Tot. Ann. CAT Costs}] \times 12\% [\% \text{ of Tier 1 IM Recovery}]}{14 [\text{Estimated Tier 1 IMs}]} \right) \div 12 [\text{Months per year}] = \mathbf{\$27,161}$$

**Calculation 1.2 (Calculation of a Tier 2 Industry Member Monthly Fee)**

1,541 [Estimated Tot. IMs] × 2.15% [% of Tier 2 IMs] = 33 [Estimated Tier 2 IMs]

$$\left( \frac{\$50,700,000 [\text{Tot. Ann. CAT Costs}] \times 75\% [\text{IM \% of Tot. Ann. CAT Costs}] \times 20.5\% [\% \text{ of Tier 2 IM Recovery}]}{33 [\text{Estimated Tier 2 IMs}]} \right) \div 12 [\text{Months per year}] = \mathbf{\$19,685}$$

**Calculation 1.3 (Calculation of a Tier 3 Industry Member Monthly Fee)**

1,541 [Estimated Tot. IMs] × 2.125% [% of Tier 3 IMs] = 43 [Estimated Tier 3 IMs]

$$\left( \frac{\$50,700,000 [\text{Tot. Ann. CAT Costs}] \times 75\% [\text{IM \% of Tot. Ann. CAT Costs}] \times 18.5\% [\% \text{ of Tier 3 IM Recovery}]}{43 [\text{Estimated Tier 3 IMs}]} \right) \div 12 [\text{Months per year}] = \mathbf{\$13,633}$$

**Calculation 1.4 (Calculation of a Tier 4 Industry Member Monthly Fee)**

1,541 [Estimated Tot. IMs] × 7.75% [% of Tier 4 IMs] = 119 [Estimated Tier 4 IMs]

$$\left( \frac{\$50,700,000 [\text{Tot. Ann. CAT Costs}] \times 75\% [\text{IM \% of Tot. Ann. CAT Costs}] \times 32\% [\% \text{ of Tier 4 IM Recovery}]}{119 [\text{Estimated Tier 4 IMs}]} \right) \div 12 [\text{Months per year}] = \mathbf{\$8522}$$

**Calculation 1.5 (Calculation of a Tier 5 Industry Member Annual Fee)**

1,541 [Estimated Tot. IMs] × 8.3% [% of Tier 5 IMs] = 128 [Estimated Tier 5 IMs]

$$\left( \frac{\$50,700,000 [\text{Tot. Ann. CAT Costs}] \times 75\% [\text{IM \% of Tot. Ann. CAT Costs}] \times 7.75\% [\% \text{ of Tier 5 IM Recovery}]}{128 [\text{Estimated Tier 5 IMs}]} \right) \div 12 [\text{Months per year}] = \mathbf{\$2476}$$

**Calculation 1.6 (Calculation of a Tier 6 Industry Member Monthly Fee)**

1,541 [Estimated Tot. IMs] × 18.8% [% of Tier 6 IMs] = 290 [Estimated Tier 6 IMs]

$$\left( \frac{\$50,700,000 [\text{Tot. Ann. CAT Costs}] \times 75\% [\text{IM \% of Tot. Ann. CAT Costs}] \times 6\% [\% \text{ of Tier 6 IM Recovery}]}{290 [\text{Estimated Tier 6 IMs}]} \right) \div 12 [\text{Months per year}] = \mathbf{\$656}$$

**Calculation 1.7 (Calculation of a Tier 7 Industry Member Monthly Fee)**

1,541 [Estimated Tot. IMs] × 59.3% [% of Tier 7 IMs] = 914 [Estimated Tier 7 IMs]

$$\left( \frac{\$50,700,000 [\text{Tot. Ann. CAT Costs}] \times 75\% [\text{IM \% of Tot. Ann. CAT Costs}] \times 1\% [\% \text{ of Tier 7 IM Recovery}]}{914 [\text{Estimated Tier 7 IMs}]} \right) \div 12 [\text{Months per year}] = \mathbf{\$35}$$

BILLING CODE 8011-01-C

**CALCULATION OF ANNUAL TIER FEES FOR EQUITY EXECUTION VENUES ("EV")**

Equity Execution Venue tier	Percentage of Equity Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1 .....	25.00	33.25	8.31
Tier 2 .....	42.00	25.73	6.43
Tier 3 .....	23.00	8.00	2.00
Tier 4 .....	10.00	49.00	0.01
Total .....	100	67	16.75

Equity Execution Venue tier	Estimated number of Equity Execution Venues
Tier 1 .....	13
Tier 2 .....	22
Tier 3 .....	12
Tier 4 .....	5
<b>Total</b> .....	<b>52</b>

**Calculation 2.1 (Calculation of a Tier 1 Equity Execution Venue Monthly Fee)**

52 [Estimated Tot. Equity EVs] × 25% [% of Tier 1 Equity EVs] = 13 [Estimated Tier 1 Equity EVs]

$$\left( \frac{\$50,700,000 [\text{Tot. Ann.CAT Costs}] \times 33.25\% [\text{EV \% of Tot. Ann.CAT Costs}] \times 26\% [\text{\% of Tier 1 Equity EV Recovery}]}{13 [\text{Estimated Tier 1 Equity EVs}]} \right) \div 12 [\text{Months per year}] = \mathbf{\$27,016}$$

**Calculation 2.2 (Calculation of a Tier 2 Equity Execution Venue Monthly Fee)**

52 [Estimated Tot. Equity EVs] × 42% [% of Tier 2 Equity EVs] = 22 [Estimated Tier 2 Equity EVs]

$$\left( \frac{\$50,700,000 [\text{Tot. Ann.CAT Costs}] \times 25\% [\text{EV \% of Tot. Ann.CAT Costs}] \times 25.73\% [\text{\% of Tier 2 Equity EV Recovery}]}{22 [\text{Estimated Tier 2 Equity EVs}]} \right) \div 12 [\text{Months per year}] = \mathbf{\$12,353}$$

**Calculation 2.3 (Calculation of a Tier 3 Equity Execution Venue Monthly Fee)**

52 [Estimated Tot. Equity EVs] × 23% [% of Tier 2 Equity EVs] = 12 [Estimated Tier 2 Equity EVs]

$$\left( \frac{\$50,700,000 [\text{Tot. Ann.CAT Costs}] \times 25\% [\text{EV \% of Tot. Ann.CAT Costs}] \times 8\% [\text{\% of Tier 2 Equity EV Recovery}]}{12 [\text{Estimated Tier 2 Equity EVs}]} \right) \div 12 [\text{Months per year}] = \mathbf{\$7,042}$$

**Calculation 2.4 (Calculation of a Tier 4 Equity Execution Venue Monthly Fee)**

52 [Estimated Tot. Equity EVs] × 10% [% of Tier 2 Equity EVs] = 5 [Estimated Tier 2 Equity EVs]

$$\left( \frac{\$50,700,000 [\text{Tot. Ann.CAT Costs}] \times 25\% [\text{EV \% of Tot. Ann.CAT Costs}] \times 0.02\% [\text{\% of Tier 2 Equity EV Recovery}]}{5 [\text{Estimated Tier 2 Equity EVs}]} \right) \div 12 [\text{Months per year}] = \mathbf{\$42}$$

**CALCULATION OF ANNUAL TIER FEES FOR OPTIONS EXECUTION VENUES (“EV”)**

Options Execution Venue tier	Percentage of Options Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1 .....	75.00	28.25	7.06
Tier 2 .....	25.00	4.75	1.19
<b>Total</b> .....	<b>100</b>	<b>33</b>	<b>8.25</b>

Options Execution Venue tier	Estimated number of Options Execution Venues
Tier 1 .....	11
Tier 2 .....	4
<b>Total</b> .....	<b>15</b>

**Calculation 3.1 (Calculation of a Tier 1 Options Execution Venue Monthly Fee)**

$$15 \text{ [Estimated Tot. Options EVs]} \times 75\% \text{ [% of Tier 1 Options EVs]} = 11 \text{ [Estimated Tier 1 Options EVs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 25\% \text{ [EV \% of Tot. Ann. CAT Costs]} \times 28.25\% \text{ [% of Tier 1 Options EV Recovery]}}{11 \text{ [Estimated Tier 1 Options EVs]}} \right) \div 12 \text{ [Months per year]} = \$27,127$$

**Calculation 3.2 (Calculation of a Tier 2 Options Execution Venue Annual Fee)**

$$15 \text{ [Estimated Tot. Options EVs]} \times 25\% \text{ [% of Tier 2 Options EVs]} = 4 \text{ [Estimated Tier 2 Options EVs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 25\% \text{ [EV \% of Tot. Ann. CAT Costs]} \times 4.75\% \text{ [% of Tier 2 Options EV Recovery]}}{4 \text{ [Estimated Tier 2 Options EVs]}} \right) \div 12 \text{ [Months per year]} = \$12,543$$

**TRACEABILITY OF TOTAL CAT FEES**

Type	Industry Member tier	Estimated number of members	CAT Fees paid annually	Total recovery
Industry Members .....	Tier 1 .....	14	\$325,932	\$4,563,048
	Tier 2 .....	33	236,220	7,795,260
	Tier 3 .....	43	163,596	7,034,628
	Tier 4 .....	119	102,264	12,169,416
	Tier 5 .....	128	29,712	3,803,136
	Tier 6 .....	290	7,872	2,282,880
	Tier 7 .....	914	420	383,880
Total .....	.....	1,541	.....	38,032,248
Equity Execution Venues .....	Tier 1 .....	13	324,192	4,214,496
	Tier 2 .....	22	148,248	3,261,456
	Tier 3 .....	12	84,504	1,014,048
	Tier 4 .....	5	516	2,580
Total .....	.....	52	.....	8,492,580
Options Execution Venues .....	Tier 1 .....	11	325,524	3,580,764
	Tier 2 .....	4	150,516	602,064
Total .....	.....	15	.....	4,182,828
Total .....	.....	.....	.....	50,700,000
Excess <sup>56</sup> .....	.....	.....	.....	7,656

**(F) Comparability of Fees**

The funding principles require a funding model in which the fees charged to the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venue and/or Industry Members). Accordingly, in creating the model, the Operating Committee sought to establish comparable fees for the top tier of Industry Members (other than Execution Venue ATSSs), Equity Execution Venues and Options Execution Venues. Specifically, each Tier 1 CAT Reporter would be required

to pay a quarterly fee of approximately \$81,000.

**(G) Billing Onset**

Under Section 11.1(c) of the CAT NMS Plan, to fund the development and implementation of the CAT, the Company shall time the imposition and collection of all fees on Participants and Industry Members in a manner reasonably related to the timing when the Company expects to incur such development and implementation costs. The Company is currently incurring such development and implementation costs and will continue to do so prior to the commencement of CAT reporting and thereafter. In accordance with the CAT NMS Plan, all CAT Reporters, including both Industry Members and Execution Venues (including Participants), will be invoiced as promptly as possible following the latest of the operative date of the Consolidated

Audit Trail Funding Fees for each of the Participants and the operative date of the Plan amendment adopting CAT Fees for Participants.

**(H) Changes to Fee Levels and Tiers**

Section 11.3(d) of the CAT NMS Plan states that “[t]he Operating Committee shall review such fee schedule on at least an annual basis and shall make any changes to such fee schedule that it deems appropriate. The Operating Committee is authorized to review such fee schedule on a more regular basis, but shall not make any changes on more than a semi-annual basis unless, pursuant to a Supermajority Vote, the Operating Committee concludes that such change is necessary for the adequate funding of the Company.” With such reviews, the Operating Committee will review the distribution of Industry Members and Execution Venues across tiers, and make any

<sup>56</sup> The amount in excess of the total CAT costs will contribute to the gradual accumulation of the target operating reserve of \$11.425 million.

updates to the percentage of CAT Reporters allocated to each tier as may be necessary. In addition, the reviews will evaluate the estimated ongoing CAT costs and the level of the operating reserve. To the extent that the total CAT costs decrease, the fees would be adjusted downward, and to the extent that the total CAT costs increase, the fees would be adjusted upward.<sup>57</sup> Furthermore, any surplus of the Company's revenues over its expenses is to be included within the operational reserve to offset future fees. The limitations on more frequent changes to the fee, however, are intended to provide budgeting certainty for the CAT Reporters and the Company.<sup>58</sup> To the extent that the Operating Committee approves changes to the number of tiers in the funding model or the fees assigned to each tier, then the Operating Committee will file such changes with the SEC pursuant to Rule 608 of the Exchange Act, and the Participants will file such changes with the SEC pursuant to Section 19(b) of the Exchange Act and Rule 19b-4 thereunder, and any such changes will become effective in accordance with the requirements of those provisions.

(J) Initial and Periodic Tier Reassignments

The Operating Committee has determined to calculate fee tiers every three months based on market share or message traffic, as applicable, from the prior three months. For the initial tier assignments, the Company will calculate the relevant tier for each CAT Reporter using the three months of data prior to the commencement date. As with the initial tier assignment, for the tri-monthly reassignments, the Company will calculate the relevant tier using the three months of data prior to the relevant tri-monthly date. Any movement of CAT Reporters between tiers will not change the criteria for each tier or the fee amount corresponding to each tier.

In performing the tri-monthly reassignments, the assignment of CAT Reporters in each assigned tier is relative. Therefore, a CAT Reporter's assigned tier will depend, not only on its own message traffic or market share, but also on the message traffic/market share across all CAT Reporters. For example, the percentage of Industry Members (other than Execution Venue ATSS) in each tier is relative such that such Industry Member's assigned tier

will depend on message traffic generated across all CAT Reporters as well as the total number of CAT Reporters. The Operating Committee will inform CAT Reporters of their assigned tier every three months following the periodic tiering process, as the funding model will compare an individual CAT Reporter's activity to that of other CAT Reporters in the marketplace.

The following demonstrates a tier reassignment. In accordance with the funding model, the top 75% of Options Execution Venues in market share are categorized as Tier 1 while the bottom 25% of Options Execution Venues in market share are categorized as Tier 2. In the sample scenario below, Options Execution Venue L is initially categorized as a Tier 2 Options Execution Venue in Period A due to its market share. When market share is recalculated for Period B, the market share of Execution Venue L increases, and it is therefore subsequently reranked and reassigned to Tier 1 in Period B. Correspondingly, Options Execution Venue K, initially a Tier 1 Options Execution Venue in Period A, is reassigned to Tier 2 in Period B due to decreases in its market share.

Period A			Period B		
Options Execution Venue	Market share rank	Tier	Options Execution Venue	Market share rank	Tier
Options Execution Venue A	1	1	Options Execution Venue A	1	1
Options Execution Venue B	2	1	Options Execution Venue B	2	1
Options Execution Venue C	3	1	Options Execution Venue C	3	1
Options Execution Venue D	4	1	Options Execution Venue D	4	1
Options Execution Venue E	5	1	Options Execution Venue E	5	1
Options Execution Venue F	6	1	Options Execution Venue F	6	1
Options Execution Venue G	7	1	Options Execution Venue I	7	1
Options Execution Venue H	8	1	Options Execution Venue H	8	1
Options Execution Venue I	9	1	Options Execution Venue G	9	1
Options Execution Venue J	10	1	Options Execution Venue J	10	1
Options Execution Venue K	11	1	Options Execution Venue L	11	1
Options Execution Venue L	12	2	Options Execution Venue K	12	2
Options Execution Venue M	13	2	Options Execution Venue N	13	2
Options Execution Venue N	14	2	Options Execution Venue M	14	2
Options Execution Venue O	15	2	Options Execution Venue O	15	2

For each periodic tier reassignment, the Operating Committee will review the new tier assignments, particularly those assignments for CAT Reporters that shift from the lowest tier to a higher tier. This review is intended to evaluate whether potential changes to the market or CAT Reporters (e.g., dissolution of a large CAT Reporter) adversely affect the tier reassignments.

(J) Sunset Provision

The Operating Committee developed the proposed funding model by analyzing currently available historical data. Such historical data, however, is not as comprehensive as data that will be submitted to the CAT. Accordingly, the Operating Committee believes that it will be appropriate to revisit the funding model once CAT Reporters

have actual experience with the funding model. Accordingly, the Operating Committee determined to include an automatic sunset provision for the proposed fees. Specifically, the Operating Committee determined that the CAT Fees should automatically expire two years after the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. The Operating Committee intends to monitor

<sup>57</sup> The CAT Fees are designed to recover the costs associated with the CAT. Accordingly, CAT Fees would not be affected by increases or decreases in other non-CAT expenses incurred by the

Participants, such as any changes in costs related to the retirement of existing regulatory systems, such as OATS.

<sup>58</sup> Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85006.

the operation of the funding model during this two year period and to evaluate its effectiveness during that period. Such a process will inform the Operating Committee's approach to funding the CAT after the two year period.

(3) Proposed CAT Fee Schedule

SRO proposes the Consolidated Audit Trail Funding Fees to impose the CAT Fees determined by the Operating Committee on SRO's members. The proposed fee schedule has four sections, covering definitions, the fee schedule for CAT Fees, the timing and manner of payments, and the automatic unsetting of the CAT Fees. Each of these sections is discussed in detail below.

(A) Definitions

Paragraph (a) of the proposed fee schedule sets forth the definitions for the proposed fee schedule. Paragraph (a)(1) states that, for purposes of the Consolidated Audit Trail Funding Fees, the terms "CAT", "CAT NMS Plan," "Industry Member," "NMS Stock," "OTC Equity Security", "Options Market Maker", and "Participant" are defined as set forth in Rule 6.85 (Consolidated Audit Trail (CAT)—Definitions).

The proposed fee schedule imposes different fees on Equity ATSs and Industry Members that are not Equity ATSs. Accordingly, the proposed fee schedule defines the term "Equity ATS." First, paragraph (a)(2) defines an "ATS" to mean an alternative trading system as defined in Rule 300(a) of Regulation ATS under the Securities Exchange Act of 1934, as amended, that operates pursuant to Rule 301 of Regulation ATS. This is the same definition of an ATS as set forth in Section 1.1 of the CAT NMS Plan in the definition of an "Execution Venue." Then, paragraph (a)(4) defines an "Equity ATS" as an ATS that executes transactions in NMS Stocks and/or OTC Equity Securities.

Paragraph (a)(3) of the proposed fee schedule defines the term "CAT Fee" to mean the Consolidated Audit Trail Funding Fee(s) to be paid by Industry Members as set forth in paragraph (b) in the proposed fee schedule.

Finally, Paragraph (a)(6) defines an "Execution Venue" as a Participant or an ATS (excluding any such ATS that does not execute orders). This definition is the same substantive definition as set forth in Section 1.1 of the CAT NMS Plan. Paragraph (a)(5) defines an "Equity Execution Venue" as an Execution Venue that trades NMS Stocks and/or OTC Equity Securities.

(B) Fee Schedule

SRO proposes to impose the CAT Fees applicable to its Industry Members through paragraph (b) of the proposed fee schedule. Paragraph (b)(1) of the proposed fee schedule sets forth the CAT Fees applicable to Industry Members other than Equity ATSs. Specifically, paragraph (b)(1) states that the Company will assign each Industry Member (other than an Equity ATS) to a fee tier once every quarter, where such tier assignment is calculated by ranking each Industry Member based on its total message traffic (with discounts for equity market maker quotes and Options Market Maker quotes based on the trade to quote ratio for equities and options, respectively) for the three months prior to the quarterly tier calculation day and assigning each Industry Member to a tier based on that ranking and predefined Industry Member percentages. The Industry Members with the highest total quarterly message traffic will be ranked in Tier 1, and the Industry Members with lowest quarterly message traffic will be ranked in Tier 7. Each quarter, each Industry Member (other than an Equity ATS) shall pay the following CAT Fee corresponding to the tier assigned by the Company for such Industry Member for that quarter:

Tier	Percentage of Industry Members	Quarterly CAT Fee
1 .....	0.900	\$81,483
2 .....	2.150	59,055
3 .....	2.800	40,899
4 .....	7.750	25,566
5 .....	8.300	7,428
6 .....	18.800	1,968
7 .....	59.300	105

Paragraph (b)(2) of the proposed fee schedule sets forth the CAT Fees applicable to Equity ATSs.<sup>59</sup> These are the same fees that Participants that trade NMS Stocks and/or OTC Equity Securities will pay. Specifically, paragraph (b)(2) states that the Company will assign each Equity ATS to a fee tier once every quarter, where such tier assignment is calculated by ranking each Equity Execution Venue based on its total market share of NMS Stocks and OTC Equity Securities (with a discount for Equity ATSs exclusively trading OTC Equity Securities based on the average shares per trade ratio between NMS Stocks and OTC Equity Securities) for the three months prior to the quarterly tier calculation day and

<sup>59</sup>Note that no fee schedule is provided for Execution Venue ATSs that execute transactions in Listed Options, as no such Execution Venue ATSs currently exist due to trading restrictions related to Listed Options.

assigning each Equity ATS to a tier based on that ranking and predefined Equity Execution Venue percentages. The Equity ATSs with the higher total quarterly market share will be ranked in Tier 1, and the Equity ATSs with the lowest quarterly market share will be ranked in Tier 4. Specifically, paragraph (b)(2) states that, each quarter, each Equity ATS shall pay the following CAT Fee corresponding to the tier assigned by the Company for such Equity ATS for that quarter:

Tier	Percentage of Equity Execution Venues	Quarterly CAT Fee
1 .....	25.00	\$81,048
2 .....	42.00	37,062
3 .....	23.00	21,126
4 .....	10.00	129

(C) Timing and Manner of Payment

Section 11.4 of the CAT NMS Plan states that the Operating Committee shall establish a system for the collection of fees authorized under the CAT NMS Plan. The Operating Committee may include such collection responsibility as a function of the Plan Processor or another administrator. To implement the payment process to be adopted by the Operating Committee, paragraph (c)(1) of the proposed fee schedule states that the Company will provide each Industry Member with one invoice each quarter for its CAT Fees as determined pursuant to paragraph (b) of the proposed fee schedule, regardless of whether the Industry Member is a member of multiple self-regulatory organizations. Paragraph (c)(1) further states that each Industry Member will pay its CAT Fees to the Company via the centralized system for the collection of CAT Fees established by the Company in the manner prescribed by the Company. SRO will provide Industry Members with details regarding the manner of payment of CAT Fees by Regulatory Circular.

All CAT fees will be billed and collected centrally through the Company via the Plan Processor. Although each Participant will adopt its own fee schedule regarding CAT Fees, no CAT Fees or portion thereof will be collected by the individual Participants. Each Industry Member will receive from the Company one invoice for its applicable CAT fees, not separate invoices from each Participant of which it is a member. The Industry Members will pay the CAT Fees to the Company via the centralized system for the



collection of CAT fees established by the Company.<sup>60</sup>

Section 11.4 of the CAT NMS Plan also states that Participants shall require each Industry Member to pay all applicable authorized CAT Fees within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). Section 11.4 further states that, if an Industry Member fails to pay any such fee when due, such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (i) the Prime Rate plus 300 basis points; or (ii) the maximum rate permitted by applicable law. Therefore, in accordance with Section 11.4 of the CAT NMS Plan, SRO proposed to adopt paragraph (c)(2) of the proposed fee schedule. Paragraph (c)(2) of the proposed fee schedule states that each Industry Member shall pay CAT Fees within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If an Industry Member fails to pay any such fee when due, such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (i) the Prime Rate plus 300 basis points; or (ii) the maximum rate permitted by applicable law.

#### (D) Sunset Provision

The Operating Committee has determined to require that the CAT Fees automatically sunset two years from the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. Accordingly, SRO proposes paragraph (d) of the fee schedule, which states that “[t]hese Consolidated Audit Trailing Funding Fees will automatically expire two years after the operative date of the amendment of the CAT NMS Plan that adopts CAT fees for the Participants.”

#### (4) Changes to Prior CAT Fee Plan Amendment

The proposed funding model set forth in this Amendment is a revised version of the Original Proposal. The Commission received a number of comment letters in response to the Original Proposal.<sup>61</sup> The SEC suspended the Original Proposal and instituted proceedings to determine whether to approve or disapprove it.<sup>62</sup> Pursuant to

those proceedings, additional comment letters were submitted regarding the proposed funding model.<sup>63</sup> In developing this Amendment, the Operating Committee carefully considered these comments and made a number of changes to the Original Proposal to address these comments where appropriate.

This Amendment makes the following changes to the Original Proposal: (1) Adds two additional CAT Fee tiers for Equity Execution Venues; (2) discounts the market share of Execution Venue ATSSs exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF by the average shares per trade ratio between NMS Stocks and OTC Equity Securities (calculated as 0.17% based on available data from the second quarter of 2017) when calculating the market share of Execution Venue ATSSs exclusively trading OTC Equity Securities and FINRA; (3) discounts the Options Market Maker quotes by the trade to quote ratio for options (calculated as 0.01% based on available data for June 2016 through June 2017) when calculating message traffic for Options Market Makers; (4) discounts equity market maker quotes by the trade to quote ratio for equities (calculated as 5.43% based on available data for June 2016 through June 2017) when calculating message traffic for equity market makers; (5) decreases the number of tiers for Industry Members (other than the Execution Venue ATSSs) from nine to seven; (6) changes the allocation of CAT costs between Equity Execution Venues and Options Execution Venues from 75%/25% to 67%/33%; (7) adjusts tier percentages and recovery allocations for Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATSSs); (8) focuses the comparability of CAT Fees on the individual entity level, rather than primarily on the comparability of affiliated entities; (9) commences invoicing of CAT Reporters as promptly as possible following the latest of the operative date of the Consolidated Audit Trail Funding Fees for each of the Participants and the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants; and (10) requires the proposed fees to automatically expire two years from the operative date of the CAT NMS Plan amendment adopting CAT Fees for the Participants.

#### (A) Equity Execution Venues

##### (i) Small Equity Execution Venues

In the Original Proposal, the Operating Committee proposed to establish two fee tiers for Equity Execution Venues. The Commission and commenters raised the concern that, by establishing only two tiers, smaller Equity Execution Venues (e.g., those Equity ATSSs representing less than 1% of NMS market share) would be placed in the same fee tier as larger Equity Execution Venues, thereby imposing an undue or inappropriate burden on competition.<sup>64</sup> To address this concern, the Operating Committee proposes to add two additional tiers for Equity Execution Venues, a third tier for smaller Equity Execution Venues and a fourth tier for the smallest Equity Execution Venues.

Specifically, the Original Proposal had two tiers of Equity Execution Venues. Tier 1 required the largest Equity Execution Venues to pay a quarterly fee of \$63,375. Based on available data, these largest Equity Execution Venues were those that had equity market share of share volume greater than or equal to 1%.<sup>65</sup> Tier 2 required the remaining smaller Equity Execution Venues to pay a quarterly fee of \$38,820.

To address concerns about the potential for the \$38,820 quarterly fee to impose an undue burden on smaller Equity Execution Venues, the Operating Committee determined to move to a four tier structure for Equity Execution Venues. Tier 1 would continue to include the largest Equity Execution Venues by share volume (that is, based on currently available data, those with market share of equity share volume greater than or equal to one percent), and these Equity Execution Venues would be required to pay a quarterly fee of \$81,048. The Operating Committee determined to divide the original Tier 2 into three tiers. The new Tier 2 Equity Execution Venues, which would include the next largest Equity Execution Venues by equity share volume, would be required to pay a quarterly fee of \$37,062. The new Tier

<sup>64</sup> See Suspension Order at 31664; SIFMA Letter at 3.

<sup>65</sup> Note that while these equity market share thresholds were referenced as data points to help differentiate between Equity Execution Venue tiers, the proposed funding model is directly driven not by market share thresholds, but rather by fixed percentages of Equity Execution Venues across tiers to account for fluctuating levels of market share across time. Actual market share in any tier will vary based on the actual market activity in a given measurement period, as well as the number of Equity Execution Venues included in the measurement period.

<sup>60</sup> Section 11.4 of the CAT NMS Plan.

<sup>61</sup> For a description of the comments submitted in response to the Original Proposal, see Suspension Order.

<sup>62</sup> Suspension Order.

<sup>63</sup> See MFA Letter; SIFMA Letter; FIA Principal Traders Group Letter; Belvedere Letter; Sidley Letter; Group One Letter; and Virtu Financial Letter.

3 Equity Execution Venues would be required to pay a quarterly fee of \$21,126. The new Tier 4 Equity Execution Venues, which would include the smallest Equity Execution Venues by share volume, would be required to pay a quarterly fee of \$129.

In developing the proposed four tier structure, the Operating Committee considered keeping the existing two tiers, as well as shifting to three, four or five Equity Execution Venue tiers (the maximum number of tiers permitted under the Plan), to address the concerns regarding small Equity Execution Venues. For each of the two, three, four and five tier alternatives, the Operating Committee considered the assignment of various percentages of Equity Execution Venues to each tier as well as various percentage of Equity Execution Venue recovery allocations for each alternative. As discussed below in more detail, each of these options was considered in the context of the full model, as changes in each variable in the model affect other variables in the model when allocating the total CAT costs among CAT Reporters. The Operating Committee determined that the four tier alternative addressed the spectrum of different Equity Execution Venues. The Operating Committee determined that neither a two tier structure nor a three tier structure sufficiently accounted for the range of market shares of smaller Equity Execution Venues. The Operating Committee also determined that, given the limited number of Equity Execution Venues, that a fifth tier was unnecessary to address the range of market shares of the Equity Execution Venues.

By increasing the number of tiers for Equity Execution Venues and reducing the proposed CAT Fees for the smaller Equity Execution Venues, the Operating Committee believes that the proposed fees for Equity Execution Venues would not impose an undue or inappropriate burden on competition under Section 6 or Section 15A of the Exchange Act. Moreover, the Operating Committee believes that the proposed fees appropriately take into account the distinctions in the securities trading operations of different Equity Execution Venues, as required under the funding principles of the CAT NMS Plan.<sup>66</sup> The larger number of tiers more closely tracks the variety of sizes of equity share volume of Equity Execution Venues. In addition, the reduction in the fees for the smaller Equity Execution Venues recognizes the potential burden of larger fees on smaller entities. In particular, the very small quarterly fee of \$129 for

Tier 4 Equity Execution Venues reflects the fact that certain Equity Execution Venues have a very small share volume due to their typically more focused business models.

Accordingly, with this Amendment, SRO proposes to amend paragraph (b)(2) of the proposed fee schedule to add the two additional tiers for Equity Execution Venues, to establish the percentages and fees for Tiers 3 and 4 as described, and to revise the percentages and fees for Tiers 1 and 2 as described.

(ii) Execution Venues for OTC Equity Securities

In the Original Proposal, the Operating Committee proposed to group Execution Venues for OTC Equity Securities and Execution Venues for NMS Stocks in the same tier structure. The Commission and commenters raised concerns as to whether this determination to place Execution Venues for OTC Equity Securities in the same tier structure as Execution Venues for NMS Stocks would result in an undue or inappropriate burden on competition, recognizing that the application of share volume may lead to different outcomes as applied to OTC Equity Securities and NMS Stocks.<sup>67</sup> To address this concern, the Operating Committee proposes to discount the market share of Execution Venue ATSS exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF by the average shares per trade ratio between NMS Stocks and OTC Equity Securities (0.17% for the second quarter of 2017) in order to adjust for the greater number of shares being traded in the OTC Equity Securities market, which is generally a function of a lower per share price for OTC Equity Securities when compared to NMS Stocks.

As commenters noted, many OTC Equity Securities are priced at less than one dollar—and a significant number at less than one penny—and low-priced shares tend to trade in larger quantities. Accordingly, a disproportionately large number of shares are involved in transactions involving OTC Equity Securities versus NMS Stocks, which has the effect of overstating an Execution Venue's true market share when the Execution Venue is involved in the trading of OTC Equity Securities. Because the proposed fee tiers are based on market share calculated by share volume, Execution Venue ATSS trading OTC Equity Securities and FINRA may be subject to higher tiers than their

operations may warrant.<sup>68</sup> The Operating Committee proposes to address this concern in two ways. First, the Operating Committee proposes to increase the number of Equity Execution Venue tiers, as discussed above. Second, the Operating Committee determined to discount the market share of Execution Venue ATSS exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF when calculating their tier placement. Because the disparity in share volume between Execution Venues trading in OTC Equity Securities and NMS Stocks is based on the different number of shares per trade for OTC Equity Securities and NMS Stocks, the Operating Committee believes that discounting the share volume of such Execution Venue ATSS as well as the market share of the FINRA ORF would address the difference in shares per trade for OTC Equity Securities and NMS Stocks. Specifically, the Operating Committee proposes to impose a discount based on the objective measure of the average shares per trade ratio between NMS Stocks and OTC Equity Securities. Based on available data from the second quarter of 2017, the average shares per trade ratio between NMS Stocks and OTC Equity Securities is 0.17%.

The practical effect of applying such a discount for trading in OTC Equity Securities is to shift Execution Venue ATSS exclusively trading OTC Equity Securities to tiers for smaller Execution Venues and with lower fees. For example, under the Original Proposal, one Execution Venue ATS exclusively trading OTC Equity Securities was placed in the first CAT Fee tier, which had a quarterly fee of \$63,375. With the imposition of the proposed tier changes and the discount, this ATS would be ranked in Tier 3 and would owe a quarterly fee of \$21,126.

In developing the proposed discount for Equity Execution Venue ATSS exclusively trading OTC Equity Securities and FINRA, the Operating Committee evaluated different alternatives to address the concerns related to OTC Equity Securities, including creating a separate tier structure for Execution Venues trading OTC Equity Securities (like the separate tier for Options Execution Venues) as well as the proposed discounting method for Execution Venue ATSS exclusively trading OTC Equity Securities and FINRA. For these alternatives, the Operating Committee considered how each alternative would affect the recovery allocations. In addition, each of these options was

<sup>66</sup> Section 11.2(b) of the CAT NMS Plan.

<sup>67</sup> See Suspension Order at 31664–5.

<sup>68</sup> Suspension Order at 31664–5.

considered in the context of the full model, as changes in each variable in the model affect other variables in the model when allocating the total CAT costs among CAT Reporters. The Operating Committee did not adopt a separate tier structure for Equity Execution Venues trading OTC Equity Securities as they determined that the proposed discount approach appropriately addresses the concern. The Operating Committee determined to adopt the proposed discount because it directly relates to the concern regarding the trading patterns and operations in the OTC Equity Securities markets, and is an objective discounting method.

By increasing the number of tiers for Equity Execution Venues and imposing a discount on the market share of share volume calculation for trading in OTC Equity Securities, the Operating Committee believes that the proposed fees for Equity Execution Venues would not impose an undue or inappropriate burden on competition under Section 6 or Section 15A of the Exchange Act. Moreover, the Operating Committee believes that the proposed fees appropriately take into account the distinctions in the securities trading operations of different Equity Execution Venues, as required under the funding principles of the CAT NMS Plan.<sup>69</sup> As discussed above, the larger number of tiers more closely tracks the variety of sizes of equity share volume of Equity Execution Venues. In addition, the proposed discount recognizes the different types of trading operations at Equity Execution Venues trading OTC Equity Securities versus those trading NMS Stocks, thereby more closely matching the relative revenue generation by Equity Execution Venues trading OTC Equity Securities to their CAT Fees.

Accordingly, with this Amendment, SRO proposes to amend paragraph (b)(2) of the proposed fee schedule to indicate that the market share for Equity ATSs exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF would be discounted. In addition, as discussed above, to address concerns related to smaller ATSs, including those that exclusively trade OTC Equity Securities, SRO proposes to amend paragraph (b)(2) of the proposed fee schedule to add two additional tiers for Equity Execution Venues, to establish the percentages and fees for Tiers 3 and 4 as described, and to revise the percentages and fees for Tiers 1 and 2 as described.

<sup>69</sup> Section 11.2(b) of the CAT NMS Plan.

#### (B) Market Makers

In the Original Proposal, the Operating Committee proposed to include both Options Market Maker quotes and equities market maker quotes in the calculation of total message traffic for such market makers for purposes of tiering for Industry Members (other than Execution Venue ATSs). The Commission and commenters raised questions as to whether the proposed treatment of Options Market Maker quotes may result in an undue or inappropriate burden on competition or may lead to a reduction in market quality.<sup>70</sup> To address this concern, the Operating Committee determined to discount the Options Market Maker quotes by the trade to quote ratio for options when calculating message traffic for Options Market Makers. Similarly, to avoid disincentives to quoting behavior on the equities side as well, the Operating Committee determined to discount equity market maker quotes by the trade to quote ratio for equities when calculating message traffic for equities market makers.

In the Original Proposal, market maker quotes were treated the same as other message traffic for purposes of tiering for Industry Members (other than Execution Venue ATSs). Commenters noted, however, that charging Industry Members on the basis of message traffic will impact market makers disproportionately because of their continuous quoting obligations. Moreover, in the context of options market makers, message traffic would include bids and offers for every listed options strikes and series, which are not an issue for equities.<sup>71</sup> The Operating Committee proposes to address this concern in two ways. First, the Operating Committee proposes to discount Options Market Maker quotes when calculating the Options Market Makers' tier placement. Specifically, the Operating Committee proposes to impose a discount based on the objective measure of the trade to quote ratio for options. Based on available data from June 2016 through June 2017, the trade to quote ratio for options is 0.01%. Second, the Operating Committee proposes to discount equities market maker quotes when calculating the equities market makers' tier placement. Specifically, the Operating Committee proposes to impose a discount based on the

<sup>70</sup> See Suspension Order at 31663-4; SIFMA Letter at 4-6; FIA Principal Traders Group Letter at 3; Sidley Letter at 2-6; Group One Letter at 2-6; and Belvedere Letter at 2.

<sup>71</sup> Suspension Order at 31664.

objective measure of the trade to quote ratio for equities. Based on available data for June 2016 through June 2017, this trade to quote ratio for equities is 5.43%.

The practical effect of applying such discounts for quoting activity is to shift market makers' calculated message traffic lower, leading to the potential shift to tiers for lower message traffic and reduced fees. Such an approach would move sixteen Industry Member CAT Reporters that are market makers to a lower tier than in the Original Proposal. For example, under the Original Proposal, Broker-Dealer Firm ABC was placed in the first CAT Fee tier, which had a quarterly fee of \$101,004. With the imposition of the proposed tier changes and the discount, Broker-Dealer Firm ABC, an options market maker, would be ranked in Tier 3 and would owe a quarterly fee of \$40,899.

In developing the proposed market maker discounts, the Operating Committee considered various discounts for Options Market Makers and equity market makers, including discounts of 50%, 25%, 0.00002%, as well as the 5.43% for option market makers and 0.01% for equity market makers. Each of these options were considered in the context of the full model, as changes in each variable in the model affect other variables in the model when allocating the total CAT costs among CAT Reporters. The Operating Committee determined to adopt the proposed discount because it directly relates to the concern regarding the quoting requirement, is an objective discounting method, and has the desired potential to shift market makers to lower fee tiers.

By imposing a discount on Options Market Makers and equities market makers' quoting traffic for the calculation of message traffic, the Operating Committee believes that the proposed fees for market makers would not impose an undue or inappropriate burden on competition under Section 6 or Section 15A of the Exchange Act. Moreover, the Operating Committee believes that the proposed fees appropriately take into account the distinctions in the securities trading operations of different Industry Members, and avoid disincentives, such as a reduction in market quality, as required under the funding principles of the CAT NMS Plan.<sup>72</sup> The proposed discounts recognize the different types of trading operations presented by Options Market Makers and equities market makers, as well as the value of

<sup>72</sup> Section 11.2(b) of the CAT NMS Plan.

the market makers' quoting activity to the market as a whole. Accordingly, the Operating Committee believes that the proposed discounts will not impact the ability of small Options Market Makers or equities market makers to provide liquidity.

Accordingly, with this Amendment, SRO proposes to amend paragraph (b)(1) of the proposed fee schedule to indicate that the message traffic related to equity market maker quotes and Options Market Maker quotes would be discounted. In addition, SRO proposes to define the term "Options Market Maker" in paragraph (a)(1) of the proposed fee schedule.

#### (C) Comparability/Allocation of Costs

Under the Original Proposal, 75% of CAT costs were allocated to Industry Members (other than Execution Venue ATSS) and 25% of CAT costs were allocated to Execution Venues. This cost allocation sought to maintain the greatest level of comparability across the funding model, where comparability considered affiliations among or between CAT Reporters. The Commission and commenters expressed concerns regarding whether the proposed 75%/25% allocation of CAT costs is consistent with the Plan's funding principles and the Exchange Act, including whether the allocation places a burden on competition or reduces market quality. The Commission and commenters also questioned whether the approach of accounting for affiliations among CAT Reporters in setting CAT Fees disadvantages non-affiliated CAT Reporters or otherwise burdens competition in the market for trading services.<sup>73</sup>

In response to these concerns, the Operating Committee determined to revise the proposed funding model to focus the comparability of CAT Fees on the individual entity level, rather than primarily on the comparability of affiliated entities. In light of the interconnected nature of the various aspects of the funding model, the Operating Committee determined to revise various aspects of the model to enhance comparability at the individual entity level. Specifically, to achieve such comparability, the Operating Committee determined to (1) decrease the number of tiers for Industry Members (other than Execution Venue ATSS) from nine to seven; (2) change the allocation of CAT costs between Equity Execution Venues and Options

Execution Venues from 75%/25% to 67%/33%; and (3) adjust tier percentages and recovery allocations for Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATSS). With these changes, the proposed funding model provides fee comparability for the largest individual entities, with the largest Industry Members (other than Execution Venue ATSS), Equity Execution Venues and Options Execution Venues each paying a CAT Fee of approximately \$81,000 each quarter.

#### (i) Number of Industry Member Tiers

In the Original Proposal, the proposed funding model had nine tiers for Industry Members (other than Execution Venue ATSS). The Operating Committee determined that reducing the number of tiers from nine tiers to seven tiers (and adjusting the predefined Industry Member Percentages as well) continues to provide a fair allocation of fees among Industry Members and appropriately distinguishes between Industry Members with differing levels of message traffic. In reaching this conclusion, the Operating Committee considered historical message traffic generated by Industry Members across all exchanges and as submitted to FINRA's OATS, and considered the distribution of firms with similar levels of message traffic, grouping together firms with similar levels of message traffic. Based on this, the Operating Committee determined that seven tiers would group firms with similar levels of message traffic, while also achieving greater comparability in the model for the individual CAT Reporters with the greatest market share or message traffic.

In developing the proposed seven tier structure, the Operating Committee considered remaining at nine tiers, as well as reducing the number of tiers down to seven when considering how to address the concerns raised regarding comparability. For each of the alternatives, the Operating Committee considered the assignment of various percentages of Industry Members to each tier as well as various percentages of Industry Member recovery allocations for each alternative. Each of these options was considered in the context of its effects on the full funding model, as changes in each variable in the model affect other variables in the model when allocating the total CAT costs among CAT Reporters. The Operating Committee determined that the seven tier alternative provided the most fee comparability at the individual entity level for the largest CAT Reporters, while both providing logical breaks in

tiering for Industry Members with different levels of message traffic and a sufficient number of tiers to provide for the full spectrum of different levels of message traffic for all Industry Members.

#### (ii) Allocation of CAT Costs Between Equity and Options Execution Venues

The Operating Committee also determined to adjust the allocation of CAT costs between Equity Execution Venues and Options Execution Venues to enhance comparability at the individual entity level. In the Original Proposal, 75% of Execution Venue CAT costs were allocated to Equity Execution Venues, and 25% of Execution Venue CAT costs were allocated to Options Execution Venues. To achieve the goal of increased comparability at the individual entity level, the Operating Committee analyzed a range of alternative splits for revenue recovery between Equity and Options Execution Venues, along with other changes in the proposed funding model. Based on this analysis, the Operating Committee determined to allocate 67 percent of Execution Venue costs recovered to Equity Execution Venues and 33 percent to Options Execution Venues. The Operating Committee determined that a 67/33 allocation between Equity and Options Execution Venues enhances the level of fee comparability for the largest CAT Reporters. Specifically, the largest Equity and Options Execution Venues would pay a quarterly CAT Fee of approximately \$81,000.

In developing the proposed allocation of CAT costs between Equity and Options Execution Venues, the Operating Committee considered various different options for such allocation, including keeping the original 75%/25% allocation, as well as shifting to a 70%/30%, 67%/33%, or 57.75%/42.25% allocation. For each of the alternatives, the Operating Committee considered the effect each allocation would have on the assignment of various percentages of Equity Execution Venues to each tier as well as various percentages of Equity Execution Venue recovery allocations for each alternative. Moreover, each of these options was considered in the context of the full model, as changes in each variable in the model affect other variables in the model when allocating the total CAT costs among CAT Reporters. The Operating Committee determined that the 67%/33% allocation between Equity and Options Execution Venues provided the greatest level of fee comparability at the individual entity level for the largest CAT Reporters, while still providing for

<sup>73</sup> See Suspension Order at 31662-3; SIFMA Letter at 3; Sidley Letter at 6-7; Group One Letter at 2; and Belvedere Letter at 2.

appropriate fee levels across all tiers for all CAT Reporters.

(iii) Allocation of Costs Between Execution Venues and Industry Members

The Operating Committee determined to allocate 25% of CAT costs to Execution Venues and 75% to Industry Members (other than Execution Venue ATs), as it had in the Original Proposal. The Operating Committee determined that this 75%/25% allocation, along with the other changes proposed above, led to the most comparable fees for the largest Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATs). The largest Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATs) would each pay a quarterly CAT Fee of approximately \$81,000.

As a preliminary matter, the Operating Committee determined that it is appropriate to allocate most of the costs to create, implement and maintain the CAT to Industry Members for several reasons. First, there are many more broker-dealers expected to report to the CAT than Participants (*i.e.*, 1,541 broker-dealer CAT Reporters versus 22 Participants). Second, since most of the costs to process CAT reportable data is generated by Industry Members, Industry Members could be expected to contribute toward such costs. Finally, as noted by the SEC, the CAT “substantially enhance[s] the ability of the SROs and the Commission to oversee today’s securities markets,”<sup>74</sup> thereby benefitting all market participants. After making this determination, the Operating Committee analyzed several different cost allocations, as discussed further below, and determined that an allocation where 75% of the CAT costs should be borne by the Industry Members (other than Execution Venue ATs) and 25% should be paid by Execution Venues was most appropriate and led to the greatest comparability of CAT Fees for the largest CAT Reporters.

In developing the proposed allocation of CAT costs between Execution Venues and Industry Members (other than Execution Venue ATs), the Operating Committee considered various different options for such allocation, including keeping the original 75%/25% allocation, as well as shifting to an 80%/20%, 70%/30%, or 65%/35% allocation. Each of these options was

considered in the context of the full model, including the effect on each of the changes discussed above, as changes in each variable in the model affect other variables in the model when allocating the total CAT costs among CAT Reporters. In particular, for each of the alternatives, the Operating Committee considered the effect each allocation had on the assignment of various percentages of Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATs) to each relevant tier as well as various percentages of recovery allocations for each tier. The Operating Committee determined that the 75%/25% allocation between Execution Venues and Industry Members (other than Execution Venue ATs) provided the greatest level of fee comparability at the individual entity level for the largest CAT Reporters, while still providing for appropriate fee levels across all tiers for all CAT Reporters.

(iv) Affiliations

The funding principles set forth in Section 11.2 of the Plan require that the fees charged to CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venue and/or Industry Members). The proposed funding model satisfies this requirement. As discussed above, under the proposed funding model, the largest Equity Execution Venues, Options Execution Venues, and Industry Members (other than Execution Venue ATs) pay approximately the same fee. Moreover, the Operating Committee believes that the proposed funding model takes into consideration affiliations between or among CAT Reporters as complexes with multiple CAT Reporters will pay the appropriate fee based on the proposed fee schedule for each of the CAT Reporters in the complex. For example, a complex with a Tier 1 Equity Execution Venue and Tier 2 Industry Member will pay the same as another complex with a Tier 1 Equity Execution Venue and Tier 2 Industry Member.

(v) Fee Schedule Changes

Accordingly, with this Amendment, SRO proposes to amend paragraphs (b)(1) and (2) of the proposed fee schedule to reflect the changes discussed in this section. Specifically, SRO proposes to amend paragraph (b)(1) and (2) of the proposed fee schedule to update the number of tiers, and the fees

and percentages assigned to each tier to reflect the described changes.

(D) Market Share/Message Traffic

In the Original Proposal, the Operating Committee proposed to charge Execution Venues based on market share and Industry Members (other than Execution Venue ATs) based on message traffic. Commenters questioned the use of the two different metrics for calculating CAT Fees.<sup>75</sup> The Operating Committee continues to believe that the proposed use of market share and message traffic satisfies the requirements of the Exchange Act and the funding principles set forth in the CAT NMS Plan. Accordingly, the proposed funding model continues to charge Execution Venues based on market share and Industry Members (other than Execution Venue ATs) based on message traffic.

In drafting the Plan and the Original Proposal, the Operating Committee expressed the view that the correlation between message traffic and size does not apply to Execution Venues, which they described as producing similar amounts of message traffic regardless of size. The Operating Committee believed that charging Execution Venues based on message traffic would result in both large and small Execution Venues paying comparable fees, which would be inequitable, so the Operating Committee determined that it would be more appropriate to treat Execution Venues differently from Industry Members in the funding model. Upon a more detailed analysis of available data, however, the Operating Committee noted that Execution Venues have varying levels of message traffic. Nevertheless, the Operating Committee continues to believe that a bifurcated funding model—where Industry Members (other than Execution Venue ATs) are charged fees based on message traffic and Execution Venues are charged based on market share—complies with the Plan and meets the standards of the Exchange Act for the reasons set forth below.

Charging Industry Members based on message traffic is the most equitable means for establishing fees for Industry Members (other than Execution Venue ATs). This approach will assess fees to Industry Members that create larger volumes of message traffic that are relatively higher than those fees charged to Industry Members that create smaller volumes of message traffic. Since message traffic, along with fixed costs of the Plan Processor, is a key component

<sup>74</sup> Securities Exchange Act Rel. No. 67457 (Jul 18, 2012), 77 FR 45722, 45726 (Aug. 1, 2012) (“Rule 613 Adopting Release”).

<sup>75</sup> Suspension Order at 31663; FIA Principal Traders Group Letter at 2.

of the costs of operating the CAT, message traffic is an appropriate criterion for placing Industry Members in a particular fee tier.

The Operating Committee also believes that it is appropriate to charge Execution Venues CAT Fees based on their market share. In contrast to Industry Members (other than Execution Venue ATs), which determine the degree to which they produce the message traffic that constitutes CAT Reportable Events, the CAT Reportable Events of Execution Venues are largely derivative of quotations and orders received from Industry Members that the Execution Venues are required to display. The business model for Execution Venues, however, is focused on executions in their markets. As a result, the Operating Committee believes that it is more equitable to charge Execution Venues based on their market share rather than their message traffic.

Similarly, focusing on message traffic would make it more difficult to draw distinctions between large and small exchanges, including options exchanges in particular. For instance, the Operating Committee analyzed the message traffic of Execution Venues and Industry Members for the period of April 2017 to June 2017 and placed all CAT Reporters into a nine-tier framework (*i.e.*, a single tier may include both Execution Venues and Industry Members). The Operating Committee's analysis found that the majority of exchanges (15 total) were grouped in Tiers 1 and 2. Moreover, virtually all of the options exchanges were in Tiers 1 and 2.<sup>76</sup> Given the concentration of options exchanges in Tiers 1 and 2, the Operating Committee believes that using a funding model based purely on message traffic would make it more difficult to distinguish between large and small options exchanges, as compared to the proposed bifurcated fee approach.

In addition, the Operating Committee also believes that it is appropriate to treat ATs as Execution Venues under the proposed funding model since ATs have business models that are similar to those of exchanges, and ATs also compete with exchanges. For these reasons, the Operating Committee believes that charging Execution Venues based on market share is more appropriate and equitable than charging Execution Venues based on message traffic.

<sup>76</sup> The Participants note that this analysis did not place MIAx PEARL in Tier 1 or Tier 2 since the exchange commenced trading on February 6, 2017.

#### (E) Time Limit

In the Original Proposal, the Operating Committee did not impose any time limit on the application of the proposed CAT Fees. As discussed above, the Operating Committee developed the proposed funding model by analyzing currently available historical data. Such historical data, however, is not as comprehensive as data that will be submitted to the CAT. Accordingly, the Operating Committee believes that it will be appropriate to revisit the funding model once CAT Reporters have actual experience with the funding model. Accordingly, the Operating Committee proposes to include a sunset provision in the proposed fee model. The proposed CAT Fees will sunset two years after the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. Specifically, SRO proposes to add paragraph (d) of the proposed fee schedule to include this sunset provision. Such a provision will provide the Operating Committee and other market participants with the opportunity to reevaluate the performance of the proposed funding model.

#### (F) Tier Structure/Decreasing Cost per Unit

In the Original Proposal, the Operating Committee determined to use a tiered fee structure. The Commission and commenters questioned whether the decreasing cost per additional unit (of message traffic in the case of Industry Members, or of share volume in the case of Execution Venues) in the proposed fee schedules burdens competition by disadvantaging small Industry Members and Execution Venues and/or by creating barriers to entry in the market for trading services and/or the market for broker-dealer services.<sup>77</sup>

The Operating Committee does not believe that decreasing cost per additional unit in the proposed fee schedules places an unfair competitive burden on Small Industry Members and Execution Venues. While the cost per unit of message traffic or share volume necessarily will decrease as volume increases in any tiered fee model using fixed fee percentages and, as a result, Small Industry Members and small Execution Venues may pay a larger fee per message or share, this comment fails to take account of the substantial differences in the absolute fees paid by Small Industry Members and small Execution Venues as opposed to large

<sup>77</sup> Suspension Order at 31667.

Industry Members and large Execution Venues. For example, under the fee proposals, Tier 7 Industry Members would pay a quarterly fee of \$105, while Tier 1 Industry Members would pay a quarterly fee of \$81,483. Similarly, a Tier 4 Equity Execution Venue would pay a quarterly fee of \$129, while a Tier 1 Equity Execution Venue would pay a quarterly fee of \$81,048. Thus, Small Industry Members and small Execution Venues are not disadvantaged in terms of the total fees that they actually pay. In contrast to a tiered model using fixed fee percentages, the Operating Committee believes that strictly variable or metered funding models based on message traffic or share volume would be more likely to affect market behavior and may present administrative challenges (*e.g.*, the costs to calculate and monitor fees may exceed the fees charged to the smallest CAT Reporters).

#### (G) Other Alternatives Considered

In addition to the various funding model alternatives discussed above regarding discounts, number of tiers and allocation percentages, the Operating Committee also discussed other possible funding models. For example, the Operating Committee considered allocating the total CAT costs equally among each of the Participants, and then permitting each Participant to charge its own members as it deems appropriate.<sup>78</sup> The Operating Committee determined that such an approach raised a variety of issues, including the likely inconsistency of the ensuing charges, potential for lack of transparency, and the impracticality of multiple SROs submitting invoices for CAT charges. The Operating Committee therefore determined that the proposed funding model was preferable to this alternative.

#### (H) Industry Member Input

Commenters expressed concern regarding the level of Industry Member input into the development of the proposed funding model, and certain commenters have recommended a greater role in the governance of the CAT.<sup>79</sup> The Participants previously addressed this concern in its letters responding to comments on the Plan and the CAT Fees.<sup>80</sup> As discussed in those letters, the Participants discussed

<sup>78</sup> See FIA Principal Traders Group Letter at 2; Belvedere Letter at 4.

<sup>79</sup> See Suspension Order at 31662; MFA Letter at 1–2.

<sup>80</sup> Letter from Participants to Brent J. Fields, Secretary, SEC (Sept. 23, 2016) (“Plan Response Letter”); Letter from CAT NMS Plan Participants to Brent J. Fields, Secretary, SEC (June 29, 2017) (“Fee Rule Response Letter”).

the funding model with the Development Advisory Group (“DAG”), the advisory group formed to assist in the development of the Plan, during its original development.<sup>81</sup> Moreover, Industry Members currently have a voice in the affairs of the Operating Committee and operation of the CAT generally through the Advisory Committee established pursuant to Rule 613(b)(7) and Section 4.13 of the Plan. The Advisory Committee attends all meetings of the Operating Committee, as well as meetings of various subcommittees and working groups, and provides valuable and critical input for the Participants’ and Operating Committee’s consideration. The Operating Committee continues to believe that that Industry Members have an appropriate voice regarding the funding of the Company.

#### (I) Conflicts of Interest

Commenters also raised concerns regarding Participant conflicts of interest in setting the CAT Fees.<sup>82</sup> The Participants previously responded to this concern in both the Plan Response Letter and the Fee Rule Response Letter.<sup>83</sup> As discussed in those letters, the Plan, as approved by the SEC, adopts various measures to protect against the potential conflicts issues raised by the Participants’ fee-setting authority. Such measures include the operation of the Company as a not for profit business league and on a break-even basis, and the requirement that the Participants file all CAT Fees under Section 19(b) of the Exchange Act. The Operating Committee continues to believe that these measures adequately protect against concerns regarding conflicts of interest in setting fees, and that additional measures, such as an independent third party to evaluate an appropriate CAT Fee, are unnecessary.

#### (J) Fee Transparency

Commenters also argued that they could not adequately assess whether the CAT Fees were fair and equitable because the Operating Committee has not provided details as to what the Participants are receiving in return for the CAT Fees.<sup>84</sup> The Operating Committee provided a detailed discussion of the proposed funding model in the Plan, including the expenses to be covered by the CAT Fees.

<sup>81</sup> Fee Rule Response Letter at 2; Plan Response Letter at 18.

<sup>82</sup> See Suspension Order at 31662; FIA Principal Traders Group at 3.

<sup>83</sup> See Plan Response Letter at 16, 17; Fee Rule Response Letter at 10–12.

<sup>84</sup> See FIA Principal Traders Group at 3; SIFMA Letter at 3.

In addition, the agreement between the Company and the Plan Processor sets forth a comprehensive set of services to be provided to the Company with regard to the CAT. Such services include, without limitation: User support services (e.g., a help desk); tools to allow each CAT Reporter to monitor and correct their submissions; a comprehensive compliance program to monitor CAT Reporters’ adherence to Rule 613; publication of detailed Technical Specifications for Industry Members and Participants; performing data linkage functions; creating comprehensive data security and confidentiality safeguards; creating query functionality for regulatory users (i.e., the Participants, and the SEC and SEC staff); and performing billing and collection functions. The Operating Committee further notes that the services provided by the Plan Processor and the costs related thereto were subject to a bidding process.

#### (K) Funding Authority

Commenters also questioned the authority of the Operating Committee to impose CAT Fees on Industry Members.<sup>85</sup> The Participants previously responded to this same comment in the Plan Response Letter and the Fee Rule Response Letter.<sup>86</sup> As the Participants previously noted, SEC Rule 613 specifically contemplates broker-dealers contributing to the funding of the CAT. In addition, as noted by the SEC, the CAT “substantially enhance[s] the ability of the SROs and the Commission to oversee today’s securities markets,”<sup>87</sup> thereby benefitting all market participants. Therefore, the Operating Committee continues to believe that it is equitable for both Participants and Industry Members to contribute to funding the cost of the CAT.

#### 2. Statutory Basis

SRO believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,<sup>88</sup> which require, among other things, that the SRO 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 dealer, and Section 6(b)(4) of the Act,<sup>89</sup> which requires that

SRO rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using its facilities. As discussed above, the SEC approved the bifurcated, tiered, fixed fee funding model in the CAT NMS Plan, finding it was reasonable and that it equitably allocated fees among Participants and Industry Members. SRO believes that the proposed tiered fees adopted pursuant to the funding model approved by the SEC in the CAT NMS Plan are reasonable, equitably allocated and not unfairly discriminatory.

SRO believes that this proposal is consistent with the Act because it implements, interprets or clarifies the provisions of the Plan, and is designed to assist SRO and its Industry Members 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.”<sup>90</sup> To the extent that this proposal implements, interprets or clarifies the Plan and applies specific requirements to Industry Members, SRO believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

SRO believes that the proposed tiered fees are reasonable. First, the total CAT Fees to be collected would be directly associated with the costs of establishing and maintaining the CAT, where such costs include Plan Processor costs and costs related to insurance, third party services and the operational reserve. The CAT Fees would not cover Participant services unrelated to the CAT. In addition, any surplus CAT Fees cannot be distributed to the individual Participants; such surpluses must be used as a reserve to offset future fees. Given the direct relationship between the fees and the CAT costs, SRO believes that the total level of the CAT Fees is reasonable.

In addition, SRO believes that the proposed CAT Fees are reasonably designed to allocate the total costs of the CAT equitably between and among the Participants and Industry Members, and are therefore not unfairly discriminatory. As discussed in detail above, the proposed tiered fees impose comparable fees on similarly situated CAT Reporters. For example, those with a larger impact on the CAT (measured

<sup>85</sup> See Suspension Order at 31661–2; SIFMA Letter at 2.

<sup>86</sup> See Plan Response Letter at 9–10; Fee Rule Response Letter at 3–4.

<sup>87</sup> Rule 613 Adopting Release at 45726.

<sup>88</sup> 15 U.S.C. 78f(b)(5).

<sup>89</sup> 15 U.S.C. 78f(b)(4).

<sup>90</sup> Approval Order at 84697.



via message traffic or market share) pay higher fees, whereas CAT Reporters with a smaller impact pay lower fees. Correspondingly, the tiered structure lessens the impact on smaller CAT Reporters by imposing smaller fees on those CAT Reporters with less market share or message traffic. In addition, the fee structure takes into consideration distinctions in securities trading operations of CAT Reporters, including ATSS trading OTC Equity Securities, and equity and options market makers.

Moreover, SRO believes that the division of the total CAT costs between Industry Members and Execution Venues, and the division of the Execution Venue portion of total costs between Equity and Options Execution Venues, is reasonably designed to allocate CAT costs among CAT Reporters. The 75%/25% division between Industry Members (other than Execution Venue ATSS) and Execution Venues maintains the greatest level of comparability across the funding model. For example, the cost allocation establishes fees for the largest Industry Members (*i.e.*, those Industry Members in Tiers 1) that are comparable to the largest Equity Execution Venues and Options Execution Venues (*i.e.*, those Execution Venues in Tier 1). Furthermore, the allocation of total CAT cost recovery recognizes the difference in the number of CAT Reporters that are Industry Members (other than Execution Venue ATSS) versus CAT Reporters that are Execution Venues. Similarly, the 67%/33% allocation between Equity and Options Execution Venues also helps to provide fee comparability for the largest CAT Reporters.

Finally, SRO 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 fixed fee. Such factors are crucial to estimating a reliable revenue stream for the Company and for permitting CAT Reporters 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 Act<sup>91</sup> require that SRO rules not impose any burden on competition that is not necessary or appropriate. SRO 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. SRO notes that the proposed rule change implements provisions of the CAT NMS

Plan approved by the Commission, and is designed to assist SRO in meeting its regulatory obligations pursuant to the Plan. Similarly, all national securities exchanges and FINRA are proposing this proposed fee schedule 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 exchanges and FINRA.

Moreover, as previously described, SRO believes that the proposed rule change fairly and equitably allocates costs among CAT Reporters. In particular, the proposed fee schedule is structured to impose comparable fees on similarly situated CAT Reporters, and lessen the impact on smaller CAT Reporters. CAT Reporters with similar levels of CAT activity will pay similar fees. For example, Industry Members (other than Execution Venue ATSS) with higher levels of message traffic will pay higher fees, and those with lower levels of message traffic will pay lower fees. Similarly, Execution Venue ATSS and other Execution Venues with larger market share will pay higher fees, and those with lower levels of market share will pay lower fees. Therefore, given that there is generally a relationship between message traffic and/or market share to the CAT Reporter's size, smaller CAT Reporters generally pay less than larger CAT Reporters. Accordingly, SRO does not believe that the CAT Fees would have a disproportionate effect on smaller or larger CAT Reporters. In addition, ATSS and exchanges will pay the same fees based on market share. Therefore, SRO does not believe that the fees will impose any burden on the competition between ATSS and exchanges. Accordingly, SRO believes that the proposed fees will minimize the potential for adverse effects on competition between CAT Reporters in the market.

Furthermore, the tiered, fixed fee funding model limits the disincentives to providing liquidity to the market. Therefore, the proposed fees are structured to limit burdens on competitive quoting and other liquidity provision in the market.

In addition, the Operating Committee believes that the proposed changes to the Original Proposal, as discussed above in detail, address certain competitive concerns raised by commenters, including concerns related to, among other things, smaller ATSS, ATSS trading OTC Equity Securities, market making quoting and fee comparability. As discussed above, the Operating Committee believes that the

proposals address the competitive concerns raised by commenters.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

SRO has set forth responses to comments received regarding the Original Proposal in Section 3(a)(4) above.

### **III. Solicitation of Comments on Amendment No. 1**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 is consistent with the Act. In particular, the Commission seeks comment on the following:

#### Allocation of Costs

(1) Commenters' views as to whether the allocation of CAT costs is consistent with the funding principle expressed in the CAT NMS Plan that requires the Operating Committee to "avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality."<sup>92</sup>

(2) Commenters' views as to whether the allocation of 25% of CAT costs to the Execution Venues (including all the Participants) and 75% to Industry Members, will incentivize or disincentivize the Participants to effectively and efficiently manage the CAT costs incurred by the Participants since they will only bear 25% of such costs.

(3) Commenters' views on the determination to allocate 75% of all costs incurred by the Participants from November 21, 2016 to November 21, 2017 to Industry Members (other than Execution Venue ATSS), when such costs are development and build costs and when Industry Member reporting is scheduled to commence a year later, including views on whether such "fees, costs and expenses . . . [are] fairly and reasonably shared among the Participants and Industry Members" in accordance with the CAT NMS Plan.<sup>93</sup>

(4) Commenters' views on whether an analysis of the ratio of the expected Industry Member-reported CAT messages to the expected SRO-reported CAT messages should be the basis for determining the allocation of costs between Industry Members and Execution Venues.<sup>94</sup>

<sup>92</sup> Section 11.2(e) of the CAT NMS Plan.

<sup>93</sup> Section 11.1(c) of the CAT NMS Plan.

<sup>94</sup> The Notice for the CAT NMS Plan did not provide a comprehensive count of audit trail message traffic from different regulatory data

<sup>91</sup> 15 U.S.C. 78f(b)(8)



(5) Any additional data analysis on the allocation of CAT costs, including any existing supporting evidence.

#### Comparability

(6) Commenters' views on the shift in the standard used to assess the comparability of CAT Fees, with the emphasis now on comparability of individual entities instead of affiliated entities, including views as to whether this shift is consistent with the funding principle expressed in the CAT NMS Plan that requires the Operating Committee to establish a fee structure in which the fees charged to "CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venues and/or Industry Members)." <sup>95</sup>

(7) Commenters' views as to whether the reduction in the number of tiers for Industry Members (other than Execution Venue ATs) from nine to seven, the revised allocation of CAT costs between Equity Execution Venues and Options Execution Venues from a 75%/25% split to a 67%/33% split, and the adjustment of all tier percentages and recovery allocations achieves comparability across individual entities, and whether these changes should have resulted in a change to the allocation of 75% of total CAT costs to Industry Members (other than Execution Venue ATs) and 25% of such costs to Execution Venues.

#### Discounts

(8) Commenters' views as to whether the discounts for options market-makers, equities market-makers, and Equity ATs trading OTC Equity Securities are clear, reasonable, and consistent with the funding principle expressed in the CAT NMS Plan that requires the Operating Committee to "avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality," <sup>96</sup> including views as to whether the discounts for market-makers limit any potential disincentives to act as a market-maker and/or to provide liquidity due to CAT fees.

sources, but the Commission did estimate the ratio of all SRO audit trail messages to OATS audit trail messages to be 1.9431. See Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30613, 30721 n.919 and accompanying text (May 17, 2016).

<sup>95</sup> Section 11.2(c) of the CAT NMS Plan.

<sup>96</sup> Section 11.2(e) of the CAT NMS Plan.

#### Calculation of Costs and Imposition of CAT Fees

(9) Commenters' views as to whether the amendment provides sufficient information regarding the amount of costs incurred from November 21, 2016 to November 21, 2017, particularly, how those costs were calculated, how those costs relate to the proposed CAT Fees, and how costs incurred after November 21, 2017 will be assessed upon Industry Members and Execution Venues;

(10) Commenters' views as to whether the timing of the imposition and collection of CAT Fees on Execution Venues and Industry Members is reasonably related to the timing of when the Company expects to incur such development and implementation costs.<sup>97</sup>

(11) Commenters' views on dividing CAT costs equally among each of the Participants, and then each Participant charging its own members as it deems appropriate, taking into consideration the possibility of inconsistency in charges, the potential for lack of transparency, and the impracticality of multiple SROs submitting invoices for CAT charges.

#### Burden on Competition and Barriers to Entry

(12) Commenters' views as to whether the allocation of 75% of CAT costs to Industry Members (other than Execution Venue ATs) imposes any burdens on competition to Industry Members, including views on what baseline competitive landscape the Commission should consider when analyzing the proposed allocation of CAT costs.

(13) Commenters' views on the burdens on competition, including the relevant markets and services and the impact of such burdens on the baseline competitive landscape in those relevant markets and services.

(14) Commenters' views on any potential burdens imposed by the fees on competition between and among CAT Reporters, including views on which baseline markets and services the fees could have competitive effects on and whether the fees are designed to minimize such effects.

(15) Commenters' general views on the impact of the proposed fees on economies of scale and barriers to entry.

(16) Commenters' views on the baseline economies of scale and barriers to entry for Industry Members and Execution Venues and the relevant markets and services over which these economies of scale and barriers to entry exist.

<sup>97</sup> Section 11.1(c) of the CAT NMS Plan.

(17) Commenters' views as to whether a tiered fee structure necessarily results in less active tiers paying more per unit than those in more active tiers, thus creating economies of scale, with supporting information if possible.

(18) Commenters' views as to how the level of the fees for the least active tiers would or would not affect barriers to entry.

(19) Commenters' views on whether the difference between the cost per unit (messages or market share) in less active tiers compared to the cost per unit in more active tiers creates regulatory economies of scale that favor larger competitors and, if so:

(a) How those economies of scale compare to operational economies of scale; and

(b) Whether those economies of scale reduce or increase the current advantages enjoyed by larger competitors or otherwise alter the competitive landscape.

(20) Commenters' views on whether the fees could affect competition between and among national securities exchanges and FINRA, in light of the fact that implementation of the fees does not require the unanimous consent of all such entities, and, specifically:

(a) Whether any of the national securities exchanges or FINRA are disadvantaged by the fees; and

(b) If so, whether any such disadvantages would be of a magnitude that would alter the competitive landscape.

(21) Commenters' views on any potential burden imposed by the fees on competitive quoting and other liquidity provision in the market, including, specifically:

(a) Commenters' views on the kinds of disincentives that discourage liquidity provision and/or disincentives that the Commission should consider in its analysis;

(b) Commenters' views as to whether the fees could disincentivize the provision of liquidity; and

(c) Commenters' views as to whether the fees limit any disincentives to provide liquidity.

(22) Commenters' views as to whether the amendment adequately responds to and/or addresses comments received on related filings.

#### Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2017-040 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-CBOE-2017-040. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2017-040, and should be submitted on or before January 5, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>98</sup>

**Robert W. Errett,**  
Deputy Secretary.

[FR Doc. 2017-26994 Filed 12-14-17; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-82261; File No. SR-NYSE-2017-22]

**Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Amendment No. 2 to Proposed Rule Change Amending the Consolidated Audit Trail Funding Fees**

December 11, 2017.

On May 10, 2017, New York Stock Exchange LLC ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt a fee schedule to establish the fees for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail ("CAT NMS Plan"). The proposed rule change was published in the **Federal Register** for comment on May 22, 2017.<sup>3</sup> The Commission received seven comment letters on the proposed rule change,<sup>4</sup> and a response to

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 80693 (May 16, 2017), 82 FR 23363 (May 22, 2017) ("Original Proposal").

<sup>4</sup> Since the CAT NMS Plan Participants' proposed rule changes to adopt fees to be charged to Industry Members to fund the consolidated audit trail are substantively identical, the Commission is considering all comments received on the proposed rule changes regardless of the comment file to which they were submitted. See text accompanying note 12 *infra*, for a list of the CAT NMS Plan Participants. See Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Brent J. Fields, Secretary, Commission (dated June 6, 2017), available at: <https://www.sec.gov/comments/sr-batsbx-2017-38/batsbx201738-1788188-153228.pdf>; Letter from Patricia L. Cerny and Steven O'Malley, Compliance Consultants, to Brent J. Fields, Secretary, Commission (dated June 12, 2017), available at: <https://www.sec.gov/comments/sr-cboe-2017-040/cboe2017040-1799253-153675.pdf>; Letter from Daniel Zinn, General Counsel, OTC Markets Group Inc., to Eduardo A. Aleman, Assistant Secretary, Commission (dated June 13, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-1801717-153703.pdf>; Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission (dated June 22, 2017), available at: <https://www.sec.gov/comments/sr-cboe-2017-040/cboe2017040-1819670-154195.pdf>; Letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, Commission (dated June 23, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-1822454-154283.pdf>; and Letter from Suzanne H. Shatto, Investor, to Commission (dated June 27, 2017), available at: <https://www.sec.gov/comments/sr-batsedgx-2017-22/batsedgx201722-154443.pdf>. The Commission also received a comment letter which is not pertinent to these proposed rule changes. See Letter from Christina Crouch, Smart Ltd., to Brent J. Fields, Secretary,

comments from the Participants.<sup>5</sup> On June 30, 2017, the Commission temporarily suspended and initiated proceedings to determine whether to approve or disapprove the proposed rule change.<sup>6</sup> The Commission thereafter received seven comment letters,<sup>7</sup> and a response to comments from the Participants.<sup>8</sup> On October 25, 2017, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>9</sup> On November 9, 2017, the Commission extended the time period within which to approve the proposed rule change or disapprove the proposed rule change to January 14, 2018.<sup>10</sup> On November 29, 2017, the Exchange filed Amendment No. 2 to the proposed rule change, as described in Items I and II below, which

Commission (dated June 5, 2017), available at: <https://www.sec.gov/comments/sr-batsbx-2017-38/batsbx201738-1785545-153152.htm>.

<sup>5</sup> See Letter from CAT NMS Plan Participants to Brent J. Fields, Secretary, Commission (dated June 29, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-1832632-154584.pdf>.

<sup>6</sup> See Securities Exchange Act Release No. 81067 (June 30, 2017), 82 FR 31656 (July 7, 2017).

<sup>7</sup> See Letter from W. Hardy Callcott, Partner, Sidley Austin LLP, to Brent J. Fields, Secretary, Commission (dated July 27, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2148338-157737.pdf>; Letter from Kevin Coleman, General Counsel and Chief Compliance Officer, Belvedere Trading LLC, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2148360-157740.pdf>; Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2150977-157744.pdf>; Letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2150818-157743.pdf>; Letter from John Kinahan, Chief Executive Officer, Group One Trading, L.P., to Brent J. Fields, Secretary, Commission (dated August 10, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-2214568-160619.pdf>; Letter from Joseph Molluso, Executive Vice President and CFO, Virtu Financial, to Brent J. Fields, Secretary, Commission (dated August 18, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-2238648-160830.pdf>.

<sup>8</sup> See Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Brent J. Fields, Secretary, Commission (dated November 2, 2017), available at <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2674608-161412.pdf>.

<sup>9</sup> Amendment No. 1 to the proposed rule change replaced and superseded the Original Proposal in its entirety. See Securities Exchange Act Release No. 82260 (December 11, 2017).

<sup>10</sup> See Securities Exchange Act Release No. 82049 (November 9, 2017), 82 FR 53549 (November 16, 2017).

<sup>98</sup> 17 CFR 200.30-3(a)(12).

Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments from interested persons on Amendment No. 2.

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

The Exchange proposes to amend the NYSE Price List ("Price List") to adopt the fees for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail (the "CAT NMS Plan" or "Plan").<sup>11</sup> On October 25, 2017, NYSE filed an amendment to the Original Proposal ("First Amendment"). The Exchange files this proposed rule change (the "Second Amendment") to amend the Original Proposal, as amended by the First Amendment. The proposed rule change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

##### 1. Purpose

BOXX Options Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc. ("FINRA"), Investors' Exchange LLC, Miami International Securities Exchange, LLC, MIAX PEARL, LLC, NASDAQ BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, New York Stock

Exchange LLC, NYSE American LLC, NYSE Arca, Inc. and NYSE National, Inc.<sup>12</sup> (collectively, the "Participants") filed with the Commission, pursuant to Section 11A of the Exchange Act<sup>13</sup> and Rule 608 of Regulation NMS thereunder,<sup>14</sup> the CAT NMS Plan.<sup>15</sup> The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act. The Plan was published for comment in the **Federal Register** on May 17, 2016,<sup>16</sup> and approved by the Commission, as modified, on November 15, 2016.<sup>17</sup> The Plan is designed to create, implement and maintain a consolidated audit trail ("CAT") that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. The Plan accomplishes this by creating CAT NMS, LLC (the "Company"), of which each Participant is a member, to operate the CAT.<sup>18</sup> Under the CAT NMS Plan, the Operating Committee of the Company ("Operating Committee") has discretion to establish funding for the Company to operate the CAT, including establishing fees that the Participants will pay, and establishing fees for Industry Members that will be implemented by the Participants ("CAT Fees").<sup>19</sup> The Participants are required to file with the SEC under Section 19(b) of the Exchange Act any such CAT Fees applicable to Industry Members that the Operating Committee approves.<sup>20</sup> Accordingly, the Exchange submitted the Original Proposal to adopt the Consolidated Audit Trail Funding Fees, which would require Industry Members

that are Exchange members to pay the CAT Fees determined by the Operating Committee.

The Commission published the Original Proposal for public comment in the **Federal Register** on May 22, 2017,<sup>21</sup> and received comments in response to the Original Proposal or similar fee filings by other Participants.<sup>22</sup> On June 30, 2017, the Commission suspended, and instituted proceedings to determine whether to approve or disapprove, the Original Proposal.<sup>23</sup> The Commission received seven comment letters in response to those proceedings.<sup>24</sup>

In response to the comments on the Original Proposal, the Operating Committee determined to make the following changes to the funding model: (1) Add two additional CAT Fee tiers for Equity Execution Venues; (2) discount the market share of Execution Venue ATSS exclusively trading OTC Equity Securities as well as the market share of the FINRA over-the-counter reporting facility ("ORF") by the average shares per trade ratio between NMS Stocks and OTC Equity Securities (calculated as 0.17% based on available data from the second quarter of June 2017) when calculating the market share of Execution Venue ATS exclusively trading OTC Equity Securities and FINRA; (3) discount the Options Market Maker quotes by the trade to quote ratio for options (calculated as 0.01% based on available data for June 2016 through June 2017) when calculating message traffic for Options Market Makers; (4) discount equity market maker quotes by the trade to quote ratio for equities (calculated as 5.43% based on available

<sup>21</sup> Securities Exchange Act Rel. No. 80693 (May 16, 2017), 82 FR 23363 (May 22, 2017) (SR-NYSE-2017-22).

<sup>22</sup> For a summary of comments, see generally Securities Exchange Act Rel. No. 81067 (June 30, 2017), 82 FR 31656 (July 7, 2017) ("Suspension Order").

<sup>23</sup> Suspension Order.

<sup>24</sup> See Letter from Stuart J. Kaswell, Executive Vice President, Managing Director and General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, SEC (July 28, 2017) ("MFA Letter"); Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Brent J. Fields, Secretary, SEC (July 28, 2017) ("SIFMA Letter"); Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, SEC (July 28, 2017) ("FIA Principal Traders Group Letter"); Letter from Kevin Coleman, General Counsel & Chief Compliance Officer, Belvedere Trading LLC, to Brent J. Fields, Secretary, SEC (July 28, 2017) ("Belvedere Letter"); Letter from W. Hardy Callcott, Sidley Austin LLP, to Brent J. Fields, Secretary, SEC (July 27, 2017) ("Sidley Letter"); Letter from John Kinahan, Chief Executive Officer, Group One Trading, L.P., to Brent J. Fields, Secretary, SEC (Aug. 10, 2017) ("Group One Letter"); and Letter from Joseph Molluso, Executive Vice President, Virtu Financial, to Brent J. Fields, Secretary, SEC (Aug. 18, 2017) ("Virtu Financial Letter").

<sup>11</sup> Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth herein, the CAT Compliance Rule or in the CAT NMS Plan.

<sup>12</sup> Note that Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., LLC, C2 Options Exchange, Incorporated, and Chicago Board Options Exchange, Incorporated, have been renamed Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., respectively.

<sup>13</sup> 15 U.S.C. 78k-1.

<sup>14</sup> 17 CFR 242.608.

<sup>15</sup> See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. See Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.

<sup>16</sup> Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

<sup>17</sup> Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) ("Approval Order").

<sup>18</sup> The Plan also serves as the limited liability company agreement for the Company.

<sup>19</sup> Section 11.1(b) of the CAT NMS Plan.

<sup>20</sup> *Id.*

data for June 2016 through June 2017) when calculating message traffic for equity market makers; (5) decrease the number of tiers for Industry Members (other than the Execution Venue ATs) from nine to seven; (6) change the allocation of CAT costs between Equity Execution Venues and Options Execution Venues from 75%/25% to 67%/33%; (7) adjust tier percentages and recovery allocations for Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATs); (8) focus the comparability of CAT Fees on the individual entity level, rather than primarily on the comparability of affiliated entities; (9) commence invoicing of CAT Reporters as promptly as possible following the latest of the operative date of the Consolidated Audit Trail Funding Fees for each of the Participants and the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants; and (10) require the proposed fees to automatically expire two years from the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. On October 25, 2017, the Exchange filed the First Amendment and proposed to amend the Original Proposal to reflect these changes.

NYSE submits this Second Amendment to the revise the proposal as set forth in the First Amendment to discount the OTC Equity Securities market share of all Execution Venue ATs trading OTC Equity Securities, rather than applying the discount solely to those Execution Venue ATs that exclusively trade OTC Equity Securities, when calculating the market share of Execution Venue ATs trading OTC Equity Securities. As discussed in the First Amendment:

The Operating Committee determined to discount the market share of Execution Venue ATs exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF in recognition of the different trading characteristics of the OTC Equity Securities market as compared to the market in NMS Stocks. Many OTC Equity Securities are priced at less than one dollar—and a significant number at less than one penny—per share and low-priced shares tend to trade in larger quantities. Accordingly, a disproportionately large number of shares are involved in transactions involving OTC Equity Securities versus NMS Stocks. Because the proposed fee tiers are based on market share calculated by share volume, Execution Venue ATs exclusively trading OTC Equity Securities and FINRA would likely be subject to higher tiers than their operations may warrant.<sup>25</sup>

The Operating Committee believes that this argument applies equally to both Execution Venue ATs exclusively trading OTC Equity Securities and to Execution Venue ATs that trade OTC Equity Securities as well as other securities. Accordingly, NYSE proposes to amend paragraph (b)(2) of the Consolidated Audit Trail Funding Fees to apply the discount to all Execution Venue ATs trading OTC Equity Securities. Specifically, the Exchange proposes to change the parenthetical regarding the OTC Equity Securities discount in paragraph (b)(2) of the proposed fee schedule from “with a discount for Equity ATs exclusively trading OTC Equity Securities based on the average shares per trade ratio between NMS Stocks and OTC Equity Securities” to “with a discount for OTC Equity Securities market share of Equity ATs trading OTC Equity Securities based on the average shares per trade ratio between NMS Stocks and OTC Equity Securities.”

Additionally, the Exchange proposes to delete footnote 45 in Section 3(a) on page 23 of the First Amendment as the footnote is erroneous and was included inadvertently.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)(4) of the Act,<sup>26</sup> because it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using its facilities. The Exchange believes the proposed rule change is also consistent with Section 6(b)(5) of the Act,<sup>27</sup> which requires, among other things, that the Exchange’s rules 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 believes that the proposed rule change is consistent with the Act, and that the proposed fees are reasonable, equitably allocated and not unfairly discriminatory. In particular, the Exchange believes that the proposed rule change would treat all Equity ATs trading OTC Equity Securities in a comparable manner when calculating applicable fees. In addition, the proposed fee structure would take into consideration distinctions in securities trading operations of CAT Reporters,

including all ATs trading OTC Equity Securities.

### B. Self-Regulatory Organization’s Statement on Burden on Competition

Section 6(b)(8) of the Act<sup>28</sup> require that the Exchange’s rules not impose any burden on competition that is not necessary or appropriate. 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. As previously described, the Exchange believes that the proposed rule change fairly and equitably allocates costs among CAT Reporters. In particular, the proposed rule change is structured to impose comparable fees on similarly situated CAT Reporters. The Exchange believes that the proposed rule change would treat all Equity ATs trading OTC Equity Securities in a comparable manner when calculating applicable fees. In addition, the proposed rule change would take into consideration distinctions in securities trading operations of CAT Reporters, including all ATs trading OTC Equity Securities. Moreover, the Operating Committee believes that the proposed rule change addresses certain competitive concerns raised by commenters related to ATs trading OTC Equity Securities.

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

No written comments were solicited or received with respect to the proposed rule change.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal, as amended by Amendment No. 1 and Amendment No. 2, is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission’s internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR–NYSE–2017–22 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.

<sup>25</sup> See SR–NYSE–2017–22, Amendment 1, Section 3(a), at page 23.

<sup>26</sup> 15 U.S.C. 78f(b)(4).

<sup>27</sup> 15 U.S.C. 78f(b)(6).

<sup>28</sup> 15 U.S.C. 78f(b)(8).

All submissions should refer to File Number SR–NYSE–2017–22. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2017–22, and should be submitted on or before January 5, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>29</sup>

**Robert W. Errett,**  
Deputy Secretary.

[FR Doc. 2017–27021 Filed 12–14–17; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82279; File No. SR–BatsBZX–2017–38]

### Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of Amendment No. 2 to the Proposed Rule Change To Amend the Schedule of Fees and Assessments To Adopt a Fee Schedule To Establish Fees for Industry Members Related to the National Market System Plan Governing the Consolidated Audit Trail

December 11, 2017.

#### I. Introduction

On May 23, 2017, Bats BZX Exchange Inc., n/k/a Cboe BZX Exchange, Inc., (“Exchange” or “SRO”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) <sup>1</sup> and Rule 19b–4 thereunder, <sup>2</sup> a proposed rule change to adopt a fee schedule to establish the fees for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail (“CAT NMS Plan”). The proposed rule change was published in the **Federal Register** for comment on June 6, 2017.<sup>3</sup> The Commission received seven comment letters on the proposed rule change,<sup>4</sup>

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> See Securities Exchange Act Release No. 80822 (May 31, 2017), 82 FR 26148 (June 6, 2017) (“Original Proposal”).

<sup>4</sup> Since the CAT NMS Plan Participants’ proposed rule changes to adopt fees to be charged to Industry Members to fund the consolidated audit trail are substantively identical, the Commission is considering all comments received on the proposed rule changes regardless of the comment file to which they were submitted. See text accompanying note 12 *infra*, for a list of the CAT NMS Plan Participants. See Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Brent J. Fields, Secretary, Commission (dated June 6, 2017), available at: <https://www.sec.gov/comments/sr-batsbzx-2017-38/batsbzx201738-1788188-153228.pdf>; Letter from Patricia L. Cerny and Steven O’Malley, Compliance Consultants, to Brent J. Fields, Secretary, Commission (dated June 12, 2017), available at: <https://www.sec.gov/comments/sr-cboe-2017-040/cboe2017040-1799253-153675.pdf>; Letter from Daniel Zinn, General Counsel, OTC Markets Group Inc., to Eduardo A. Aleman, Assistant Secretary, Commission (dated June 13, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-1801717-153703.pdf>; Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission (dated June 22, 2017), available at: <https://www.sec.gov/comments/sr-cboe-2017-040/cboe2017040-1819670-154195.pdf>; Letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, Commission (dated June 23, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/>

and a response to comments from the CAT NMS Plan Participants.<sup>5</sup> On June 30, 2017, the Commission temporarily suspended and initiated proceedings to determine whether to approve or disapprove the proposed rule change.<sup>6</sup> The Commission thereafter received seven comment letters,<sup>7</sup> and a response to comments from the Participants.<sup>8</sup> On November 3, 2017, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>9</sup> On November 9, 2017, the Commission extended the time period within which to approve the proposed rule change or disapprove the proposed

[finra2017011-1822454-154283.pdf](https://www.sec.gov/comments/sr-finra2017011-1822454-154283.pdf); and Letter from Suzanne H. Shatto, Investor, to Commission (dated June 27, 2017), available at: <https://www.sec.gov/comments/sr-batsedg-2017-22/batsedg201722-154443.pdf>. The Commission also received a comment letter which is not pertinent to these proposed rule changes. See Letter from Christina Crouch, Smart Ltd., to Brent J. Fields, Secretary, Commission (dated June 5, 2017), available at: <https://www.sec.gov/comments/sr-batsbzx-2017-38/batsbzx201738-1785545-153152.htm>.

<sup>5</sup> See Letter from CAT NMS Plan Participants to Brent J. Fields, Secretary, Commission (dated June 29, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-1832632-154584.pdf>.

<sup>6</sup> See Securities Exchange Act Release No. 81067 (June 30, 2017), 82 FR 31656 (July 7, 2017).

<sup>7</sup> See Letter from W. Hardy Callcott, Partner, Sidley Austin LLP, to Brent J. Fields, Secretary, Commission (dated July 27, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2148338-157737.pdf>; Letter from Kevin Coleman, General Counsel and Chief Compliance Officer, Belvedere Trading LLC, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2148360-157740.pdf>; Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2150977-157744.pdf>; Letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2150818-157743.pdf>; Letter from John Kinahan, Chief Executive Officer, Group One Trading, L.P., to Brent J. Fields, Secretary, Commission (dated August 10, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-2214568-160619.pdf>; Letter from Joseph Molluso, Executive Vice President and CFO, Virtu Financial, to Brent J. Fields, Commission (dated August 18, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-2238648-160830.pdf>.

<sup>8</sup> See Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Brent J. Fields, Commission, Secretary (dated November 2, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2674608-161412.pdf>.

<sup>9</sup> Amendment No. 1 to the proposed rule change replaced and superseded the Original Proposal in its entirety. See Securities Exchange Act Release No. 34–82278 (December 11, 2017).

<sup>29</sup> 17 CFR 200.30–3(a)(12).

rule change to January 14, 2018.<sup>10</sup> On December 7, 2017, the Exchange filed Amendment No. 2 to the proposed rule change, as described in Item II, which Item has been prepared by the Exchange. The Commission is publishing this notice to solicit comments from interested persons on Amendment No. 2.

## II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Amendment

On May 23, 2017, Cboe BZX Exchange, Inc. ("SRO") filed with the Securities and Exchange Commission ("Commission" or "SEC") proposed rule change SR-BatsBZX-2017-38 (the "Original Proposal"), pursuant to which SRO proposed to adopt a fee schedule to establish the fees for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail (the "CAT NMS Plan" or "Plan").<sup>11</sup> On November 3, 2017, SRO filed an amendment to the Original Proposal ("First Amendment"). SRO files this proposed rule change (the "Second Amendment") to amend the Original Proposal as amended by the First Amendment.

With this Second Amendment, SRO is including Exhibits 4A and 4B, which reflect the changes to the text of the proposed rule change as set forth in the First Amendment, and Exhibits 5A and 5B, which reflect all proposed changes to SRO's current rule text.

BOX Options Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc. ("FINRA"), Investors' Exchange LLC, Miami International Securities Exchange, LLC, MIAX PEARL, LLC, NASDAQ BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc. and NYSE National, Inc.<sup>12</sup> (collectively, the "Participants")

<sup>10</sup> See Securities Exchange Act Release No. 82049 (November 9, 2017), 82 FR 53549 (November 16, 2017).

<sup>11</sup> Unless otherwise specified, capitalized terms used in this fee filing are defined as set forth herein, the CAT Compliance Rule Series, in the CAT NMS Plan, or the Original Proposal.

<sup>12</sup> Note that Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., LLC, C2 Options Exchange, Incorporated, and Chicago Board Options Exchange, Incorporated, have been renamed Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., respectively.

filed with the Commission, pursuant to Section 11A of the Exchange Act<sup>13</sup> and Rule 608 of Regulation NMS thereunder,<sup>14</sup> the CAT NMS Plan.<sup>15</sup> The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act. The Plan was published for comment in the **Federal Register** on May 17, 2016,<sup>16</sup> and approved by the Commission, as modified, on November 15, 2016.<sup>17</sup> The Plan is designed to create, implement and maintain a consolidated audit trail ("CAT") that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. The Plan accomplishes this by creating CAT NMS, LLC (the "Company"), of which each Participant is a member, to operate the CAT.<sup>18</sup> Under the CAT NMS Plan, the Operating Committee of the Company ("Operating Committee") has discretion to establish funding for the Company to operate the CAT, including establishing fees that the Participants will pay, and establishing fees for Industry Members that will be implemented by the Participants ("CAT Fees").<sup>19</sup> The Participants are required to file with the SEC under Section 19(b) of the Exchange Act any such CAT Fees applicable to Industry Members that the Operating Committee approves.<sup>20</sup> Accordingly, SRO submitted the Original Proposal to propose the Consolidated Audit Trail Funding Fees, which would require Industry Members that are SRO members to pay the CAT Fees determined by the Operating Committee.

The Commission published the Original Proposal for public comment in the **Federal Register** on June 6, 2017,<sup>21</sup> and received comments in response to the Original Proposal or similar fee

filings by other Participants.<sup>22</sup> On June 30, 2017, the Commission suspended, and instituted proceedings to determine whether to approve or disapprove, the Original Proposal.<sup>23</sup> The Commission received seven comment letters in response to those proceedings.<sup>24</sup>

In response to the comments on the Original Proposal, the Operating Committee determined to make the following changes to the funding model: (1) Adds two additional CAT Fee tiers for Equity Execution Venues; (2) discounts the market share of Execution Venue ATSs exclusively trading OTC Equity Securities as well as the market share of the FINRA over-the-counter reporting facility ("ORF") by the average shares per trade ratio between NMS Stocks and OTC Equity Securities (calculated as 0.17% based on available data from the second quarter of 2017) when calculating the market share of Execution Venue ATSs exclusively trading OTC Equity Securities and FINRA; (3) discounts the Options Market Maker quotes by the trade to quote ratio for options (calculated as 0.01% based on available data for June 2016 through June 2017) when calculating message traffic for Options Market Makers; (4) discounts equity market maker quotes by the trade to quote ratio for equities (calculated as 5.43% based on available data for June 2016 through June 2017) when calculating message traffic for equity market makers; (5) decreases the number of tiers for Industry Members (other than the Execution Venue ATSs) from nine to seven; (6) changes the allocation of CAT costs between Equity Execution Venues and Options Execution Venues from 75%/25% to 67%/33%; (7) adjusts tier percentages and recovery allocations for Equity Execution Venues, Options Execution Venues and Industry Members (other

<sup>22</sup> For a summary of comments, see generally Securities Exchange Act Rel. No. 81067 (June 30, 2017), 82 FR 31656 (July 7, 2017) ("Suspension Order").

<sup>23</sup> Suspension Order.

<sup>24</sup> See Letter from Stuart J. Kaswell, Executive Vice President, Managing Director and General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, SEC (July 28, 2017); Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Brent J. Fields, Secretary, SEC (July 28, 2017); Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, SEC (July 28, 2017); Letter from Kevin Coleman, General Counsel & Chief Compliance Officer, Belvedere Trading LLC, to Brent J. Fields, Secretary, SEC (July 28, 2017); Letter from W. Hardy Callcott, Sidley Austin LLP, to Brent J. Fields, Secretary, SEC (July 27, 2017); Letter from John Kinahan, Chief Executive Officer, Group One Trading, L.P., to Brent J. Fields, Secretary, SEC (Aug. 10, 2017); and Letter from Joseph Molluso, Executive Vice President, Virtu Financial, to Brent J. Fields, Secretary, SEC (Aug. 18, 2017).

<sup>13</sup> 15 U.S.C. 78k-1.

<sup>14</sup> 17 CFR 242.608.

<sup>15</sup> See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. See Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.

<sup>16</sup> Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

<sup>17</sup> Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) ("Approval Order").

<sup>18</sup> The Plan also serves as the limited liability company agreement for the Company.

<sup>19</sup> Section 11.1(b) of the CAT NMS Plan.

<sup>20</sup> *Id.*

<sup>21</sup> Securities Exchange Act Rel. No. 80822 (May 31, 2017), 82 FR 26148 (June 6, 2017) (SR-BatsBZX-2017-38).



than Execution Venue ATs); (8) focuses the comparability of CAT Fees on the individual entity level, rather than primarily on the comparability of affiliated entities; (9) commences invoicing of CAT Reporters as promptly as possible following the latest of the operative date of the Consolidated Audit Trail Funding Fees for each of the Participants and the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants; and (10) requires the proposed fees to automatically expire two years from the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. On November 3, 2017, SRO filed the First Amendment and proposed to amend the Original Proposal to reflect these changes.

SRO submits this Second Amendment to revise the proposal as set forth in the First Amendment to discount the OTC Equity Securities market share of all Execution Venue ATs trading OTC Equity Securities, rather than applying the discount solely to those Execution Venue ATs that exclusively trade OTC Equity Securities, when calculating the market share of Execution Venue ATs trading OTC Equity Securities. As discussed in the First Amendment:

The Operating Committee determined to discount the market share of Execution Venue ATs exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF in recognition of the different trading characteristics of the OTC Equity Securities market as compared to the market in NMS Stocks. Many OTC Equity Securities are priced at less than one dollar—and a significant number at less than one penny—per share and low-priced shares tend to trade in larger quantities. Accordingly, a disproportionately large number of shares are involved in transactions involving OTC Equity Securities versus NMS Stocks. Because the proposed fee tiers are based on market share calculated by share volume, Execution Venue ATs exclusively trading OTC Equity Securities and FINRA would likely be subject to higher tiers than their operations may warrant.<sup>25</sup>

The Operating Committee believes that this argument applies equally to both Execution Venue ATs exclusively trading OTC Equity Securities and to Execution Venue ATs that trade OTC Equity Securities as well as other securities. Accordingly, SRO proposes to amend paragraph (b)(2) of the Consolidated Audit Trail Funding Fees to apply the discount to all Execution Venue ATs trading OTC Equity Securities. Specifically, SRO proposes to change the parenthetical regarding the OTC Equity Securities discount in

paragraph (b)(2) of the proposed fee schedule from “with a discount for Equity ATs exclusively trading OTC Equity Securities based on the average shares per trade ratio between NMS Stocks and OTC Equity Securities” to “with a discount for OTC Equity Securities market share of Equity ATs trading OTC Equity Securities based on the average shares per trade ratio between NMS Stocks and OTC Equity Securities.”

### III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal, as amended by Amendment No. 1 and Amendment No. 2, is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission’s internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR–BatsBZX–2017–38 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–BatsBZX–2017–38. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit

personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsBZX–2017–38, and should be submitted on or before January 5, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2017–27004 Filed 12–14–17; 8:45 am]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82269; File No. SR–BatsEDGA–2017–13]

### Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing of Amendment No. 2 to the Proposed Rule Change To Amend the Schedule of Fees and Assessments To Adopt a Fee Schedule To Establish Fees for Industry Members Related to the National Market System Plan Governing the Consolidated Audit Trail

December 11, 2017.

#### I. Introduction

On May 16, 2017, Bats EDGA Exchange, Inc., n/k/a Cboe EDGA Exchange, Inc., (“Exchange” or “SRO”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> a proposed rule change to adopt a fee schedule to establish the fees for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail (“CAT NMS Plan”). The proposed rule change was published in the **Federal Register** for comment on June 1, 2017.<sup>3</sup> The Commission received seven comment letters on the proposed rule change,<sup>4</sup> and a response to comments

<sup>26</sup> 17 CFR 200.30–3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> See Securities Exchange Act Release No. 80784 (May 26, 2017), 82 FR 25448 (June 1, 2017) (“Original Proposal”).

<sup>4</sup> Since the CAT NMS Plan Participants’ proposed rule changes to adopt fees to be charged to Industry Members to fund the consolidated audit trail are substantively identical, the Commission is considering all comments received on the proposed rule changes regardless of the comment file to which they were submitted. See text accompanying note 12 *infra*, for a list of the CAT NMS Plan Participants. See Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets

from the CAT NMS Plan Participants.<sup>5</sup> On June 30, 2017, the Commission temporarily suspended and initiated proceedings to determine whether to approve or disapprove the proposed rule change.<sup>6</sup> The Commission thereafter received seven comment letters,<sup>7</sup> and a response to comments

Association, to Brent J. Fields, Secretary, Commission (dated June 6, 2017), available at: <https://www.sec.gov/comments/sr-batsbx-2017-38/batsbx201738-1788188-153228.pdf>; Letter from Patricia L. Cerny and Steven O'Malley, Compliance Consultants, to Brent J. Fields, Secretary, Commission (dated June 12, 2017), available at: <https://www.sec.gov/comments/sr-cboe-2017-040/cboe2017040-1799253-153675.pdf>; Letter from Daniel Zinn, General Counsel, OTC Markets Group Inc., to Eduardo A. Aleman, Assistant Secretary, Commission (dated June 13, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-1801717-153703.pdf>; Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission (dated June 22, 2017), available at: <https://www.sec.gov/comments/sr-cboe-2017-040/cboe2017040-1819670-154195.pdf>; Letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, Commission (dated June 23, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-1822454-154283.pdf>; and Letter from Suzanne H. Shatto, Investor, to Commission (dated June 27, 2017), available at: <https://www.sec.gov/comments/sr-batsedgx-2017-22/batsedgx201722-154443.pdf>. The Commission also received a comment letter which is not pertinent to these proposed rule changes. See Letter from Christina Crouch, Smart Ltd., to Brent J. Fields, Secretary, Commission (dated June 5, 2017), available at: <https://www.sec.gov/comments/sr-batsbx-2017-38/batsbx201738-1785545-153152.htm>.

<sup>5</sup> See Letter from CAT NMS Plan Participants to Brent J. Fields, Secretary, Commission (dated June 29, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-1832632-154584.pdf>.

<sup>6</sup> See Securities Exchange Act Release No. 81067 (June 30, 2017), 82 FR 31656 (July 7, 2017).

<sup>7</sup> See Letter from W. Hardy Callcott, Partner, Sidley Austin LLP, to Brent J. Fields, Secretary, Commission (dated July 27, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2148338-157737.pdf>; Letter from Kevin Coleman, General Counsel and Chief Compliance Officer, Belvedere Trading LLC, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2148360-157740.pdf>; Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2151228-157745.pdf>; Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2150977-157744.pdf>; Letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2150818-157743.pdf>; Letter from John Kinahan, Chief Executive Officer, Group One Trading, L.P., to Brent J. Fields, Secretary, Commission (dated August 10, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-2214568-160619.pdf>; Letter from

from the Participants.<sup>8</sup> On November 3, 2017, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>9</sup> On November 9, 2017, the Commission extended the time period within which to approve the proposed rule change or disapprove the proposed rule change to January 14, 2018.<sup>10</sup> On December 7, 2017, the Exchange filed Amendment No. 2 to the proposed rule change, as described in Item II, which Item has been prepared by the Exchange. The Commission is publishing this notice to solicit comments from interested persons on Amendment No. 2.

## II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Amendment

On May 16, 2017, Cboe EDGA Exchange, Inc. ("SRO") filed with the Securities and Exchange Commission ("Commission" or "SEC") proposed rule change SR-BatsEDGA-2017-13 (the "Original Proposal"), pursuant to which SRO proposed to adopt a fee schedule to establish the fees for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail (the "CAT NMS Plan" or "Plan").<sup>11</sup> On November 3, 2017, SRO filed an amendment to the Original Proposal ("First Amendment"). SRO files this proposed rule change (the "Second Amendment") to amend the Original Proposal as amended by the First Amendment.

With this Second Amendment, SRO is including Exhibit 4, which reflects the changes to the text of the proposed rule change as set forth in the First Amendment, and Exhibit 5, which reflects all proposed changes to SRO's current rule text.

BOX Options Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Chicago Stock Exchange, Inc., Financial

Joseph Molluso, Executive Vice President and CFO, Virtu Financial, to Brent J. Fields, Commission (dated August 18, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-2238648-160830.pdf>.

<sup>8</sup> See Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Brent J. Fields, Commission, Secretary (dated November 2, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2674608-161412.pdf>.

<sup>9</sup> Amendment No. 1 to the proposed rule change replaced and superseded the Original Proposal in its entirety. See Securities Exchange Act Release No. 82268 (December 11, 2017).

<sup>10</sup> See Securities Exchange Act Release No. 82049 (November 9, 2017), 82 FR 53549 (November 16, 2017).

<sup>11</sup> Unless otherwise specified, capitalized terms used in this fee filing are defined as set forth herein, the CAT Compliance Rule Series, in the CAT NMS Plan, or the Original Proposal.

Industry Regulatory Authority, Inc. ("FINRA"), Investors' Exchange LLC, Miami International Securities Exchange, LLC, MIAAX PEARL, LLC, NASDAQ BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc. and NYSE National, Inc.<sup>12</sup> (collectively, the "Participants") filed with the Commission, pursuant to Section 11A of the Exchange Act<sup>13</sup> and Rule 608 of Regulation NMS thereunder,<sup>14</sup> the CAT NMS Plan.<sup>15</sup> The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act. The Plan was published for comment in the **Federal Register** on May 17, 2016,<sup>16</sup> and approved by the Commission, as modified, on November 15, 2016.<sup>17</sup> The Plan is designed to create, implement and maintain a consolidated audit trail ("CAT") that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. The Plan accomplishes this by creating CAT NMS, LLC (the "Company"), of which each Participant is a member, to operate the CAT.<sup>18</sup> Under the CAT NMS Plan, the Operating Committee of the Company ("Operating Committee") has discretion to establish funding for the Company to operate the CAT, including establishing fees that the Participants will pay, and establishing fees for Industry Members that will be implemented by the Participants ("CAT Fees").<sup>19</sup> The Participants are required to file with the SEC under Section 19(b)

<sup>12</sup> Note that Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., LLC, C2 Options Exchange, Incorporated, and Chicago Board Options Exchange, Incorporated, have been renamed Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., respectively.

<sup>13</sup> 15 U.S.C. 78k-1.

<sup>14</sup> 17 CFR 242.608.

<sup>15</sup> See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. See Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.

<sup>16</sup> Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

<sup>17</sup> Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) ("Approval Order").

<sup>18</sup> The Plan also serves as the limited liability company agreement for the Company.

<sup>19</sup> Section 11.1(b) of the CAT NMS Plan.



of the Exchange Act any such CAT Fees applicable to Industry Members that the Operating Committee approves.<sup>20</sup> Accordingly, SRO submitted the Original Proposal to propose the Consolidated Audit Trail Funding Fees, which would require Industry Members that are SRO members to pay the CAT Fees determined by the Operating Committee.

The Commission published the Original Proposal for public comment in the **Federal Register** on June 1, 2017,<sup>21</sup> and received comments in response to the Original Proposal or similar fee filings by other Participants.<sup>22</sup> On June 30, 2017, the Commission suspended, and instituted proceedings to determine whether to approve or disapprove, the Original Proposal.<sup>23</sup> The Commission received seven comment letters in response to those proceedings.<sup>24</sup>

In response to the comments on the Original Proposal, the Operating Committee determined to make the following changes to the funding model: (1) Adds two additional CAT Fee tiers for Equity Execution Venues; (2) discounts the market share of Execution Venue ATSs exclusively trading OTC Equity Securities as well as the market share of the FINRA over-the-counter reporting facility (“ORF”) by the average shares per trade ratio between NMS Stocks and OTC Equity Securities (calculated as 0.17% based on available data from the second quarter of 2017) when calculating the market share of Execution Venue ATS exclusively trading OTC Equity Securities and FINRA; (3) discounts the Options Market Maker quotes by the trade to quote ratio for options (calculated as 0.01% based on available data for June 2016 through June 2017) when

calculating message traffic for Options Market Makers; (4) discounts equity market maker quotes by the trade to quote ratio for equities (calculated as 5.43% based on available data for June 2016 through June 2017) when calculating message traffic for equity market makers; (5) decreases the number of tiers for Industry Members (other than the Execution Venue ATSs) from nine to seven; (6) changes the allocation of CAT costs between Equity Execution Venues and Options Execution Venues from 75%/25% to 67%/33%; (7) adjusts tier percentages and recovery allocations for Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATSs); (8) focuses the comparability of CAT Fees on the individual entity level, rather than primarily on the comparability of affiliated entities; (9) commences invoicing of CAT Reporters as promptly as possible following the latest of the operative date of the Consolidated Audit Trail Funding Fees for each of the Participants and the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants; and (10) requires the proposed fees to automatically expire two years from the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. On November 3, 2017, SRO filed the First Amendment and proposed to amend the Original Proposal to reflect these changes.

SRO submits this Second Amendment to the revise the proposal as set forth in the First Amendment to discount the OTC Equity Securities market share of all Execution Venue ATSs trading OTC Equity Securities, rather than applying the discount solely to those Execution Venue ATSs that exclusively trade OTC Equity Securities, when calculating the market share of Execution Venue ATS trading OTC Equity Securities. As discussed in the First Amendment:

The Operating Committee determined to discount the market share of Execution Venue ATSs exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF in recognition of the different trading characteristics of the OTC Equity Securities market as compared to the market in NMS Stocks. Many OTC Equity Securities are priced at less than one dollar—and a significant number at less than one penny—per share and low-priced shares tend to trade in larger quantities. Accordingly, a disproportionately large number of shares are involved in transactions involving OTC Equity Securities versus NMS Stocks. Because the proposed fee tiers are based on market share calculated by share volume, Execution Venue ATSs exclusively trading OTC Equity Securities and FINRA would

likely be subject to higher tiers than their operations may warrant.<sup>25</sup>

The Operating Committee believes that this argument applies equally to both Execution Venue ATSs exclusively trading OTC Equity Securities and to Execution Venue ATSs that trade OTC Equity Securities as well as other securities. Accordingly, SRO proposes to amend paragraph (b)(2) of the Consolidated Audit Trail Funding Fees to apply the discount to all Execution Venue ATSs trading OTC Equity Securities. Specifically, SRO proposes to change the parenthetical regarding the OTC Equity Securities discount in paragraph (b)(2) of the proposed fee schedule from “with a discount for Equity ATSs exclusively trading OTC Equity Securities based on the average shares per trade ratio between NMS Stocks and OTC Equity Securities” to “with a discount for OTC Equity Securities market share of Equity ATSs trading OTC Equity Securities based on the average shares per trade ratio between NMS Stocks and OTC Equity Securities.”

### III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal, as amended by Amendment No. 1 and Amendment No. 2, is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission’s internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR–BatsEDGA–2017–13 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–BatsEDGA–2017–13. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

<sup>25</sup> SR–BatsEDGA–2017–13, Amendment No. 1 at page 30.

<sup>20</sup> *Id.*

<sup>21</sup> Securities Exchange Act Rel. No. 80784 (May 26, 2017), 82 FR 25448 (June 1, 2017) (SR–BatsEDGA–2017–13).

<sup>22</sup> For a summary of comments, see generally Securities Exchange Act Rel. No. 81067 (June 30, 2017), 82 FR 31656 (July 7, 2017) (“Suspension Order”).

<sup>23</sup> Suspension Order.

<sup>24</sup> See Letter from Stuart J. Kaswell, Executive Vice President, Managing Director and General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, SEC (July 28, 2017); Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Brent J. Fields, Secretary, SEC (July 28, 2017); Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, SEC (July 28, 2017); Letter from Kevin Coleman, General Counsel & Chief Compliance Officer, Belvedere Trading LLC, to Brent J. Fields, Secretary, SEC (July 28, 2017); Letter from W. Hardy Callcott, Sidley Austin LLP, to Brent J. Fields, Secretary, SEC (July 27, 2017); Letter from John Kinahan, Chief Executive Officer, Group One Trading, L.P., to Brent J. Fields, Secretary, SEC (Aug. 10, 2017); and Letter from Joseph Molluso, Executive Vice President, Virtu Financial, to Brent J. Fields, Secretary, SEC (Aug. 18, 2017).

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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BatsEDGA-2017-13, and should be submitted on or before January 5, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

**Robert W. Errett,**  
Deputy Secretary.

[FR Doc. 2017-26991 Filed 12-14-17; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82277; File No. SR-BatsEDGX-2017-22]

### Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing of Amendment No. 2 to the Proposed Rule Change To Amend the Schedule of Fees and Assessments To Adopt a Fee Schedule To Establish Fees for Industry Members Related to the National Market System Plan Governing the Consolidated Audit Trail

December 11, 2017.

#### I. Introduction

On May 23, 2017, Bats EDGX Exchange, Inc., n/k/a Cboe EDGX Exchange, Inc., ("Exchange" or "SRO") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt a fee schedule to establish the fees for Industry Members related to the National Market System

Plan Governing the Consolidated Audit Trail ("CAT NMS Plan"). The proposed rule change was published in the **Federal Register** for comment on June 6, 2017.<sup>3</sup> The Commission received seven comment letters on the proposed rule change,<sup>4</sup> and a response to comments from the CAT NMS Plan Participants.<sup>5</sup> On June 30, 2017, the Commission temporarily suspended and initiated proceedings to determine whether to approve or disapprove the proposed rule change.<sup>6</sup> The Commission thereafter received seven comment letters,<sup>7</sup> and a response to comments

<sup>3</sup> See Securities Exchange Act Release No. 80821 (May 31, 2017), 82 FR 26177 (June 6, 2017) ("Original Proposal").

<sup>4</sup> Since the CAT NMS Plan Participants' proposed rule changes to adopt fees to be charged to Industry Members to fund the consolidated audit trail are substantively identical, the Commission is considering all comments received on the proposed rule changes regardless of the comment file to which they were submitted. See text accompanying note 12 *infra*, for a list of the CAT NMS Plan Participants. See Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Brent J. Fields, Secretary, Commission (dated June 6, 2017), available at: <https://www.sec.gov/comments/sr-batsbzx-2017-38/batsbzx201738-1788188-153228.pdf>; Letter from Patricia L. Cerny and Steven O'Malley, Compliance Consultants, to Brent J. Fields, Secretary, Commission (dated June 12, 2017), available at: <https://www.sec.gov/comments/sr-cboe-2017-040/cboe2017040-1799253-153675.pdf>; Letter from Daniel Zinn, General Counsel, OTC Markets Group Inc., to Eduardo A. Aleman, Assistant Secretary, Commission (dated June 13, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-1801717-153703.pdf>; Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission (dated June 22, 2017), available at: <https://www.sec.gov/comments/sr-cboe-2017-040/cboe2017040-1819670-154195.pdf>; Letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, Commission (dated June 23, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-1822454-154283.pdf>; and Letter from Suzanne H. Shatto, Investor, to Commission (dated June 27, 2017), available at: <https://www.sec.gov/comments/sr-batsedgx-2017-22/batsedgx201722-154443.pdf>. The Commission also received a comment letter which is not pertinent to these proposed rule changes. See Letter from Christina Crouch, Smart Ltd., to Brent J. Fields, Secretary, Commission (dated June 5, 2017), available at: <https://www.sec.gov/comments/sr-batsbzx-2017-38/batsbzx201738-1785545-153152.htm>.

<sup>5</sup> See Letter from CAT NMS Plan Participants to Brent J. Fields, Secretary, Commission (dated June 29, 2017), available at: <https://www.sec.gov/comments/sr-batsbzx-2017-11/batsbzx201711-1832632-154584.pdf>.

<sup>6</sup> See Securities Exchange Act Release No. 81067 (June 30, 2017), 82 FR 31656 (July 7, 2017).

<sup>7</sup> See Letter from W. Hardy Callcott, Partner, Sidley Austin LLP, to Brent J. Fields, Secretary, Commission (dated July 27, 2017), available at: <https://www.sec.gov/comments/sr-batsbzx-2017-11/batsbzx201711-2148338-157737.pdf>; Letter from Kevin Coleman, General Counsel and Chief Compliance Officer, Belvedere Trading LLC, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/>

from the Participants.<sup>8</sup> On November 3, 2017, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>9</sup> On November 9, 2017, the Commission extended the time period within which to approve the proposed rule change or disapprove the proposed rule change to January 14, 2018.<sup>10</sup> On December 7, 2017, the Exchange filed Amendment No. 2 to the proposed rule change, as described in Item II, which Item has been prepared by the Exchange. The Commission is publishing this notice to solicit comments from interested persons on Amendment No. 2.

#### II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Amendment

On May 23, 2017, Cboe EDGX Exchange, Inc. ("SRO") filed with the Securities and Exchange Commission ("Commission" or "SEC") proposed rule change SR-BatsEDGX-2017-22 (the "Original Proposal"), pursuant to which SRO proposed to adopt a fee schedule to establish the fees for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail (the "CAT NMS Plan" or "Plan").<sup>11</sup> On November

[comments/sr-batsbzx-2017-11/batsbzx201711-2148360-157740.pdf](https://www.sec.gov/comments/sr-batsbzx-2017-11/batsbzx201711-2148360-157740.pdf); Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbzx-2017-11/batsbzx201711-2151228-157745.pdf>; Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbzx-2017-11/batsbzx201711-2150977-157744.pdf>; Letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbzx-2017-11/batsbzx201711-2150818-157743.pdf>; Letter from John Kinahan, Chief Executive Officer, Group One Trading, L.P., to Brent J. Fields, Secretary, Commission (dated August 10, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-2214568-160619.pdf>; Letter from Joseph Molluso, Executive Vice President and CFO, Virtu Financial, to Brent J. Fields, Secretary, Commission (dated August 18, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-2238648-160830.pdf>.

<sup>8</sup> See Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Brent J. Fields, Secretary, Commission (dated November 2, 2017), available at: <https://www.sec.gov/comments/sr-batsbzx-2017-11/batsbzx201711-2674608-161412.pdf>.

<sup>9</sup> Amendment No. 1 to the proposed rule change replaced and superseded the Original Proposal in its entirety. See Securities Exchange Act Release No. 82276 (December 11, 2017).

<sup>10</sup> See Securities Exchange Act Release No. 82049 (November 9, 2017), 82 FR 53549 (November 16, 2017).

<sup>11</sup> Unless otherwise specified, capitalized terms used in this fee filing are defined as set forth herein, the CAT Compliance Rule Series, in the CAT NMS Plan, or the Original Proposal.

<sup>26</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

3, 2017, SRO filed an amendment to the Original Proposal (“First Amendment”). SRO files this proposed rule change (the “Second Amendment”) to amend the Original Proposal as amended by the First Amendment.

With this Second Amendment, SRO is including Exhibits 4A and 4B, which reflect the changes to the text of the proposed rule change as set forth in the First Amendment, and Exhibits 5A and 5B, which reflect all proposed changes to SRO’s current rule text.

BOX Options Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc. (“FINRA”), Investors’ Exchange LLC, Miami International Securities Exchange, LLC, MIAX PEARL, LLC, NASDAQ BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc. and NYSE National, Inc.<sup>12</sup> (collectively, the “Participants”) filed with the Commission, pursuant to Section 11A of the Exchange Act<sup>13</sup> and Rule 608 of Regulation NMS thereunder,<sup>14</sup> the CAT NMS Plan.<sup>15</sup> The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act. The Plan was published for comment in the **Federal Register** on May 17, 2016,<sup>16</sup> and approved by the Commission, as modified, on November 15, 2016.<sup>17</sup> The Plan is designed to create, implement and maintain a consolidated audit trail (“CAT”) that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing,

<sup>12</sup> Note that Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., LLC, C2 Options Exchange, Incorporated, and Chicago Board Options Exchange, Incorporated, have been renamed Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., respectively.

<sup>13</sup> 15 U.S.C. 78k-1.

<sup>14</sup> 17 CFR 242.608.

<sup>15</sup> See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. See Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.

<sup>16</sup> Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

<sup>17</sup> Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (“Approval Order”).

cancellation, modification, or execution in a single consolidated data source. The Plan accomplishes this by creating CAT NMS, LLC (the “Company”), of which each Participant is a member, to operate the CAT.<sup>18</sup> Under the CAT NMS Plan, the Operating Committee of the Company (“Operating Committee”) has discretion to establish funding for the Company to operate the CAT, including establishing fees that the Participants will pay, and establishing fees for Industry Members that will be implemented by the Participants (“CAT Fees”).<sup>19</sup> The Participants are required to file with the SEC under Section 19(b) of the Exchange Act any such CAT Fees applicable to Industry Members that the Operating Committee approves.<sup>20</sup> Accordingly, SRO submitted the Original Proposal to propose the Consolidated Audit Trail Funding Fees, which would require Industry Members that are SRO members to pay the CAT Fees determined by the Operating Committee.

The Commission published the Original Proposal for public comment in the **Federal Register** on June 6, 2017,<sup>21</sup> and received comments in response to the Original Proposal or similar fee filings by other Participants.<sup>22</sup> On June 30, 2017, the Commission suspended, and instituted proceedings to determine whether to approve or disapprove, the Original Proposal.<sup>23</sup> The Commission received seven comment letters in response to those proceedings.<sup>24</sup>

In response to the comments on the Original Proposal, the Operating Committee determined to make the following changes to the funding model:

<sup>18</sup> The Plan also serves as the limited liability company agreement for the Company.

<sup>19</sup> Section 11.1(b) of the CAT NMS Plan.

<sup>20</sup> *Id.*

<sup>21</sup> Securities Exchange Act Rel. No. 80821 (May 31, 2017), 82 FR 26177 (June 6, 2017) (SR–BatsEDGX–2017–22).

<sup>22</sup> For a summary of comments, see generally Securities Exchange Act Rel. No. 81067 (June 30, 2017), 82 FR 31656 (July 7, 2017) (“Suspension Order”).

<sup>23</sup> Suspension Order.

<sup>24</sup> See Letter from Stuart J. Kaswell, Executive Vice President, Managing Director and General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, SEC (July 28, 2017); Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Brent J. Fields, Secretary, SEC (July 28, 2017); Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, SEC (July 28, 2017); Letter from Kevin Coleman, General Counsel & Chief Compliance Officer, Belvedere Trading LLC, to Brent J. Fields, Secretary, SEC (July 28, 2017); Letter from W. Hardy Callcott, Sidley Austin LLP, to Brent J. Fields, Secretary, SEC (July 27, 2017); Letter from John Kinahan, Chief Executive Officer, Group One Trading, L.P., to Brent J. Fields, Secretary, SEC (Aug. 10, 2017); and Letter from Joseph Molluso, Executive Vice President, Virtu Financial, to Brent J. Fields, Secretary, SEC (Aug. 18, 2017).

(1) Adds two additional CAT Fee tiers for Equity Execution Venues; (2) discounts the market share of Execution Venue ATSs exclusively trading OTC Equity Securities as well as the market share of the FINRA over-the-counter reporting facility (“ORF”) by the average shares per trade ratio between NMS Stocks and OTC Equity Securities (calculated as 0.17% based on available data from the second quarter of 2017) when calculating the market share of Execution Venue ATS exclusively trading OTC Equity Securities and FINRA; (3) discounts the Options Market Maker quotes by the trade to quote ratio for options (calculated as 0.01% based on available data for June 2016 through June 2017) when calculating message traffic for Options Market Makers; (4) discounts equity market maker quotes by the trade to quote ratio for equities (calculated as 5.43% based on available data for June 2016 through June 2017) when calculating message traffic for equity market makers; (5) decreases the number of tiers for Industry Members (other than the Execution Venue ATSs) from nine to seven; (6) changes the allocation of CAT costs between Equity Execution Venues and Options Execution Venues from 75%/25% to 67%/33%; (7) adjusts tier percentages and recovery allocations for Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATSs); (8) focuses the comparability of CAT Fees on the individual entity level, rather than primarily on the comparability of affiliated entities; (9) commences invoicing of CAT Reporters as promptly as possible following the latest of the operative date of the Consolidated Audit Trail Funding Fees for each of the Participants and the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants; and (10) requires the proposed fees to automatically expire two years from the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. On November 3, 2017, SRO filed the First Amendment and proposed to amend the Original Proposal to reflect these changes.

SRO submits this Second Amendment to the revise the proposal as set forth in the First Amendment to discount the OTC Equity Securities market share of all Execution Venue ATSs trading OTC Equity Securities, rather than applying the discount solely to those Execution Venue ATSs that exclusively trade OTC Equity Securities, when calculating the market share of Execution Venue ATS

trading OTC Equity Securities. As discussed in the First Amendment:

The Operating Committee determined to discount the market share of Execution Venue ATSS exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF in recognition of the different trading characteristics of the OTC Equity Securities market as compared to the market in NMS Stocks. Many OTC Equity Securities are priced at less than one dollar—and a significant number at less than one penny—per share and low-priced shares tend to trade in larger quantities. Accordingly, a disproportionately large number of shares are involved in transactions involving OTC Equity Securities versus NMS Stocks. Because the proposed fee tiers are based on market share calculated by share volume, Execution Venue ATSS exclusively trading OTC Equity Securities and FINRA would likely be subject to higher tiers than their operations may warrant.<sup>25</sup>

The Operating Committee believes that this argument applies equally to both Execution Venue ATSS exclusively trading OTC Equity Securities and to Execution Venue ATSS that trade OTC Equity Securities as well as other securities. Accordingly, SRO proposes to amend paragraph (b)(2) of the Consolidated Audit Trail Funding Fees to apply the discount to all Execution Venue ATSS trading OTC Equity Securities. Specifically, SRO proposes to change the parenthetical regarding the OTC Equity Securities discount in paragraph (b)(2) of the proposed fee schedule from “with a discount for Equity ATSS exclusively trading OTC Equity Securities based on the average shares per trade ratio between NMS Stocks and OTC Equity Securities” to “with a discount for OTC Equity Securities market share of Equity ATSS trading OTC Equity Securities based on the average shares per trade ratio between NMS Stocks and OTC Equity Securities.”

### III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal, as amended by Amendment No. 1 and Amendment No. 2, is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission’s internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR–BatsEDGX–2017–22 on the subject line.

<sup>25</sup> SR–BatsEDGX–2017–22, Amendment No. 1 at page 30.

#### 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–BatsEDGX–2017–22. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsEDGX–2017–22, and should be submitted on or before January 5, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2017–27002 Filed 12–14–17; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82260; File No. SR–NYSE–2017–22]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Amendment No. 1 to a Proposed Rule Change Amending the Consolidated Audit Trail Funding Fees

December 11, 2017.

On May 10, 2017, the New York Stock Exchange LLC (“Exchange” or “NYSE”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> a proposed rule change to adopt a fee schedule to establish the fees for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail (“CAT NMS Plan”). The proposed rule change was published in the **Federal Register** for comment on May 22, 2017.<sup>3</sup> The Commission received seven comment letters on the proposed rule change,<sup>4</sup> and a response to

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> See Securities Exchange Act Release No. 80693 (May 16, 2017), 82 FR 23363 (May 22, 2017) (“Original Proposal”).

<sup>4</sup> Since the CAT NMS Plan Participants’ proposed rule changes to adopt fees to be charged to Industry Members to fund the consolidated audit trail are substantively identical, the Commission is considering all comments received on the proposed rule changes regardless of the comment file to which they were submitted. See text accompanying notes 13–16 *infra*, for a list of the CAT NMS Plan Participants. See Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Brent J. Fields, Secretary, Commission (dated June 6, 2017), available at: <https://www.sec.gov/comments/sr-batsbzx-2017-38/batsbzx201738-1788188-153228.pdf>; Letter from Patricia L. Cerny and Steven O’Malley, Compliance Consultants, to Brent J. Fields, Secretary, Commission (dated June 12, 2017), available at: <https://www.sec.gov/comments/sr-cboe-2017-040/cboe2017040-1799253-153675.pdf>; Letter from Daniel Zinn, General Counsel, OTC Markets Group Inc., to Eduardo A. Aleman, Assistant Secretary, Commission (dated June 13, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-1801717-153703.pdf>; Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission (dated June 22, 2017), available at: <https://www.sec.gov/comments/sr-cboe-2017-040/cboe2017040-1819670-154195.pdf>; Letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, Commission (dated June 23, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-1822454-154283.pdf>; and Letter from Suzanne H. Shatto, Investor, to Commission (dated June 27, 2017), available at: <https://www.sec.gov/comments/sr-batsedgx-2017-22/batsedgx201722-154443.pdf>. The Commission also received a comment letter which is not pertinent to these proposed rule changes. See Letter from Christina

<sup>26</sup> 17 CFR 200.30–3(a)(12).

comments from the Participants.<sup>5</sup> On June 30, 2017, the Commission temporarily suspended and initiated proceedings to determine whether to approve or disapprove the proposed rule change.<sup>6</sup> The Commission thereafter received seven comment letters,<sup>7</sup> and a response to comments from the Participants.<sup>8</sup> On October 25, 2017, the Exchange filed Amendment No. 1 to the proposed rule change, as described in Items I and II below, which Items have been prepared by the Exchange.<sup>9</sup> On November 9, 2017, the Commission extended the time period within which to approve the proposed rule change or disapprove the proposed rule change to January 14, 2018.<sup>10</sup> The Commission is publishing this notice to

Crouch, Smart Ltd., to Brent J. Fields, Secretary, Commission (dated June 5, 2017), available at: <https://www.sec.gov/comments/sr-batsbzx-2017-38/batsbzx201738-1785545-153152.htm>.

<sup>5</sup> See Letter from CAT NMS Plan Participants to Brent J. Fields, Secretary, Commission (dated June 29, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-1832632-154584.pdf>.

<sup>6</sup> See Securities Exchange Act Release No. 81067 (June 30, 2017), 82 FR 31656 (July 7, 2017).

<sup>7</sup> See Letter from W. Hardy Callcott, Partner, Sidley Austin LLP, to Brent J. Fields, Secretary, Commission (dated July 27, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2148338-157737.pdf>; Letter from Kevin Coleman, General Counsel and Chief Compliance Officer, Belvedere Trading LLC, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2148360-157740.pdf>; Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2151228-157745.pdf>; Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2150977-157744.pdf>; Letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2150818-157743.pdf>; Letter from John Kinahan, Chief Executive Officer, Group One Trading, L.P., to Brent J. Fields, Secretary, Commission (dated August 10, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-2214568-160619.pdf>; Letter from Joseph Molluso, Executive Vice President and CFO, Virtu Financial, to Brent J. Fields, Commission (dated August 18, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-2238648-160830.pdf>.

<sup>8</sup> See Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Brent J. Fields, Secretary, Commission (dated November 2, 2017), available at <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2674608-161412.pdf>.

<sup>9</sup> Amendment No. 1 to the proposed rule change replaces and supersedes the Original Proposal in its entirety.

<sup>10</sup> See Securities Exchange Act Release No. 82049 (November 9, 2017), 82 FR 53549 (November 16, 2017).

solicit comments from interested persons on Amendment No. 1.<sup>11</sup>

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

The Exchange proposes to amend the NYSE Price List ("Price List") to adopt the fees for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail (the "CAT NMS Plan" or "Plan").<sup>12</sup> The Exchange files this proposed rule change (the "Amendment") to amend the Original Proposal. This Amendment replaces the Original Proposal in its entirety, and also describes the changes from the Original Proposal. The proposed rule change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

<sup>11</sup> The Commission notes that on November 29, 2017, the Exchange filed Amendment No. 2 to the proposed rule change. Amendment No. 2 is a partial amendment to the proposed rule change, as amended by Amendment No. 1. Amendment No. 2 proposes to change the parenthetical regarding the OTC Equity Securities discount in paragraph (b)(2) of the proposed fee schedule from "with a discount for Equity ATSS exclusively trading OTC Equity Securities based on the average shares per trade ratio between NMS Stocks and OTC Equity Securities" to "with a discount for OTC Equity Securities market share of Equity ATSS trading OTC Equity Securities based on the average shares per trade ratio between NMS Stocks and OTC Equity Securities." Amendment No. 2 also deletes footnote 42 in Section 3(a) on page 23 of the First Amendment which reads, "The discount is only applied to the market share of Execution Venue ATSS exclusively trading OTC Equity Securities. Accordingly, FINRA's market share, which includes market share from the OTC Reporting Facility, is not discounted as a result of its OTC Equity Securities activity," as the footnote is erroneous and was included inadvertently. See Securities Exchange Act Release No. 82261 (December 11, 2017).

<sup>12</sup> Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth herein, the CAT Compliance Rule or in the CAT NMS Plan.

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

#### 1. Purpose

BOX Options Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc.,<sup>13</sup> Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc. ("FINRA"), Investors' Exchange LLC, Miami International Securities Exchange, LLC, MIA X PEARL, LLC, NASDAQ BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC,<sup>14</sup> NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC,<sup>15</sup> NYSE Arca, Inc. and NYSE National, Inc.<sup>16</sup> (collectively, the "Participants") filed with the Commission, pursuant to Section 11A of the Exchange Act<sup>17</sup> and Rule 608 of Regulation NMS thereunder,<sup>18</sup> the CAT NMS Plan.<sup>19</sup> The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act. The Plan was published for comment in the **Federal Register** on May 17, 2016,<sup>20</sup> and approved by the Commission, as modified, on November

<sup>13</sup> Note that Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., LLC, C2 Options Exchange, Incorporated, and Chicago Board Options Exchange, Incorporated, have been renamed Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., respectively.

<sup>14</sup> ISE Gemini, LLC, ISE Mercury, LLC and International Securities Exchange, LLC have been renamed Nasdaq GEMX, LLC, Nasdaq MRX, LLC, and Nasdaq ISE, LLC, respectively. See Securities Exchange Act Rel. No. 80248 (Mar. 15, 2017), 82 FR 14547 (Mar. 21, 2017); Securities Exchange Act Rel. No. 80326 (Mar. 29, 2017), 82 FR 16460 (Apr. 4, 2017); and Securities Exchange Act Rel. No. 80325 (Mar. 29, 2017), 82 FR 16445 (Apr. 4, 2017).

<sup>15</sup> NYSE MKT LLC has been renamed NYSE American LLC. See Securities Exchange Act Rel. No. 80283 (Mar. 21, 2017), 82 FR 15244 (Mar. 27, 2017).

<sup>16</sup> National Stock Exchange, Inc. has been renamed NYSE National, Inc. See Securities Exchange Act Rel. No. 79902 (Jan. 30, 2017), 82 FR 9258 (Feb. 3, 2017).

<sup>17</sup> 15 U.S.C. 78k-1.

<sup>18</sup> 17 CFR 242.608.

<sup>19</sup> See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. See Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.

<sup>20</sup> Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

15, 2016.<sup>21</sup> The Plan is designed to create, implement and maintain a consolidated audit trail (“CAT”) that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. The Plan accomplishes this by creating CAT NMS, LLC (the “Company”), of which each Participant is a member, to operate the CAT.<sup>22</sup> Under the CAT NMS Plan, the Operating Committee of the Company (“Operating Committee”) has discretion to establish funding for the Company to operate the CAT, including establishing fees that the Participants will pay, and establishing fees for Industry Members that will be implemented by the Participants (“CAT Fees”).<sup>23</sup> The Participants are required to file with the SEC under Section 19(b) of the Exchange Act any such CAT Fees applicable to Industry Members that the Operating Committee approves.<sup>24</sup> Accordingly, the Exchange submitted the Original Proposal to propose the Consolidated Audit Trail Funding Fees, which would require Industry Members that are Exchange members to pay the CAT Fees determined by the Operating Committee.

The Commission published the Original Proposal for public comment in the **Federal Register** on May 22, 2017,<sup>25</sup> and received comments in response to the Original Proposal or similar fee filings by other Participants.<sup>26</sup> On June 30, 2017, the Commission suspended, and instituted proceedings to determine whether to approve or disapprove, the Original Proposal.<sup>27</sup> The Commission received seven comment letters in response to those proceedings.<sup>28</sup>

<sup>21</sup> Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (“Approval Order”).

<sup>22</sup> The Plan also serves as the limited liability company agreement for the Company.

<sup>23</sup> Section 11.1(b) of the CAT NMS Plan.

<sup>24</sup> *Id.*

<sup>25</sup> Securities Exchange Act Rel. No. 80693 (May 16, 2017), 82 FR 23363 (May 22, 2017) (SR-NYSE-2017-22).

<sup>26</sup> For a summary of comments, see generally Securities Exchange Act Rel. No. 81067 (June 30, 2017), 82 FR 31656 (July 7, 2017) (“Suspension Order”).

<sup>27</sup> Suspension Order.

<sup>28</sup> See Letter from Stuart J. Kaswell, Executive Vice President, Managing Director and General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, SEC (July 28, 2017) (“MFA Letter”); Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Brent J. Fields, Secretary, SEC (July 28, 2017) (“SIFMA Letter”); Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, SEC (July 28, 2017) (“FIA Principal Traders Group Letter”); Letter from Kevin Coleman,

In response to the comments on the Original Proposal, the Operating Committee determined to make the following changes to the funding model: (1) Add two additional CAT Fee tiers for Equity Execution Venues; (2) discount the market share of Execution Venue ATSS exclusively trading OTC Equity Securities as well as the market share of the FINRA over-the-counter reporting facility (“ORF”) by the average shares per trade ratio between NMS Stocks and OTC Equity Securities (calculated as 0.17% based on available data from the second quarter of June 2017) when calculating the market share of Execution Venue ATS exclusively trading OTC Equity Securities and FINRA; (3) discount the Options Market Maker quotes by the trade to quote ratio for options (calculated as 0.01% based on available data for June 2016 through June 2017) when calculating message traffic for Options Market Makers; (4) discount equity market maker quotes by the trade to quote ratio for equities (calculated as 5.43% based on available data for June 2016 through June 2017) when calculating message traffic for equity market makers; (5) decrease the number of tiers for Industry Members (other than the Execution Venue ATSS) from nine to seven; (6) change the allocation of CAT costs between Equity Execution Venues and Options Execution Venues from 75%/25% to 67%/33%; (7) adjust tier percentages and recovery allocations for Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATSS); (8) focus the comparability of CAT Fees on the individual entity level, rather than primarily on the comparability of affiliated entities; (9) commence invoicing of CAT Reporters as promptly as possible following the latest of the operative date of the Consolidated Audit Trail Funding Fees for each of the Participants and the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants; and (10) require the proposed fees to automatically expire two years from the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. As discussed in detail below, the Exchange proposes to amend

General Counsel & Chief Compliance Officer, Belvedere Trading LLC, to Brent J. Fields, Secretary, SEC (July 28, 2017) (“Belvedere Letter”); Letter from W. Hardy Callcott, Sidley Austin LLP, to Brent J. Fields, Secretary, SEC (July 27, 2017) (“Sidley Letter”); Letter from John Kinahan, Chief Executive Officer, Group One Trading, L.P., to Brent J. Fields, Secretary, SEC (Aug. 10, 2017) (“Group One Letter”); and Letter from Joseph Molluso, Executive Vice President, Virtu Financial, to Brent J. Fields, Secretary, SEC (Aug. 18, 2017) (“Virtu Financial Letter”).

the Original Proposal to reflect these changes.

#### (1) Executive Summary

The following provides an executive summary of the CAT funding model approved by the Operating Committee, as well as Industry Members’ rights and obligations related to the payment of CAT Fees calculated pursuant to the CAT funding model, as amended by this Amendment. A detailed description of the CAT funding model and the CAT Fees, as amended by this Amendment, as well as the changes made to the Original Proposal follows this executive summary.

#### (A) CAT Funding Model

- *CAT Costs.* The CAT funding model is designed to establish CAT-specific fees to collectively recover the costs of building and operating the CAT from all CAT Reporters, including Industry Members and Participants. The overall CAT costs for the calculation of the CAT Fees in this fee filing are comprised of Plan Processor CAT costs and non-Plan Processor CAT costs incurred, and estimated to be incurred, from November 21, 2016 through November 21, 2017. (See Section 3(a)(2)(E) below)

- *Bifurcated Funding Model.* The CAT NMS Plan requires a bifurcated funding model, where costs associated with building and operating the CAT would be borne by (1) Participants and Industry Members that are Execution Venues for Eligible Securities through fixed tier fees based on market share, and (2) Industry Members (other than alternative trading systems (“ATSS”)) that execute transactions in Eligible Securities (“Execution Venue ATSS”) through fixed tier fees based on message traffic for Eligible Securities. (See Section 3(a)(2) below)

- *Industry Member Fees.* Each Industry Member (other than Execution Venue ATSS) will be placed into one of seven tiers of fixed fees, based on “message traffic” in Eligible Securities for a defined period (as discussed below). Prior to the start of CAT reporting, “message traffic” will be comprised of historical equity and equity options orders, cancels, quotes and executions provided by each exchange and FINRA over the previous three months. After an Industry Member begins reporting to the CAT, “message traffic” will be calculated based on the Industry Member’s Reportable Events reported to the CAT. Industry Members with lower levels of message traffic will pay a lower fee and Industry Members with higher levels of message traffic will pay a higher fee. To avoid disincentives to quoting behavior, Options Market



Maker and equity market maker quotes will be discounted when calculating message traffic. (See Section 3(a)(2)(B) below)

- *Execution Venue Fees.* Each Equity Execution Venue will be placed in one of four tiers of fixed fees based on market share, and each Options Execution Venue will be placed in one of two tiers of fixed fees based on market share. Equity Execution Venue market share will be determined by calculating each Equity Execution Venue's proportion of the total volume of NMS Stock and OTC Equity shares reported by all Equity Execution Venues during the relevant time period. For purposes of calculating market share, the market share of Execution Venue ATSS exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF will be discounted. Similarly, market share for Options Execution Venues will be determined by calculating each Options Execution Venue's proportion of the total volume of Listed Options contracts reported by all Options Execution Venues during the relevant time period. Equity Execution Venues with a larger market share will pay a larger CAT Fee than Equity Execution Venues with a smaller market share. Similarly, Options Execution Venues with a larger market share will pay a larger CAT Fee than Options Execution Venues with a smaller market share. (See Section 3(a)(2)(C) below)

- *Cost Allocation.* For the reasons discussed below, in designing the model, the Operating Committee determined that 75 percent of total costs recovered would be allocated to Industry Members (other than Execution Venue ATSS) and 25 percent would be allocated to Execution Venues. In addition, the Operating Committee determined to allocate 67 percent of Execution Venue costs recovered to Equity Execution Venues and 33 percent to Options Execution Venues. (See Section 3(a)(2)(D) below)

- *Comparability of Fees.* The CAT funding model charges CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) comparable CAT Fees. (See Section 3(a)(2)(F) below)

(B) CAT Fees for Industry Members

- *Fee Schedule.* The quarterly CAT Fees for each tier for Industry Members are set forth in the two fee schedules in the Consolidated Audit Trail Funding Fees, one for Equity ATSS and one for Industry Members other than Equity ATSS. (See Section 3(a)(3)(B) below)

- *Quarterly Invoices.* Industry Members will be billed quarterly for CAT Fees, with the invoices payable within 30 days. The quarterly invoices will identify within which tier the Industry Member falls. (See Section 3(a)(3)(C) below)

- *Centralized Payment.* Each Industry Member will receive from the Company one invoice for its applicable CAT Fees, not separate invoices from each Participant of which it is a member. Each Industry Member will pay its CAT Fees to the Company via the centralized system for the collection of CAT Fees established by the Operating Committee. (See Section 3(a)(3)(C) below)

- *Billing Commencement.* Industry Members will begin to receive invoices for CAT Fees as promptly as possible following the latest of the operative date of the Consolidated Audit Trail Funding Fees for each of the Participants and the operative date of the Plan amendment adopting CAT Fees for Participants. (See Section 3(a)(2)(G) below)

- *Sunset Provision.* The Consolidated Audit Trail Funding Fees will sunset automatically two years from the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. (See Section 3(a)(2)(J) below)

## (2) Description of the CAT Funding Model

Article XI of the CAT NMS Plan requires the Operating Committee to approve the operating budget, including projected costs of developing and operating the CAT for the upcoming year. In addition to a budget, Article XI of the CAT NMS Plan provides that the Operating Committee has discretion to establish funding for the Company, consistent with a bifurcated funding model, where costs associated with building and operating the Central Repository would be borne by (1) Participants and Industry Members that are Execution Venues through fixed tier fees based on market share, and (2) Industry Members (other than Execution Venue ATSS) through fixed tier fees based on message traffic. In its order approving the CAT NMS Plan, the Commission determined that the proposed funding model was "reasonable"<sup>29</sup> and "reflects a reasonable exercise of the Participants' funding authority to recover the Participants' costs related to the CAT."<sup>30</sup>

More specifically, the Commission stated in approving the CAT NMS Plan that "[t]he Commission believes that the

proposed funding model is reasonably designed to allocate the costs of the CAT between the Participants and Industry Members."<sup>31</sup> The Commission further noted the following:

The Commission believes that the proposed funding model reflects a reasonable exercise of the Participants' funding authority to recover the Participants' costs related to the CAT. The CAT is a regulatory facility jointly owned by the Participants and . . . the Exchange Act specifically permits the Participants to charge their members fees to fund their self-regulatory obligations. The Commission further believes that the proposed funding model is designed to impose fees reasonably related to the Participants' self-regulatory obligations because the fees would be directly associated with the costs of establishing and maintaining the CAT, and not unrelated SRO services.<sup>32</sup>

Accordingly, the funding model approved by the Operating Committee imposes fees on both Participants and Industry Members.

As discussed in Appendix C of the CAT NMS Plan, in developing and approving the approved funding model, the Operating Committee considered the advantages and disadvantages of a variety of alternative funding and cost allocation models before selecting the proposed model.<sup>33</sup> After analyzing the various alternatives, the Operating Committee determined that the proposed tiered, fixed fee funding model provides a variety of advantages in comparison to the alternatives.

In particular, the fixed fee model, as opposed to a variable fee model, provides transparency, ease of calculation, ease of billing and other administrative functions, and predictability of a fixed fee. Such factors are crucial to estimating a reliable revenue stream for the Company and for permitting CAT Reporters to reasonably predict their payment obligations for budgeting purposes. Additionally, a strictly variable or metered funding model based on message volume would be far more likely to affect market behavior and place an inappropriate burden on competition.

In addition, reviews from varying time periods of current broker-dealer order and trading data submitted under existing reporting requirements showed a wide range in activity among broker-dealers, with a number of broker-dealers submitting fewer than 1,000 orders per

<sup>31</sup> *Id.* at 84795.

<sup>32</sup> *Id.* at 84794.

<sup>33</sup> Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85006.

<sup>29</sup> Approval Order at 84796.

<sup>30</sup> *Id.* at 84794.

month and other broker-dealers submitting millions and even billions of orders in the same period. Accordingly, the CAT NMS Plan includes a tiered approach to fees. The tiered approach helps ensure that fees are equitably allocated among similarly situated CAT Reporters and furthers the goal of lessening the impact on smaller firms.<sup>34</sup> In addition, in choosing a tiered fee structure, the Operating Committee concluded that the variety of benefits offered by a tiered fee structure, discussed above, outweighed the fact that CAT Reporters in any particular tier would pay different rates per message traffic order event or per market share (e.g., an Industry Member with the largest amount of message traffic in one tier would pay a smaller amount per order event than an Industry Member in the same tier with the least amount of message traffic). Such variation is the natural result of a tiered fee structure.<sup>35</sup> The Operating Committee considered several approaches to developing a tiered model, including defining fee tiers based on such factors as size of firm, message traffic or trading dollar volume. After analyzing the alternatives, it was concluded that the tiering should be based on message traffic which will reflect the relative impact of CAT Reporters on the CAT System.

Accordingly, the CAT NMS Plan contemplates that costs will be allocated across the CAT Reporters on a tiered basis in order to allocate higher costs to those CAT Reporters that contribute more to the costs of creating, implementing and maintaining the CAT and lower costs to those that contribute less.<sup>36</sup> The fees to be assessed at each tier are calculated so as to recoup a proportion of costs appropriate to the message traffic or market share (as applicable) from CAT Reporters in each tier. Therefore, Industry Members generating the most message traffic will be in the higher tiers, and will be charged a higher fee. Industry Members with lower levels of message traffic will be in lower tiers and will be assessed a lower fee for the CAT.<sup>37</sup> Correspondingly, Execution Venues with the highest market shares will be in the top tier, and will be charged higher fees. Execution Venues with the lowest market shares will be in the

lowest tier and will be assessed lower fees for the CAT.<sup>38</sup>

The CAT NMS Plan states that Industry Members (other than Execution Venue ATSS) will be charged based on message traffic, and that Execution Venues will be charged based on market share.<sup>39</sup> While there are multiple factors that contribute to the cost of building, maintaining and using the CAT, processing and storage of incoming message traffic is one of the most significant cost drivers for the CAT.<sup>40</sup> Thus, the CAT NMS Plan provides that the fees payable by Industry Members (other than Execution Venue ATSS) will be based on the message traffic generated by such Industry Member.<sup>41</sup>

In contrast to Industry Members, which determine the degree to which they produce message traffic that constitute CAT Reportable Events, the CAT Reportable Events of the Execution Venues are largely derivative of quotations and orders received from Industry Members that they are required to display. The business model for Execution Venues (other than FINRA), however, is focused on executions on their markets. As a result, the Operating Committee believes that it is more equitable to charge Execution Venues based on their market share rather than their message traffic.

Focusing on message traffic would make it more difficult to draw distinctions between large and small Execution Venues and, in particular, between large and small options exchanges. For instance, the Operating Committee analyzed the message traffic of Execution Venues and Industry Members for the period of April 2017 to June 2017 and placed all CAT Reporters into a nine-tier framework (i.e., a single tier may include both Execution Venues and Industry Members). The Operating Committee's analysis found that the majority of exchanges (15 total) were grouped in Tiers 1 and 2. Moreover, virtually all of the options exchanges were in Tiers 1 and 2.<sup>42</sup> Given the resulting concentration of options exchanges in Tiers 1 and 2 under this approach, the analysis shows that a funding model for Execution Venues based on message traffic would make it more difficult to distinguish between large and small options exchanges, as compared to the proposed fee approach

that bases fees for Execution Venues on market share.

The CAT NMS Plan's funding model also is structured to avoid a "reduction in market quality."<sup>43</sup> The tiered, fixed fee funding model is designed to limit the disincentives to providing liquidity to the market. For example, the Operating Committee expects that a firm that has a large volume of quotes would likely be categorized in one of the upper tiers, and would not be assessed a fee for this traffic directly as they would under a more directly metered model. In contrast, strictly variable or metered funding models based on message volume are far more likely to affect market behavior. In approving the CAT NMS Plan, the SEC stated that "[t]he Participants also offered a reasonable basis for establishing a funding model based on broad tiers, in that it may be . . . less likely to have an incremental deterrent effect on liquidity provision."<sup>44</sup>

The funding model also is structured to avoid a reduction in market quality because it discounts Options Market Maker and equity market maker quotes when calculating message traffic for Options Market Makers and equity market makers, respectively. As discussed in more detail below, the Operating Committee determined to discount the Options Market Maker quotes by the trade to quote ratio for options when calculating message traffic for Options Market Makers. Similarly, to avoid disincentives to quoting behavior on the equities side as well, the Operating Committee determined to discount equity market maker quotes by the trade to quote ratio for equities when calculating message traffic for equity market makers. The proposed discounts recognize the value of the market makers' quoting activity to the market as a whole.

The CAT NMS Plan is further structured to avoid potential conflicts raised by the Operating Committee determining fees applicable to its own members—the Participants. First, the Company will operate on a "break-even" basis, with fees imposed to cover costs and an appropriate reserve. Any surpluses will be treated as an operational reserve to offset future fees and will not be distributed to the Participants as profits.<sup>45</sup> To ensure that the Participants' operation of the CAT will not contribute to the funding of their other operations, Section 11.1(c) of the CAT NMS Plan specifically states that "[a]ny surplus of the Company's

<sup>34</sup> Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85006.

<sup>35</sup> Moreover, as the SEC noted in approving the CAT NMS Plan, "[t]he Participants also have offered a reasonable basis for establishing a funding model based on broad tiers, in that it may be easier to implement." Approval Order at 84796.

<sup>36</sup> Approval Order at 85005.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> Section 11.3(a) and (b) of the CAT NMS Plan.

<sup>40</sup> Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85005.

<sup>41</sup> Section 11.3(b) of the CAT NMS Plan.

<sup>42</sup> The Operating Committee notes that this analysis did not place MIA X PEARL in Tier 1 or Tier 2 since the exchange commenced trading on February 6, 2017.

<sup>43</sup> Section 11.2(e) of the CAT NMS Plan.

<sup>44</sup> Approval Order at 84796.

<sup>45</sup> *Id.* at 84792.



revenues over its expenses shall be treated as an operational reserve to offset future fees.” In addition, as set forth in Article VIII of the CAT NMS Plan, the Company “intends to operate in a manner such that it qualifies as a ‘business league’ within the meaning of Section 501(c)(6) of the [Internal Revenue] Code.” To qualify as a business league, an organization must “not [be] organized for profit and no part of the net earnings of [the organization can] inure[] to the benefit of any private shareholder or individual.”<sup>46</sup> As the SEC stated when approving the CAT NMS Plan, “the Commission believes that the Company’s application for Section 501(c)(6) business league status addresses issues raised by commenters about the Plan’s proposed allocation of profit and loss by mitigating concerns that the Company’s earnings could be used to benefit individual Participants.”<sup>47</sup> The Internal Revenue Service recently has determined that the Company is exempt from federal income tax under Section 501(c)(6) of the Internal Revenue Code.

The funding model also is structured to take into account distinctions in the securities trading operations of Participants and Industry Members. For example, the Operating Committee designed the model to address the different trading characteristics in the OTC Equity Securities market. Specifically, the Operating Committee proposes to discount the market share of Execution Venue ATSs exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF by the average shares per trade ratio between NMS Stocks and OTC Equity Securities to adjust for the greater number of shares being traded in the OTC Equity Securities market, which is generally a function of a lower per share price for OTC Equity Securities when compared to NMS Stocks. In addition, the Operating Committee also proposes to discount Options Market Maker and equity market maker message traffic in recognition of their role in the securities markets. Furthermore, the funding model creates separate tiers for Equity and Options Execution Venues due to the different trading characteristics of those markets.

Finally, by adopting a CAT-specific fee, the Operating Committee will be fully transparent regarding the costs of the CAT. Charging a general regulatory fee, which would be used to cover CAT costs as well as other regulatory costs, would be less transparent than the

selected approach of charging a fee designated to cover CAT costs only.

A full description of the funding model is set forth below. This description includes the framework for the funding model as set forth in the CAT NMS Plan, as well as the details as to how the funding model will be applied in practice, including the number of fee tiers and the applicable fees for each tier. The complete funding model is described below, including those fees that are to be paid by the Participants. The proposed Consolidated Audit Trail Funding Fees, however, do not apply to the Participants; the proposed Consolidated Audit Trail Funding Fees only apply to Industry Members. The CAT Fees for Participants will be imposed separately by the Operating Committee pursuant to the CAT NMS Plan.

#### (A) Funding Principles

Section 11.2 of the CAT NMS Plan sets forth the principles that the Operating Committee applied in establishing the funding for the Company. The Operating Committee has considered these funding principles as well as the other funding requirements set forth in the CAT NMS Plan and in Rule 613 in developing the proposed funding model. The following are the funding principles in Section 11.2 of the CAT NMS Plan:

- To create transparent, predictable revenue streams for the Company that are aligned with the anticipated costs to build, operate and administer the CAT and other costs of the Company;
- To establish an allocation of the Company’s related costs among Participants and Industry Members that is consistent with the Exchange Act, taking into account the timeline for implementation of the CAT and distinctions in the securities trading operations of Participants and Industry Members and their relative impact upon the Company’s resources and operations;
- To establish a tiered fee structure in which the fees charged to: (i) CAT Reporters that are Execution Venues, including ATSs, are based upon the level of market share; (ii) Industry Members’ non-ATS activities are based upon message traffic; (iii) the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venue and/or Industry Members);

- To provide for ease of billing and other administrative functions;
- To avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality; and
- To build financial stability to support the Company as a going concern.

#### (B) Industry Member Tiering

Under Section 11.3(b) of the CAT NMS Plan, the Operating Committee is required to establish fixed fees to be payable by Industry Members, based on message traffic generated by such Industry Member, with the Operating Committee establishing at least five and no more than nine tiers.

The CAT NMS Plan clarifies that the fixed fees payable by Industry Members pursuant to Section 11.3(b) shall, in addition to any other applicable message traffic, include message traffic generated by: (i) An ATS that does not execute orders that is sponsored by such Industry Member; and (ii) routing orders to and from any ATS sponsored by such Industry Member. In addition, the Industry Member fees will apply to Industry Members that act as routing broker-dealers for exchanges. The Industry Member fees will not be applicable, however, to an ATS that qualifies as an Execution Venue, as discussed in more detail in the section on Execution Venue tiering.

In accordance with Section 11.3(b), the Operating Committee approved a tiered fee structure for Industry Members (other than Execution Venue ATSs) as described in this section. In determining the tiers, the Operating Committee considered the funding principles set forth in Section 11.2 of the CAT NMS Plan, seeking to create funding tiers that take into account the relative impact on CAT System resources of different Industry Members, and that establish comparable fees among the CAT Reporters with the most Reportable Events. The Operating Committee has determined that establishing seven tiers results in an allocation of fees that distinguishes between Industry Members with differing levels of message traffic. Thus, each such Industry Member will be placed into one of seven tiers of fixed fees, based on “message traffic” for a defined period (as discussed below).

A seven tier structure was selected to provide a wide range of levels for tiering Industry Members such that Industry Members submitting significantly less message traffic to the CAT would be adequately differentiated from Industry Members submitting substantially more message traffic. The Operating

<sup>46</sup> 26 U.S.C. 501(c)(6).

<sup>47</sup> Approval Order at 84793.

Committee considered historical message traffic from multiple time periods, generated by Industry Members across all exchanges and as submitted to FINRA’s Order Audit Trail System (“OATS”), and considered the distribution of firms with similar levels of message traffic, grouping together firms with similar levels of message traffic. Based on this, the Operating Committee determined that seven tiers would group firms with similar levels of message traffic, charging those firms with higher impact on the CAT more, while lowering the burden on Industry Members that have less CAT-related activity. Furthermore, the selection of seven tiers establishes comparable fees among the largest CAT Reporters.

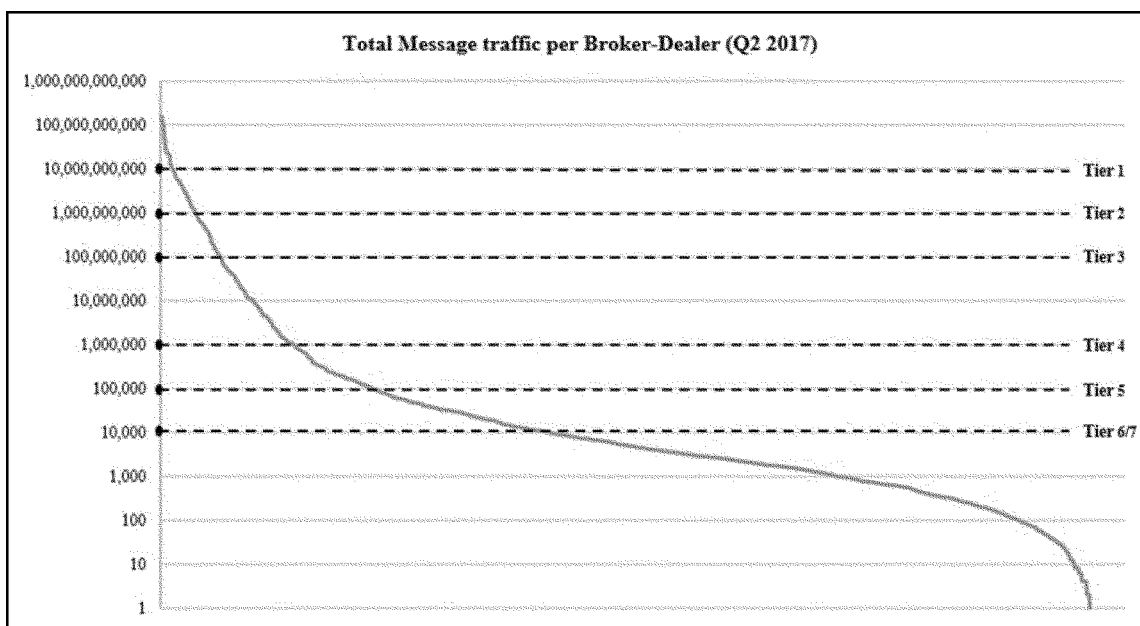
Each Industry Member (other than Execution Venue ATSs) will be ranked by message traffic and tiered by predefined Industry Member percentages (the “Industry Member Percentages”). The Operating Committee determined to use predefined percentages rather than fixed volume thresholds to ensure that the total CAT Fees collected recover the expected CAT costs regardless of changes in the total level of message traffic. To determine the fixed percentage of Industry Members in each tier, the Operating Committee analyzed historical message traffic generated by Industry Members across all exchanges and as submitted to OATS, and considered the distribution of firms with similar levels of message traffic, grouping together firms with similar levels of message traffic. Based on this, the Operating Committee identified

seven tiers that would group firms with similar levels of message traffic.

The percentage of costs recovered by each Industry Member tier will be determined by predefined percentage allocations (the “Industry Member Recovery Allocation”). In determining the fixed percentage allocation of costs recovered for each tier, the Operating Committee considered the impact of CAT Reporter message traffic on the CAT System as well as the distribution of total message volume across Industry Members while seeking to maintain comparable fees among the largest CAT Reporters. Accordingly, following the determination of the percentage of Industry Members in each tier, the Operating Committee identified the percentage of total market volume for each tier based on the historical message traffic upon which Industry Members had been initially ranked. Taking this into account along with the resulting percentage of total recovery, the percentage allocation of costs recovered for each tier were assigned, allocating higher percentages of recovery to tiers with higher levels of message traffic while avoiding any inappropriate burden on competition. Furthermore, by using percentages of Industry Members and costs recovered per tier, the Operating Committee sought to include elasticity within the funding model, allowing the funding model to respond to changes in either the total number of Industry Members or the total level of message traffic.

The following chart illustrates the breakdown of seven Industry Member tiers across the monthly average of total

equity and equity options orders, cancels, quotes and executions in the second quarter of 2017 as well as message traffic thresholds between the largest of Industry Member message traffic gaps. The Operating Committee referenced similar distribution illustrations to determine the appropriate division of Industry Member percentages in each tier by considering the grouping of firms with similar levels of message traffic and seeking to identify relative breakpoints in the message traffic between such groupings. In reviewing the chart and its corresponding table, note that while these distribution illustrations were referenced to help differentiate between Industry Member tiers, the proposed funding model is driven by fixed percentages of Industry Members across tiers to account for fluctuating levels of message traffic over time. This approach also provides financial stability for the CAT by ensuring that the funding model will recover the required amounts regardless of changes in the number of Industry Members or the amount of message traffic. Actual messages in any tier will vary based on the actual traffic in a given measurement period, as well as the number of firms included in the measurement period. The Industry Member Percentages and Industry Member Recovery Allocation for each tier will remain fixed with each Industry Member’s tier to be reassigned periodically, as described below in Section 3(a)(2)(I).



Industry Member tier	Approximate message traffic per Industry Member (Q2 2017) (orders, quotes, cancels and executions)
Tier 1 .....	>10,000,000,000
Tier 2 .....	1,000,000,000–10,000,000,000
Tier 3 .....	100,000,000–1,000,000,000
Tier 4 .....	1,000,000–100,000,000
Tier 5 .....	100,000–1,000,000
Tier 6 .....	10,000–100,000
Tier 7 .....	<10,000

Based on the above analysis, the Operating Committee approved the following Industry Member Percentages and Industry Member Recovery Allocations:

Industry Member tier	Percentage of Industry Members	Percentage of Industry Member Recovery	Percentage of total recovery
Tier 1 .....	0.900	12.00	9.00
Tier 2 .....	2.150	20.50	15.38
Tier 3 .....	2.800	18.50	13.88
Tier 4 .....	7.750	32.00	24.00
Tier 5 .....	8.300	10.00	7.50
Tier 6 .....	18.800	6.00	4.50
Tier 7 .....	59.300	1.00	0.75
Total .....	100	100	75

For the purposes of creating these tiers based on message traffic, the Operating Committee determined to define the term “message traffic” separately for the period before the commencement of CAT reporting and for the period after the start of CAT reporting. The different definition for message traffic is necessary as there will be no Reportable Events as defined in the Plan, prior to the commencement of CAT reporting. Accordingly, prior to the start of CAT reporting, “message traffic” will be comprised of historical equity and equity options orders, cancels, quotes and executions provided by each exchange and FINRA over the previous three months. Prior to the start of CAT reporting, orders would be comprised of the total number of equity and equity options orders received and originated by a member of an exchange or FINRA over the previous three-month period, including principal orders, cancel/replace orders, market maker orders originated by a member of an exchange, and reserve (iceberg) orders as well as executions originated by a member of FINRA, and excluding order rejects, system-modified orders, order routes and implied orders.<sup>48</sup> In addition, prior to the start of CAT reporting, cancels

would be comprised of the total number of equity and equity option cancels received and originated by a member of an exchange or FINRA over a three-month period, excluding order modifications (e.g., order updates, order splits, partial cancels) and multiple cancels of a complex order. Furthermore, prior to the start of CAT reporting, quotes would be comprised of information readily available to the exchanges and FINRA, such as the total number of historical equity and equity options quotes received and originated by a member of an exchange or FINRA over the prior three-month period. Additionally, prior to the start of CAT reporting, executions would be comprised of the total number of equity and equity option executions received or originated by a member of an exchange or FINRA over a three-month period.

After an Industry Member begins reporting to the CAT, “message traffic” will be calculated based on the Industry Member’s Reportable Events reported to the CAT as will be defined in the Technical Specifications.<sup>49</sup>

Quotes of Options Market Makers and equity market makers will be included

in the calculation of total message traffic for those market makers for purposes of tiering under the CAT funding model both prior to CAT reporting and once CAT reporting commences.<sup>50</sup> To address potential concerns regarding burdens on competition or market quality of including quotes in the calculation of message traffic, however, the Operating Committee determined to discount the Options Market Maker quotes by the trade to quote ratio for options when calculating message traffic for Options Market Makers. Based on available data for June 2016 through June 2017, the trade to quote ratio for options is 0.01%. Similarly, to avoid disincentives to quoting behavior on the equities side, the Operating Committee determined to discount equity market maker quotes by the trade to quote ratio for equities. Based on available data for

<sup>50</sup> The SEC approved exemptive relief permitting Options Market Maker quotes to be reported to the Central Repository by the relevant Options Exchange in lieu of requiring that such reporting be done by both the Options Exchange and the Options Market Maker, as required by Rule 613 of Regulation NMS. See Securities Exchange Act Rel. No. 77265 (Mar. 1, 2017), 81 FR 11856 (Mar. 7, 2016). This exemption applies to Options Market Maker quotes for CAT reporting purposes only. Therefore, notwithstanding the reporting exemption provided for Options Market Maker quotes, Options Market Maker quotes will be included in the calculation of total message traffic for Options Market Makers for purposes of tiering under the CAT funding model both prior to CAT reporting and once CAT reporting commences.

<sup>48</sup> Consequently, firms that do not have “message traffic” reported to an exchange or OATS before they are reporting to the CAT would not be subject to a fee until they begin to report information to CAT.

<sup>49</sup> If an Industry Member (other than an Execution Venue ATS) has no orders, cancels, quotes and executions prior to the commencement of CAT Reporting, or no Reportable Events after CAT reporting commences, then the Industry Member would not have a CAT Fee obligation.

June 2016 through June 2017, the trade to quote ratio for equities is 5.43%.<sup>51</sup> The trade to quote ratio for options and the trade to quote ratio for equities will be calculated every three months when tiers are recalculated (as discussed below).

The Operating Committee has determined to calculate fee tiers every three months, on a calendar quarter basis, based on message traffic from the prior three months. Based on its analysis of historical data, the Operating Committee believes that calculating tiers based on three months of data will provide the best balance between reflecting changes in activity by Industry Members while still providing predictability in the tiering for Industry Members. Because fee tiers will be calculated based on message traffic from the prior three months, the Operating Committee will begin calculating message traffic based on an Industry Member's Reportable Events reported to the CAT once the Industry Member has been reporting to the CAT for three months. Prior to that, fee tiers will be calculated as discussed above with regard to the period prior to CAT reporting.

#### (C) Execution Venue Tiering

Under Section 11.3(a) of the CAT NMS Plan, the Operating Committee is required to establish fixed fees payable by Execution Venues. Section 1.1 of the CAT NMS Plan defines an Execution Venue as "a Participant or an alternative trading system ("ATS") (as defined in Rule 300 of Regulation ATS) that operates pursuant to Rule 301 of Regulation ATS (excluding any such ATS that does not execute orders)."<sup>52</sup>

The Operating Committee determined that ATSs should be included within the definition of Execution Venue. The Operating Committee believes that it is appropriate to treat ATSs as Execution Venues under the proposed funding model since ATSs have business models that are similar to those of exchanges, and ATSs also compete with exchanges.

Given the differences between Execution Venues that trade NMS Stocks and/or OTC Equity Securities and Execution Venues that trade Listed Options, Section 11.3(a) addresses Execution Venues that trade NMS Stocks and/or OTC Equity Securities

separately from Execution Venues that trade Listed Options. Equity Execution Venues and Options Execution Venues are treated separately for two reasons. First, the differing quoting behavior of Equity Execution Venues and Options Execution Venues makes comparison of activity between Execution Venues difficult. Second, Execution Venue tiers are calculated based on market share of share volume, and it is therefore difficult to compare market share between asset classes (*i.e.*, equity shares versus options contracts). Discussed below is how the funding model treats the two types of Execution Venues.

#### (I) NMS Stocks and OTC Equity Securities

Section 11.3(a)(i) of the CAT NMS Plan states that each Execution Venue that (i) executes transactions or, (ii) in the case of a national securities association, has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange, in NMS Stocks or OTC Equity Securities will pay a fixed fee depending on the market share of that Execution Venue in NMS Stocks and OTC Equity Securities, with the Operating Committee establishing at least two and not more than five tiers of fixed fees, based on an Execution Venue's NMS Stocks and OTC Equity Securities market share. For these purposes, market share for Execution Venues that execute transactions will be calculated by share volume, and market share for a national securities association that has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange in NMS Stocks or OTC Equity Securities will be calculated based on share volume of trades reported, provided, however, that the share volume reported to such national securities association by an Execution Venue shall not be included in the calculation of such national security association's market share.

In accordance with Section 11.3(a)(i) of the CAT NMS Plan, the Operating Committee approved a tiered fee structure for Equity Execution Venues and Option Execution Venues. In determining the Equity Execution Venue Tiers, the Operating Committee considered the funding principles set forth in Section 11.2 of the CAT NMS Plan, seeking to create funding tiers that take into account the relative impact on system resources of different Equity Execution Venues, and that establish comparable fees among the CAT Reporters with the most Reportable Events. Each Equity Execution Venue

will be placed into one of four tiers of fixed fees, based on the Execution Venue's NMS Stocks and OTC Equity Securities market share. In choosing four tiers, the Operating Committee performed an analysis similar to that discussed above with regard to the non-Execution Venue Industry Members to determine the number of tiers for Equity Execution Venues. The Operating Committee determined to establish four tiers for Equity Execution Venues, rather than a larger number of tiers as established for non-Execution Venue Industry Members, because the four tiers were sufficient to distinguish between the smaller number of Equity Execution Venues based on market share. Furthermore, the selection of four tiers serves to help establish comparability among the largest CAT Reporters.

Each Equity Execution Venue will be ranked by market share and tiered by predefined Execution Venue percentages, (the "Equity Execution Venue Percentages"). In determining the fixed percentage of Equity Execution Venues in each tier, the Operating Committee reviewed historical market share of share volume for Execution Venues. Equity Execution Venue market shares of share volume were sourced from market statistics made publicly-available by Bats Global Markets, Inc. ("Bats"). ATS market shares of share volume was sourced from market statistics made publicly-available by FINRA. FINRA trade reporting facility ("TRF") and ORF market share of share volume was sourced from market statistics made publicly available by FINRA. Based on data from FINRA and otcmarkets.com, ATSs accounted for 39.12% of the share volume across the TRFs and ORFs during the recent tiering period. A 39.12%/60.88% split was applied to the ATS and non-ATS breakdown of FINRA market share, with FINRA tiered based only on the non-ATS portion of its market share of share volume.

The Operating Committee determined to discount the market share of Execution Venue ATSs exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF in recognition of the different trading characteristics of the OTC Equity Securities market as compared to the market in NMS Stocks. Many OTC Equity Securities are priced at less than one dollar—and a significant number at less than one penny—per share and low-priced shares tend to trade in larger quantities. Accordingly, a disproportionately large number of shares are involved in transactions involving OTC Equity Securities versus

<sup>51</sup> The trade to quote ratios were calculated based on the inverse of the average of the monthly equity SIP and OPRA quote to trade ratios from June 2016–June 2017 that were compiled by the Financial Information Forum using data from NASDAQ and SIAC.

<sup>52</sup> Although FINRA does not operate an execution venue, because it is a Participant, it is considered an "Execution Venue" under the Plan for purposes of determining fees.

NMS Stocks. Because the proposed fee tiers are based on market share calculated by share volume, Execution Venue ATSS exclusively trading OTC Equity Securities and FINRA would likely be subject to higher tiers than their operations may warrant. To address this potential concern, the Operating Committee determined to discount the market share of Execution Venue ATSS exclusively trading OTC Equity Securities and the market share of the FINRA ORF by multiplying such market share by the average shares per trade ratio between NMS Stocks and OTC Equity Securities in order to adjust for the greater number of shares being traded in the OTC Equity Securities market. Based on available data for the second quarter of 2017, the average shares per trade ratio between NMS Stocks and OTC Equity Securities is 0.17%.<sup>53</sup> The average shares per trade ratio between NMS Stocks and OTC Equity Securities will be recalculated

every three months when tiers are recalculated.<sup>54</sup>

Based on this, the Operating Committee considered the distribution of Execution Venues, and grouped together Execution Venues with similar levels of market share. The percentage of costs recovered by each Equity Execution Venue tier will be determined by predefined percentage allocations (the “Equity Execution Venue Recovery Allocation”). In determining the fixed percentage allocation of costs to be recovered from each tier, the Operating Committee considered the impact of CAT Reporter market share activity on the CAT System as well as the distribution of total market volume across Equity Execution Venues while seeking to maintain comparable fees among the largest CAT Reporters. Accordingly, following the determination of the percentage of Execution Venues in each tier, the Operating Committee identified the

percentage of total market volume for each tier based on the historical market share upon which Execution Venues had been initially ranked. Taking this into account along with the resulting percentage of total recovery, the percentage allocation of cost recovery for each tier were assigned, allocating higher percentages of recovery to the tier with a higher level of market share while avoiding any inappropriate burden on competition. Furthermore, by using percentages of Equity Execution Venues and cost recovery per tier, the Operating Committee sought to include elasticity within the funding model, allowing the funding model to respond to changes in either the total number of Equity Execution Venues or changes in market share.

Based on this analysis, the Operating Committee approved the following Equity Execution Venue Percentages and Recovery Allocations:

Equity Execution Venue tier	Percentage of Equity Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1 .....	25.00	33.25	8.31
Tier 2 .....	42.00	25.73	6.43
Tier 3 .....	23.00	8.00	2.00
Tier 4 .....	10.00	0.02	0.01
Total .....	100	67	16.75

(II) Listed Options

Section 11.3(a)(ii) of the CAT NMS Plan states that each Execution Venue that executes transactions in Listed Options will pay a fixed fee depending on the Listed Options market share of that Execution Venue, with the Operating Committee establishing at least two and no more than five tiers of fixed fees, based on an Execution Venue’s Listed Options market share. For these purposes, market share will be calculated by contract volume.

In accordance with Section 11.3(a)(ii) of the CAT NMS Plan, the Operating Committee approved a tiered fee structure for Options Execution Venues. In determining the tiers, the Operating Committee considered the funding principles set forth in Section 11.2 of the CAT NMS Plan, seeking to create funding tiers that take into account the relative impact on system resources of different Options Execution Venues, and that establish comparable fees

among the CAT Reporters with the most Reportable Events. Each Options Execution Venue will be placed into one of two tiers of fixed fees, based on the Execution Venue’s Listed Options market share. In choosing two tiers, the Operating Committee performed an analysis similar to that discussed above with regard to Industry Members (other than Execution Venue ATSS) to determine the number of tiers for Options Execution Venues. The Operating Committee determined to establish two tiers for Options Execution Venues, rather than a larger number, because the two tiers were sufficient to distinguish between the smaller number of Options Execution Venues based on market share. Furthermore, due to the smaller number of Options Execution Venues, the incorporation of additional Options Execution Venue tiers would result in significantly higher fees for Tier 1 Options Execution Venues and reduce

comparability between Execution Venues and Industry Members. Furthermore, the selection of two tiers served to establish comparable fees among the largest CAT Reporters.

Each Options Execution Venue will be ranked by market share and tiered by predefined Execution Venue percentages, (the “Options Execution Venue Percentages”). To determine the fixed percentage of Options Execution Venues in each tier, the Operating Committee analyzed the historical and publicly available market share of Options Execution Venues to group Options Execution Venues with similar market shares across the tiers. Options Execution Venue market share of share volume were sourced from market statistics made publicly-available by Bats. The process for developing the Options Execution Venue Percentages was the same as discussed above with regard to Equity Execution Venues.

<sup>53</sup> The average shares per trade ratio for both NMS Stocks and OTC Equity Securities from the second quarter of 2017 was calculated using publicly available market volume data from Bats and OTC Markets Group, and the totals were divided to

determine the average number of shares per trade between NMS Stocks and OTC Equity Securities.

<sup>54</sup> The discount is only applied to the market share of Execution Venue ATSS exclusively trading

OTC Equity Securities. Accordingly, FINRA’s market share, which includes market share from the OTC Reporting Facility, is not discounted as a result of its OTC Equity Securities activity.

The percentage of costs to be recovered from each Options Execution Venue tier will be determined by predefined percentage allocations (the "Options Execution Venue Recovery Allocation"). In determining the fixed percentage allocation of cost recovery for each tier, the Operating Committee considered the impact of CAT Reporter market share activity on the CAT System as well as the distribution of

total market volume across Options Execution Venues while seeking to maintain comparable fees among the largest CAT Reporters. Furthermore, by using percentages of Options Execution Venues and cost recovery per tier, the Operating Committee sought to include elasticity within the funding model, allowing the funding model to respond to changes in either the total number of Options Execution Venues or changes in

market share. The process for developing the Options Execution Venue Recovery Allocation was the same as discussed above with regard to Equity Execution Venues.

Based on this analysis, the Operating Committee approved the following Options Execution Venue Percentages and Recovery Allocations:

Equity Execution Venue tier	Percentage of Options Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1 .....	75.00	28.25	7.06
Tier 2 .....	25.00	4.75	1.19
Total .....	100	33	8.25

(III) Market Share/Tier Assignments

The Operating Committee determined that, prior to the start of CAT reporting, market share for Execution Venues would be sourced from publicly-available market data. Options and equity volumes for Participants will be sourced from market data made publicly available by Bats while Execution Venue ATS volumes will be sourced from market data made publicly available by FINRA and OTC Markets. Set forth in Exhibit 3 of the proposed rule change are two charts, one listing the current Equity Execution Venues, each with its rank and tier, and one listing the current Options Execution Venues, each with its rank and tier.

After the commencement of CAT reporting, market share for Execution Venues will be sourced from data reported to the CAT. Equity Execution Venue market share will be determined by calculating each Equity Execution Venue's proportion of the total volume of NMS Stock and OTC Equity shares reported by all Equity Execution Venues during the relevant time period (with the discounting of market share of Execution Venue ATSs exclusively trading OTC Equity Securities, as described above). Similarly, market share for Options Execution Venues will be determined by calculating each Options Execution Venue's proportion of the total volume of Listed Options contracts reported by all Options Execution Venues during the relevant time period.

The Operating Committee has determined to calculate fee tiers for Execution Venues every three months based on market share from the prior three months. Based on its analysis of historical data, the Operating Committee believes calculating tiers based on three

months of data will provide the best balance between reflecting changes in activity by Execution Venues while still providing predictability in the tiering for Execution Venues.

(D) Allocation of Costs

In addition to the funding principles discussed above, including comparability of fees, Section 11.1(c) of the CAT NMS Plan also requires expenses to be fairly and reasonably shared among the Participants and Industry Members. Accordingly, in developing the proposed fee schedules pursuant to the funding model, the Operating Committee calculated how the CAT costs would be allocated between Industry Members and Execution Venues, and how the portion of CAT costs allocated to Execution Venues would be allocated between Equity Execution Venues and Options Execution Venues. These determinations are described below.

(I) Allocation Between Industry Members and Execution Venues

In determining the cost allocation between Industry Members (other than Execution Venue ATSs) and Execution Venues, the Operating Committee analyzed a range of possible splits for revenue recovery from such Industry Members and Execution Venues, including 80%/20%, 75%/25%, 70%/30% and 65%/35% allocations. Based on this analysis, the Operating Committee determined that 75 percent of total costs recovered would be allocated to Industry Members (other than Execution Venue ATSs) and 25 percent would be allocated to Execution Venues. The Operating Committee determined that this 75%/25% division maintained the greatest level of comparability across the funding model.

For example, the cost allocation establishes fees for the largest Industry Members (*i.e.*, those Industry Members in Tiers 1) that are comparable to the largest Equity Execution Venues and Options Execution Venues (*i.e.*, those Execution Venues in Tier 1).

Furthermore, the allocation of total CAT cost recovery recognizes the difference in the number of CAT Reporters that are Industry Members versus CAT Reporters that are Execution Venues. Specifically, the cost allocation takes into consideration that there are approximately 23 times more Industry Members expected to report to the CAT than Execution Venues (*e.g.*, an estimated 1541 Industry Members versus 67 Execution Venues as of June 2017).

(II) Allocation Between Equity Execution Venues and Options Execution Venues

The Operating Committee also analyzed how the portion of CAT costs allocated to Execution Venues would be allocated between Equity Execution Venues and Options Execution Venues. In considering this allocation of costs, the Operating Committee analyzed a range of alternative splits for revenue recovered between Equity Execution Venues and Options Execution Venues, including a 70%/30%, 67%/33%, 65%/35%, 50%/50% and 25%/75% split. Based on this analysis, the Operating Committee determined to allocate 67 percent of Execution Venue costs recovered to Equity Execution Venues and 33 percent to Options Execution Venues. The Operating Committee determined that a 67%/33% allocation between Equity Execution Venues and Options Execution Venues maintained the greatest level of fee equitability and comparability based on the current

number of Equity Execution Venues and Options Execution Venues. For example, the allocation establishes fees for the larger Equity Execution Venues that are comparable to the larger Options Execution Venues. Specifically, Tier 1 Equity Execution Venues would pay a quarterly fee of \$81,047 and Tier 1 Options Execution Venues would pay a quarterly fee of \$81,379. In addition to fee comparability between Equity Execution Venues and Options Execution Venues, the allocation also establishes equitability between larger (Tier 1) and smaller (Tier 2) Execution Venues based upon the level of market share. Furthermore, the allocation is intended to reflect the relative levels of current equity and options order events.

(E) Fee Levels

The Operating Committee determined to establish a CAT-specific fee to collectively recover the costs of building and operating the CAT. Accordingly, under the funding model, the sum of the CAT Fees is designed to recover the total cost of the CAT. The Operating Committee has determined overall CAT costs to be comprised of Plan Processor

costs and non-Plan Processor costs, which are estimated to be \$50,700,000 in total for the year beginning November 21, 2016.<sup>55</sup>

The Plan Processor costs relate to costs incurred and to be incurred through November 21, 2017 by the Plan Processor and consist of the Plan Processor's current estimates of average yearly ongoing costs, including development costs, which total \$37,500,000. This amount is based upon the fees due to the Plan Processor pursuant to the Company's agreement with the Plan Processor.

The non-Plan Processor estimated costs incurred and to be incurred by the Company through November 21, 2017 consist of three categories of costs. The first category of such costs are third party support costs, which include legal fees, consulting fees and audit fees from November 21, 2016 until the date of filing as well as estimated third party support costs for the rest of the year. These amount to an estimated \$5,200,000. The second category of non-Plan Processor costs are estimated cyber-insurance costs for the year. Based on discussions with potential cyber-

insurance providers, assuming \$2–5 million cyber-insurance premium on \$100 million coverage, the Company has estimated \$3,000,000 for the annual cost. The final cost figures will be determined following receipt of final underwriter quotes. The third category of non-Plan Processor costs is the CAT operational reserve, which is comprised of three months of ongoing Plan Processor costs (\$9,375,000), third party support costs (\$1,300,000) and cyber-insurance costs (\$750,000). The Operating Committee aims to accumulate the necessary funds to establish the three-month operating reserve for the Company through the CAT Fees charged to CAT Reporters for the year. On an ongoing basis, the Operating Committee will account for any potential need to replenish the operating reserve or other changes to total cost during its annual budgeting process. The following table summarizes the Plan Processor and non-Plan Processor cost components which comprise the total estimated CAT costs of \$50,700,000 for the covered period.

Cost category	Cost component	Amount
Plan Processor .....	Operational Costs .....	\$37,500,000
Non-Plan Processor .....	Third Party Support Costs .....	5,200,000
	Operational Reserve .....	<sup>56</sup> 5,000,000
	Cyber-insurance Costs .....	3,000,000
Estimated Total .....		50,700,000

Based on these estimated costs and the calculations for the funding model

described above, the Operating Committee determined to impose the following fees:<sup>57</sup>

For Industry Members (other than Execution Venue ATs):

Tier	Percentage of Industry Members	Quarterly CAT Fee
1 .....	0.900	\$81,483
2 .....	2.150	59,055
3 .....	2.800	40,899
4 .....	7.750	25,566
5 .....	8.300	7,428
6 .....	18.800	1,968
7 .....	59.300	105

For Execution Venues for NMS Stocks and OTC Equity Securities:

Tier	Percentage of Equity Execution Venues	Quarterly CAT Fee
1 .....	25.00	\$81,048

<sup>55</sup> It is anticipated that CAT-related costs incurred prior to November 21, 2016 will be addressed via a separate filing.

<sup>56</sup> This \$5,000,000 represents the gradual accumulation of the funds for a target operating reserve of \$11,425,000.

<sup>57</sup> Note that all monthly, quarterly and annual CAT Fees have been rounded to the nearest dollar.

Tier	Percentage of Equity Execution Venues	Quarterly CAT Fee
2 .....	42.00	37,062
3 .....	23.00	21,126
4 .....	10.00	129

For Execution Venues for Listed Options:

Tier	Percentage of Equity Execution Venues	Quarterly CAT Fee
1 .....	75.00	\$81,381
2 .....	25.00	37,629

The Operating Committee has calculated the schedule of effective fees for Industry Members (other than Execution Venue ATs) and Execution

Venues in the following manner. Note that the calculation of CAT Fees assumes 52 Equity Execution Venues, 15 Options Execution Venues and 1,541

Industry Members (other than Execution Venue ATs) as of June 2017.

#### CALCULATION OF ANNUAL TIER FEES FOR INDUSTRY MEMBERS ("IM")

Industry Member tier	Percentage of Industry Members	Percentage of Industry Member Recovery	Percentage of total recovery
Tier 1 .....	0.900	12.00	9.00
Tier 2 .....	2.150	20.50	15.38
Tier 3 .....	2.800	18.50	13.88
Tier 4 .....	7.750	32.00	24.00
Tier 5 .....	8.300	10.00	7.50
Tier 6 .....	18.800	6.00	4.50
Tier 7 .....	59.300	1.00	0.75
Total .....	100	100	75

Industry Member tier	Estimated number of Industry Members
Tier 1 .....	14
Tier 2 .....	33
Tier 3 .....	43
Tier 4 .....	119
Tier 5 .....	128
Tier 6 .....	290
Tier 7 .....	914
Total .....	1,541



**Calculation 1.1 (Calculation of a Tier 1 Industry Member Monthly Fee)**

$$1,541 \text{ [Estimated Tot. IMs]} \times 0.9\% \text{ [% of Tier 1 IMs]} = 14 \text{ [Estimated Tier 1 IMs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 75\% \text{ [IM \% of Tot. Ann. CAT Costs]} \times 12\% \text{ [% of Tier 1 IM Recovery]}}{14 \text{ [Estimated Tier 1 IMs]}} \right) \div 12 \text{ [Months per year]} = \mathbf{\$27,161}$$

**Calculation 1.2 (Calculation of a Tier 2 Industry Member Monthly Fee)**

$$1,541 \text{ [Estimated Tot. IMs]} \times 2.15\% \text{ [% of Tier 2 IMs]} = 33 \text{ [Estimated Tier 2 IMs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 75\% \text{ [IM \% of Tot. Ann. CAT Costs]} \times 20.5\% \text{ [% of Tier 2 IM Recovery]}}{33 \text{ [Estimated Tier 2 IMs]}} \right) \div 12 \text{ [Months per year]} = \mathbf{\$19,685}$$

**Calculation 1.3 (Calculation of a Tier 3 Industry Member Monthly Fee)**

$$1,541 \text{ [Estimated Tot. IMs]} \times 2.125\% \text{ [% of Tier 3 IMs]} = 43 \text{ [Estimated Tier 3 IMs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 75\% \text{ [IM \% of Tot. Ann. CAT Costs]} \times 18.5\% \text{ [% of Tier 3 IM Recovery]}}{43 \text{ [Estimated Tier 3 IMs]}} \right) \div 12 \text{ [Months per year]} = \mathbf{\$13,633}$$

**Calculation 1.4 (Calculation of a Tier 4 Industry Member Monthly Fee)**

$$1,541 \text{ [Estimated Tot. IMs]} \times 7.75\% \text{ [% of Tier 4 IMs]} = 119 \text{ [Estimated Tier 4 IMs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 75\% \text{ [IM \% of Tot. Ann. CAT Costs]} \times 32\% \text{ [% of Tier 4 IM Recovery]}}{119 \text{ [Estimated Tier 4 IMs]}} \right) \div 12 \text{ [Months per year]} = \mathbf{\$8522}$$

**Calculation 1.5 (Calculation of a Tier 5 Industry Member Annual Fee)**

$$1,541 \text{ [Estimated Tot. IMs]} \times 8.3\% \text{ [% of Tier 5 IMs]} = 128 \text{ [Estimated Tier 5 IMs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 75\% \text{ [IM \% of Tot. Ann. CAT Costs]} \times 7.75\% \text{ [% of Tier 5 IM Recovery]}}{128 \text{ [Estimated Tier 5 IMs]}} \right) \div 12 \text{ [Months per year]} = \mathbf{\$2476}$$

**Calculation 1.6 (Calculation of a Tier 6 Industry Member Monthly Fee)**

$$1,541 \text{ [Estimated Tot. IMs]} \times 18.8\% \text{ [% of Tier 6 IMs]} = 290 \text{ [Estimated Tier 6 IMs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 75\% \text{ [IM \% of Tot. Ann. CAT Costs]} \times 6\% \text{ [% of Tier 6 IM Recovery]}}{290 \text{ [Estimated Tier 6 IMs]}} \right) \div 12 \text{ [Months per year]} = \mathbf{\$656}$$

**Calculation 1.7 (Calculation of a Tier 7 Industry Member Monthly Fee)**

$$1,541 \text{ [Estimated Tot. IMs]} \times 59.3\% \text{ [% of Tier 7 IMs]} = 914 \text{ [Estimated Tier 7 IMs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann. CAT Costs]} \times 75\% \text{ [IM \% of Tot. Ann. CAT Costs]} \times 1\% \text{ [% of Tier 7 IM Recovery]}}{914 \text{ [Estimated Tier 7 IMs]}} \right) \div 12 \text{ [Months per year]} = \mathbf{\$35}$$

**CALCULATION OF ANNUAL TIER FEES FOR EQUITY EXECUTION VENUES (“EV”)**

Equity Execution Venue tier	Percentage of Equity Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1 .....	25.00	33.25	8.31
Tier 2 .....	42.00	25.73	6.43
Tier 3 .....	23.00	8.00	2.00
Tier 4 .....	10.00	49.00	0.01
<b>Total .....</b>	<b>100</b>	<b>67</b>	<b>16.75</b>

Equity Execution Venue tier	Estimated number of Equity Execution Venues
Tier 1 .....	13
Tier 2 .....	22
Tier 3 .....	12
Tier 4 .....	5
<b>Total .....</b>	<b>52</b>

**Calculation 2.1 (Calculation of a Tier 1 Equity Execution Venue Monthly Fee)**

$$52 \text{ [Estimated Tot. Equity EVs]} \times 25\% \text{ [% of Tier 1 Equity EVs]} = 13 \text{ [Estimated Tier 1 Equity EVs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann.CAT Costs]} \times 33.25\% \text{ [EV \% of Tot. Ann.CAT Costs]} \times 26\% \text{ [% of Tier 1 Equity EV Recovery]}}{13 \text{ [Estimated Tier 1 Equity EVs]}} \right) \div 12 \text{ [Months per year]} = \mathbf{\$27,016}$$

**Calculation 2.2 (Calculation of a Tier 2 Equity Execution Venue Monthly Fee)**

$$52 \text{ [Estimated Tot. Equity EVs]} \times 42\% \text{ [% of Tier 2 Equity EVs]} = 22 \text{ [Estimated Tier 2 Equity EVs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann.CAT Costs]} \times 25\% \text{ [EV \% of Tot. Ann.CAT Costs]} \times 25.73\% \text{ [% of Tier 2 Equity EV Recovery]}}{22 \text{ [Estimated Tier 2 Equity EVs]}} \right) \div 12 \text{ [Months per year]} = \mathbf{\$12,353}$$

**Calculation 2.3 (Calculation of a Tier 3 Equity Execution Venue Monthly Fee)**

$$52 \text{ [Estimated Tot. Equity EVs]} \times 23\% \text{ [% of Tier 2 Equity EVs]} = 12 \text{ [Estimated Tier 2 Equity EVs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann.CAT Costs]} \times 25\% \text{ [EV \% of Tot. Ann.CAT Costs]} \times 8\% \text{ [% of Tier 2 Equity EV Recovery]}}{12 \text{ [Estimated Tier 2 Equity EVs]}} \right) \div 12 \text{ [Months per year]} = \mathbf{\$7,042}$$

**Calculation 2.4 (Calculation of a Tier 4 Equity Execution Venue Monthly Fee)**

$$52 \text{ [Estimated Tot. Equity EVs]} \times 10\% \text{ [% of Tier 2 Equity EVs]} = 5 \text{ [Estimated Tier 2 Equity EVs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann.CAT Costs]} \times 25\% \text{ [EV \% of Tot. Ann.CAT Costs]} \times 0.02\% \text{ [% of Tier 2 Equity EV Recovery]}}{5 \text{ [Estimated Tier 2 Equity EVs]}} \right) \div 12 \text{ [Months per year]} = \mathbf{\$42}$$

**CALCULATION OF ANNUAL TIER FEES FOR OPTIONS EXECUTION VENUES (“EV”)**

Options Execution Venue tier	Percentage of Options Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1 .....	75.00	28.25	7.06
Tier 2 .....	25.00	4.75	1.19
<b>Total .....</b>	<b>100</b>	<b>33</b>	<b>8.25</b>

Options Execution Venue Tier	Estimated Number of Options Execution Venues
Tier 1 .....	11
Tier 2 .....	4
<b>Total .....</b>	<b>15</b>

**Calculation 3.1 (Calculation of a Tier 1 Options Execution Venue Monthly Fee)**

$$15 \text{ [Estimated Tot. Options EVs]} \times 75\% \text{ [% of Tier 1 Options EVs]} = 11 \text{ [Estimated Tier 1 Options EVs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann.CAT Costs]} \times 25\% \text{ [EV \% of Tot. Ann.CAT Costs]} \times 28.25\% \text{ [% of Tier 1 Options EV Recovery]}}{11 \text{ [Estimated Tier 1 Options EVs]}} \right) \div 12 \text{ [Months per year]} = \mathbf{\$27,127}$$

**Calculation 3.2 (Calculation of a Tier 2 Options Execution Venue Annual Fee)**

$$15 \text{ [Estimated Tot. Options EVs]} \times 25\% \text{ [% of Tier 2 Options EVs]} = 4 \text{ [Estimated Tier 2 Options EVs]}$$

$$\left( \frac{\$50,700,000 \text{ [Tot. Ann.CAT Costs]} \times 25\% \text{ [EV \% of Tot. Ann.CAT Costs]} \times 4.75\% \text{ [% of Tier 2 Options EV Recovery]}}{4 \text{ [Estimated Tier 2 Options EVs]}} \right) \div 12 \text{ [Months per year]} = \mathbf{\$12,543}$$

**TRACEABILITY OF TOTAL CAT FEES**

Type	Industry Member tier	Estimated number of members	CAT Fees paid annually	Total recovery
Industry Members .....	Tier 1 .....	14	\$325,932	\$4,563,048
	Tier 2 .....	33	236,220	7,795,260
	Tier 3 .....	43	163,596	7,034,628
	Tier 4 .....	119	102,264	12,169,416
	Tier 5 .....	128	29,712	3,803,136
	Tier 6 .....	290	7,872	2,282,880
	Tier 7 .....	914	420	383,880
<b>Total .....</b>		<b>1,541</b>		<b>38,032,248</b>
Equity Execution Venues .....	Tier 1 .....	13	324,192	4,214,496
	Tier 2 .....	22	148,248	3,261,456
	Tier 3 .....	12	84,504	1,014,048
	Tier 4 .....	5	516	2,580
<b>Total .....</b>		<b>52</b>		<b>8,492,580</b>
Options Execution Venues .....	Tier 1 .....	11	325,524	3,580,764

TRACEABILITY OF TOTAL CAT FEES—Continued

Type	Industry Member tier	Estimated number of members	CAT Fees paid annually	Total recovery
	Tier 2 .....	4	150,516	602,064
Total .....	.....	15	.....	4,182,828
Total .....	.....	.....	.....	50,700,000
Excess <sup>58</sup> .....	.....	.....	.....	7,656

(F) Comparability of Fees

The funding principles require a funding model in which the fees charged to the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venue and/or Industry Members). Accordingly, in creating the model, the Operating Committee sought to establish comparable fees for the top tier of Industry Members (other than Execution Venue ATs), Equity Execution Venues and Options Execution Venues. Specifically, each Tier 1 CAT Reporter would be required to pay a quarterly fee of approximately \$81,000.

(G) Billing Onset

Under Section 11.1(c) of the CAT NMS Plan, to fund the development and implementation of the CAT, the Company shall time the imposition and collection of all fees on Participants and Industry Members in a manner reasonably related to the timing when the Company expects to incur such development and implementation costs. The Company is currently incurring such development and implementation costs and will continue to do so prior to the commencement of CAT reporting and thereafter. In accordance with the CAT NMS Plan, all CAT Reporters, including both Industry Members and Execution Venues (including Participants), will be invoiced as promptly as possible following the latest of the operative date of the Consolidated Audit Trail Funding Fees for each of the Participants and the operative date of the Plan amendment adopting CAT Fees for Participants.

<sup>58</sup> The amount in excess of the total CAT costs will contribute to the gradual accumulation of the target operating reserve of \$11.425 million.

(H) Changes to Fee Levels and Tiers

Section 11.3(d) of the CAT NMS Plan states that “[t]he Operating Committee shall review such fee schedule on at least an annual basis and shall make any changes to such fee schedule that it deems appropriate. The Operating Committee is authorized to review such fee schedule on a more regular basis, but shall not make any changes on more than a semi-annual basis unless, pursuant to a Supermajority Vote, the Operating Committee concludes that such change is necessary for the adequate funding of the Company.” With such reviews, the Operating Committee will review the distribution of Industry Members and Execution Venues across tiers, and make any updates to the percentage of CAT Reporters allocated to each tier as may be necessary. In addition, the reviews will evaluate the estimated ongoing CAT costs and the level of the operating reserve. To the extent that the total CAT costs decrease, the fees would be adjusted downward, and to the extent that the total CAT costs increase, the fees would be adjusted upward.<sup>59</sup> Furthermore, any surplus of the Company’s revenues over its expenses is to be included within the operational reserve to offset future fees. The limitations on more frequent changes to the fee, however, are intended to provide budgeting certainty for the CAT Reporters and the Company.<sup>60</sup> To the extent that the Operating Committee approves changes to the number of tiers in the funding model or the fees assigned to each tier, then the Exchange will file such changes with the SEC pursuant to Section 19(b) of the Exchange Act, and any such changes

<sup>59</sup> The CAT Fees are designed to recover the costs associated with the CAT. Accordingly, CAT Fees would not be affected by increases or decreases in other non-CAT expenses incurred by the Participants, such as any changes in costs related to the retirement of existing regulatory systems, such as OATS.

<sup>60</sup> Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85006.

will become effective in accordance with the requirements of Section 19(b).

(I) Initial and Periodic Tier Reassignments

The Operating Committee has determined to calculate fee tiers every three months based on market share or message traffic, as applicable, from the prior three months. For the initial tier assignments, the Company will calculate the relevant tier for each CAT Reporter using the three months of data prior to the commencement date. As with the initial tier assignment, for the tri-monthly reassignments, the Company will calculate the relevant tier using the three months of data prior to the relevant tri-monthly date. Any movement of CAT Reporters between tiers will not change the criteria for each tier or the fee amount corresponding to each tier.

In performing the tri-monthly reassignments, the assignment of CAT Reporters in each assigned tier is relative. Therefore, a CAT Reporter’s assigned tier will depend, not only on its own message traffic or market share, but also on the message traffic/market share across all CAT Reporters. For example, the percentage of Industry Members (other than Execution Venue ATs) in each tier is relative such that such Industry Member’s assigned tier will depend on message traffic generated across all CAT Reporters as well as the total number of CAT Reporters. The Operating Committee will inform CAT Reporters of their assigned tier every three months following the periodic tiering process, as the funding model will compare an individual CAT Reporter’s activity to that of other CAT Reporters in the marketplace.

The following demonstrates a tier reassignment. In accordance with the funding model, the top 75% of Options Execution Venues in market share are categorized as Tier 1 while the bottom 25% of Options Execution Venues in market share are categorized as Tier 2. In the sample scenario below, Options Execution Venue L is initially

categorized as a Tier 2 Options Execution Venue in Period A due to its market share. When market share is recalculated for Period B, the market

share of Execution Venue L increases, and it is therefore subsequently reranked and reassigned to Tier 1 in Period B. Correspondingly, Options

Execution Venue K, initially a Tier 1 Options Execution Venue in Period A, is reassigned to Tier 2 in Period B due to decreases in its market share.

Period A			Period B		
Options Execution Venue	Market share rank	Tier	Options Execution Venue	Market share rank	Tier
Options Execution Venue A	1	1	Options Execution Venue A	1	1
Options Execution Venue B	2	1	Options Execution Venue B	2	1
Options Execution Venue C	3	1	Options Execution Venue C	3	1
Options Execution Venue D	4	1	Options Execution Venue D	4	1
Options Execution Venue E	5	1	Options Execution Venue E	5	1
Options Execution Venue F	6	1	Options Execution Venue F	6	1
Options Execution Venue G	7	1	Options Execution Venue I	7	1
Options Execution Venue H	8	1	Options Execution Venue H	8	1
Options Execution Venue I	9	1	Options Execution Venue G	9	1
Options Execution Venue J	10	1	Options Execution Venue J	10	1
Options Execution Venue K	11	1	Options Execution Venue L	11	1
Options Execution Venue L	12	2	Options Execution Venue K	12	2
Options Execution Venue M	13	2	Options Execution Venue N	13	2
Options Execution Venue N	14	2	Options Execution Venue M	14	2
Options Execution Venue O	15	2	Options Execution Venue O	15	2

For each periodic tier reassignment, the Operating Committee will review the new tier assignments, particularly those assignments for CAT Reporters that shift from the lowest tier to a higher tier. This review is intended to evaluate whether potential changes to the market or CAT Reporters (e.g., dissolution of a large CAT Reporter) adversely affect the tier reassignments.

(J) Sunset Provision

The Operating Committee developed the proposed funding model by analyzing currently available historical data. Such historical data, however, is not as comprehensive as data that will be submitted to the CAT. Accordingly, the Operating Committee believes that it will be appropriate to revisit the funding model once CAT Reporters have actual experience with the funding model. Accordingly, the Operating Committee determined to include an automatic sunset provision for the proposed fees. Specifically, the Operating Committee determined that the CAT Fees should automatically expire two years after the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. The Operating Committee intends to monitor the operation of the funding model during this two year period and to evaluate its effectiveness during that period. Such a process will inform the Operating Committee’s approach to funding the CAT after the two year period.

(3) Proposed CAT Fee Schedule

The Exchange proposes the Consolidated Audit Trail Funding Fees to adopt the CAT Fees determined by

the Operating Committee on the Exchange’s Industry Members. The proposed fee change has four sections, covering definitions, the fee schedule for CAT Fees, the timing and manner of payments, and the automatic sunset provision of the CAT Fees. Each of these sections is discussed in detail below.

(A) Definitions

Paragraph (a) sets forth the definitions applicable to the proposed Consolidated Audit Trail Funding Fees. Proposed paragraph (a)(1) states that, for purposes of the Consolidated Audit Trail Funding Fees, the terms “CAT”, “CAT NMS Plan,” “Industry Member,” “NMS Stock,” “OTC Equity Security”, “Options Market Maker”, and “Participant” are defined as set forth in Rule 6810 (Consolidated Audit Trail—Definitions) of the CAT Compliance Rule, as adopted by the Exchange for its equities trading platform.<sup>61</sup>

The Exchange proposes to adopt different fees on Equity ATSs and Industry Members that are not Equity ATSs. Accordingly, the Exchange proposes to define the term “Equity ATS.” First, paragraph (a)(2) defines an “ATS” to mean an alternative trading system as defined in Rule 300(a) of Regulation ATS under the Securities Exchange Act of 1934, as amended, that operates pursuant to Rule 301 of Regulation ATS. This is the same definition of an ATS as set forth in Section 1.1 of the CAT NMS Plan in the definition of an “Execution Venue.” Then, paragraph (a)(4) defines an

“Equity ATS” as an ATS that executes transactions in NMS Stocks and/or OTC Equity Securities.

Paragraph (a)(3) defines the term “CAT Fee” to mean the Consolidated Audit Trail Funding Fee(s) to be paid by Industry Members as set forth in paragraph (b) of the proposed rule change.

Finally, Paragraph (a)(6) defines an “Execution Venue” as a Participant or an ATS (excluding any such ATS that does not execute orders). This definition is the same substantive definition as set forth in Section 1.1 of the CAT NMS Plan. Paragraph (a)(5) defines an “Equity Execution Venue” as an Execution Venue that trades NMS Stocks and/or OTC Equity Securities.

(B) Fee Schedule

The Exchange proposes to adopt the CAT Fees applicable to its Industry Members through paragraph (b) of the proposed rule change. Paragraph (b)(1) of the proposed rule change sets forth the CAT Fees applicable to Industry Members other than Equity ATSs. Specifically, paragraph (b)(1) states that the Company will assign each Industry Member (other than an Equity ATS) to a fee tier once every quarter, where such tier assignment is calculated by ranking each Industry Member based on its total message traffic (with discounts for equity market maker quotes and Options Market Maker quotes based on the trade to quote ratio for equities and options, respectively) for the three months prior to the quarterly tier calculation day and assigning each Industry Member to a tier based on that ranking and predefined Industry Member percentages. The Industry Members with the highest total

<sup>61</sup> Securities Exchange Act Rel. No. 80256 (Mar. 15, 2017), 82 FR 14526 (Mar. 21, 2017) (SR–NYSE–2017–01).

quarterly message traffic will be ranked in Tier 1, and the Industry Members with lowest quarterly message traffic will be ranked in Tier 7. Each quarter, each Industry Member (other than an Equity ATS) shall pay the following CAT Fee corresponding to the tier assigned by the Company for such Industry Member for that quarter:

Tier	Percentage of Industry Members	Quarterly CAT Fee
1 .....	0.900	\$81,483
2 .....	2.150	59,055
3 .....	2.800	40,899
4 .....	7.750	25,566
5 .....	8.300	7,428
6 .....	18.800	1,968
7 .....	59.300	105

Paragraph (b)(2) of the proposed rule change sets forth the CAT Fees applicable to Equity ATSs.<sup>62</sup> These are the same fees that Participants that trade NMS Stocks and/or OTC Equity Securities will pay. Specifically, paragraph (b)(2) states that the Company will assign each Equity ATS to a fee tier once every quarter, where such tier assignment is calculated by ranking each Equity Execution Venue based on its total market share of NMS Stocks and OTC Equity Securities (with a discount for Equity ATSs exclusively trading OTC Equity Securities based on the average shares per trade ratio between NMS Stocks and OTC Equity Securities) for the three months prior to the quarterly tier calculation day and assigning each Equity ATS to a tier based on that ranking and predefined Equity Execution Venue percentages. The Equity ATSs with the highest total quarterly market share will be ranked in Tier 1, and the Equity ATSs with the lowest quarterly market share will be ranked in Tier 4. Specifically, paragraph (b)(2) states that, each quarter, each Equity ATS shall pay the following CAT Fee corresponding to the tier assigned by the Company for such Equity ATS for that quarter:

Tier	Percentage of Equity Execution Venues	Quarterly CAT fee
1 .....	25.00	\$81,048
2 .....	42.00	37,062
3 .....	23.00	21,126
4 .....	10.00	129

<sup>62</sup> Note that no fee schedule is provided for Execution Venue ATSs that execute transactions in Listed Options, as no such Execution Venue ATSs currently exist due to trading restrictions related to Listed Options.

(C) Timing and Manner of Payment

Section 11.4 of the CAT NMS Plan states that the Operating Committee shall establish a system for the collection of fees authorized under the CAT NMS Plan. The Operating Committee may include such collection responsibility as a function of the Plan Processor or another administrator. To implement the payment process to be adopted by the Operating Committee, paragraph (c)(1) of the proposed rule change states that the Company will provide each Industry Member with one invoice each quarter for its CAT Fees as determined pursuant to paragraph (b) of the proposed rule change, regardless of whether the Industry Member is a member of multiple self-regulatory organizations. Paragraph (c)(1) further states that each Industry Member will pay its CAT Fees to the Company via the centralized system for the collection of CAT Fees established by the Company in the manner prescribed by the Company. The Exchange will provide Industry Members with details regarding the manner of payment of CAT Fees by Trader Update.

All CAT fees will be billed and collected centrally through the Company via the Plan Processor. Although each Participant will adopt its own fee schedule regarding CAT Fees, no CAT Fees or portion thereof will be collected by the individual Participants. Each Industry Member will receive from the Company one invoice for its applicable CAT fees, not separate invoices from each Participant of which it is a member. The Industry Members will pay the CAT Fees to the Company via the centralized system for the collection of CAT fees established by the Company.<sup>63</sup>

Section 11.4 of the CAT NMS Plan also states that Participants shall require each Industry Member to pay all applicable authorized CAT Fees within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). Section 11.4 further states that, if an Industry Member fails to pay any such fee when due, such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (i) The Prime Rate plus 300 basis points; or (ii) the maximum rate permitted by applicable law. Therefore, in accordance with Section 11.4 of the CAT NMS Plan, the Exchange proposes to adopt paragraph (c)(2), which states that each Industry Member shall pay CAT Fees

<sup>63</sup> Section 11.4 of the CAT NMS Plan.

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

(D) Sunset Provision

The Operating Committee has determined to require that the CAT Fees automatically sunset two years from the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. Accordingly, the Exchange proposes to adopt paragraph (d) of the proposed rule change, which states that “[t]hese Consolidated Audit Trailing Funding Fees will automatically expire two years after the operative date of the amendment of the CAT NMS Plan that adopts CAT fees for the Participants.”

(4) Changes to Original Proposal

The proposed funding model set forth in this Amendment is a revised version of the Original Proposal. The Commission received a number of comment letters in response to the Original Proposal.<sup>64</sup> The SEC suspended the Original Proposal and instituted proceedings to determine whether to approve or disapprove it.<sup>65</sup> Pursuant to those proceedings, additional comment letters were submitted regarding the proposed funding model.<sup>66</sup> In developing this Amendment, the Operating Committee carefully considered these comments and made a number of changes to the Original Proposal to address these comments where appropriate.

This Amendment makes the following changes to the Original Proposal: (1) Adds two additional CAT Fee tiers for Equity Execution Venues; (2) discounts the market share of Execution Venue ATSs exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF by the average shares per trade ratio between NMS Stocks and OTC Equity Securities (calculated as 0.17% based on available data from the second quarter of June 2017) when calculating the market share of Execution Venue ATSs exclusively

<sup>64</sup> For a description of the comments submitted in response to those Original Proposal, see Suspension Order.

<sup>65</sup> See Suspension Order.

<sup>66</sup> See MFA Letter; SIFMA Letter; FIA Principal Traders Group Letter; Belvedere Letter; Sidley Letter; Group One Letter; and Virtu Financial Letter.

trading OTC Equity Securities and FINRA; (3) discounts the Options Market Maker quotes by the trade to quote ratio for options (calculated as 0.01% based on available data for June 2016 through June 2017) when calculating message traffic for Options Market Makers; (4) discounts equity market maker quotes by the trade to quote ratio for equities (calculated as 5.43% based on available data for June 2016 through June 2017) when calculating message traffic for equity market makers; (5) decreases the number of tiers for Industry Members (other than the Execution Venue ATSS) from nine to seven; (6) changes the allocation of CAT costs between Equity Execution Venues and Options Execution Venues from 75%/25% to 67%/33%; (7) adjusts tier percentages and recovery allocations for Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATSS); (8) focuses the comparability of CAT Fees on the individual entity level, rather than primarily on the comparability of affiliated entities; (9) commences invoicing of CAT Reporters as promptly as possible following the latest of the operative date of the Consolidated Audit Trail Funding Fees for each of the Participants and the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants; and (10) requires the proposed fees to automatically expire two years from the operative date of the CAT NMS Plan amendment adopting CAT Fees for the Participants.

#### (A) Equity Execution Venues

##### (i) Small Equity Execution Venues

In the Original Proposal, the Operating Committee proposed to establish two fee tiers for Equity Execution Venues. The Commission and commenters raised the concern that, by establishing only two tiers, smaller Equity Execution Venues (*e.g.*, those Equity ATSS representing less than 1% of NMS market share) would be placed in the same fee tier as larger Equity Execution Venues, thereby imposing an undue or inappropriate burden on competition.<sup>67</sup> To address this concern, the Operating Committee proposes to add two additional tiers for Equity Execution Venues, a third tier for smaller Equity Execution Venues and a fourth tier for the smallest Equity Execution Venues.

Specifically, the Original Proposal had two tiers of Equity Execution Venues. Tier 1 required the largest

Equity Execution Venues to pay a quarterly fee of \$63,375. Based on available data, these largest Equity Execution Venues were those that had equity market share of share volume greater than or equal to 1%.<sup>68</sup> Tier 2 required the remaining smaller Equity Execution Venues to pay a quarterly fee of \$38,820.

To address concerns about the potential for the \$38,820 quarterly fee to impose an undue burden on smaller Equity Execution Venues, the Operating Committee determined to move to a four tier structure for Equity Execution Venues. Tier 1 would continue to include the largest Equity Execution Venues by share volume (that is, based on currently available data, those with market share of equity share volume greater than or equal to 1%), and these Equity Execution Venues would be required to pay a quarterly fee of \$81,048. The Operating Committee determined to divide the original Tier 2 into three tiers. The new Tier 2 Equity Execution Venues, which would include the next largest Equity Execution Venues by equity share volume, would be required to pay a quarterly fee of \$37,062. The new Tier 3 Equity Execution Venues would be required to pay a quarterly fee of \$21,126. The new Tier 4 Equity Execution Venues, which would include the smallest Equity Execution Venues by share volume, would be required to pay a quarterly fee of \$129.

In developing the proposed four tier structure, the Operating Committee considered keeping the existing two tiers, as well as shifting to three, four or five Equity Execution Venue tiers (the maximum number of tiers permitted under the Plan), to address the concerns regarding small Equity Execution Venues. For each of the two, three, four and five tier alternatives, the Operating Committee considered the assignment of various percentages of Equity Execution Venues to each tier as well as various percentage of Equity Execution Venue recovery allocations for each alternative. As discussed below in more detail, each of these options was considered in the context of the full model, as changes in each variable in the model affect other variables in the model when allocating

<sup>68</sup>Note that while these equity market share thresholds were referenced as data points to help differentiate between Equity Execution Venue tiers, the proposed funding model is directly driven not by market share thresholds, but rather by fixed percentages of Equity Execution Venues across tiers to account for fluctuating levels of market share across time. Actual market share in any tier will vary based on the actual market activity in a given measurement period, as well as the number of Equity Execution Venues included in the measurement period.

the total CAT costs among CAT Reporters. The Operating Committee determined that the four tier alternative addressed the spectrum of different Equity Execution Venues. The Operating Committee determined that neither a two tier structure nor a three tier structure sufficiently accounted for the range of market shares of smaller Equity Execution Venues. The Operating Committee also determined that, given the limited number of Equity Execution Venues, that a fifth tier was unnecessary to address the range of market shares of the Equity Execution Venues.

By increasing the number of tiers for Equity Execution Venues and reducing the proposed CAT Fees for the smaller Equity Execution Venues, the Exchange believes that the proposed fees for Equity Execution Venues would not impose an undue or inappropriate burden on competition under Section 6 of the Exchange Act. Moreover, the Exchange believes that the proposed fees appropriately take into account the distinctions in the securities trading operations of different Equity Execution Venues, as required under the funding principles of the CAT NMS Plan.<sup>69</sup> The larger number of tiers more closely tracks the variety of sizes of equity share volume of Equity Execution Venues. In addition, the reduction in the fees for the smaller Equity Execution Venues recognizes the potential burden of larger fees on smaller entities. In particular, the very small quarterly fee of \$129 for Tier 4 Equity Execution Venues reflects the fact that certain Equity Execution Venues have a very small share volume due to their typically more focused business models.

Accordingly, with this Amendment, the Exchange proposes to amend paragraph (b)(2) of the proposed rule change to add the two additional tiers for Equity Execution Venues, to establish the percentages and fees for Tiers 3 and 4 as described, and to revise the percentages and fees for Tiers 1 and 2 as described.

##### (ii) Execution Venues for OTC Equity Securities

In the Original Proposal, the Execution Venues for OTC Equity Securities and Execution Venues for NMS Stocks were grouped in the same tier structure. The Commission and commenters raised concerns as to whether this determination to place Execution Venues for OTC Equity Securities in the same tier structure as Execution Venues for NMS Stocks would result in an undue or

<sup>69</sup>Section 11.2(b) of the CAT NMS Plan.

<sup>67</sup> See Suspension Order at 31664; SIFMA Letter at 3.

inappropriate burden on competition, recognizing that the application of share volume may lead to different outcomes as applied to OTC Equity Securities and NMS Stocks.<sup>70</sup> To address this concern, the Operating Committee proposes to discount the market share of Execution Venue ATSs exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF by the average shares per trade ratio between NMS Stocks and OTC Equity Securities (0.17% for the second quarter of 2017) in order to adjust for the greater number of shares being traded in the OTC Equity Securities market, which is generally a function of a lower per share price for OTC Equity Securities when compared to NMS Stocks.

As commenters noted, many OTC Equity Securities are priced at less than one dollar—and a significant number at less than one penny—and low-priced shares tend to trade in larger quantities. Accordingly, a disproportionately large number of shares are involved in transactions involving OTC Equity Securities versus NMS Stocks, which has the effect of overstating an Execution Venue's true market share when the Execution Venue is involved in the trading of OTC Equity Securities. Because the proposed fee tiers are based on market share calculated by share volume, Execution Venue ATSs trading OTC Equity Securities and FINRA may be subject to higher tiers than their operations may warrant.<sup>71</sup> The Operating Committee proposes to address this concern in two ways. First, the Operating Committee proposes to increase the number of Equity Execution Venue tiers, as discussed above. Second, the Operating Committee determined to discount the market share of Execution Venue ATSs exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF when calculating their tier placement. Because the disparity in share volume between Execution Venues trading in OTC Equity Securities and NMS Stocks is based on the different number of shares per trade for OTC Equity Securities and NMS Stocks, the Operating Committee believes that discounting the share volume of such Execution Venue ATSs as well as the market share of the FINRA ORF would address the difference in shares per trade for OTC Equity Securities and NMS Stocks. Specifically, the Operating Committee proposes to impose a discount based on the objective measure of the average shares per trade ratio between NMS Stocks and OTC Equity Securities.

Based on available data from the second quarter of 2017, the average shares per trade ratio between NMS Stocks and OTC Equity Securities is 0.17%.

The practical effect of applying such a discount for trading in OTC Equity Securities is to shift Execution Venue ATSs exclusively trading OTC Equity Securities to tiers for smaller Execution Venues and with lower fees. For example, under the Original Proposal, one Execution Venue ATS exclusively trading OTC Equity Securities was placed in the first CAT Fee tier, which had a quarterly fee of \$63,375. With the imposition of the proposed tier changes and the discount, this ATS would be ranked in Tier 3 and would be subject to a quarterly fee of \$21,126.

In developing the proposed discount for Equity Execution Venue ATSs exclusively trading OTC Equity Securities and FINRA, the Operating Committee evaluated different alternatives to address the concerns related to OTC Equity Securities, including creating a separate tier structure for Execution Venues trading OTC Equity Securities (like the separate tier for Options Execution Venues) as well as the proposed discounting method for Execution Venue ATSs exclusively trading OTC Equity Securities and FINRA. For these alternatives, the Operating Committee considered how each alternative would affect the recovery allocations. In addition, each of these options was considered in the context of the full model, as changes in each variable in the model affect other variables in the model when allocating the total CAT costs among CAT Reporters. The Operating Committee did not adopt a separate tier structure for Equity Execution Venues trading OTC Equity Securities as they determined that the proposed discount approach appropriately addresses the concern. The Operating Committee determined to adopt the proposed discount because it directly relates to the concern regarding the trading patterns and operations in the OTC Equity Securities markets, and is an objective discounting method.

By increasing the number of tiers for Equity Execution Venues and imposing a discount on the market share of share volume calculation for trading in OTC Equity Securities, the Exchange believes that the proposed fees for Equity Execution Venues would not impose an undue or inappropriate burden on competition under Section 6 of the Exchange Act. Moreover, the Exchange believes that the proposed fees appropriately take into account the distinctions in the securities trading operations of different Equity Execution

Venues, as required under the funding principles of the CAT NMS Plan.<sup>72</sup> As discussed above, the larger number of tiers more closely tracks the variety of sizes of equity share volume of Equity Execution Venues. In addition, the proposed discount recognizes the different types of trading operations at Equity Execution Venues trading OTC Equity Securities versus those trading NMS Stocks, thereby more closely matching the relative revenue generation by Equity Execution Venues trading OTC Equity Securities to their CAT Fees.

Accordingly, with this Amendment, the Exchange proposes to amend paragraph (b)(2) of the proposed rule change to indicate that the market share for Equity ATSs exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF would be discounted. In addition, as discussed above, to address concerns related to smaller ATSs, including those that exclusively trade OTC Equity Securities, the Exchange proposes to amend paragraph (b)(2) of the proposed rule change to add two additional tiers for Equity Execution Venues, to establish the percentages and fees for Tiers 3 and 4 as described, and to revise the percentages and fees for Tiers 1 and 2 as described.

#### (B) Market Makers

In the Original Proposal, the proposed funding model included both Options Market Maker quotes and equities market maker quotes in the calculation of total message traffic for such market makers for purposes of tiering for Industry Members (other than Execution Venue ATSs). The Commission and commenters raised questions as to whether the proposed treatment of Options Market Maker quotes may result in an undue or inappropriate burden on competition or may lead to a reduction in market quality.<sup>73</sup> To address this concern, the Operating Committee determined to discount the Options Market Maker quotes by the trade to quote ratio for options when calculating message traffic for Options Market Makers. Similarly, to avoid disincentives to quoting behavior on the equities side as well, the Operating Committee determined to discount equity market maker quotes by the trade to quote ratio for equities when calculating message traffic for equities market makers.

<sup>72</sup> Section 11.2(b) of the CAT NMS Plan.

<sup>73</sup> See Suspension Order at 31663–4; SIFMA Letter at 4–5; FIA Principal Traders Group Letter at 3; Sidley Letter at 2–6; Group One Letter at 2–5; and Belvedere Letter at 2.

<sup>70</sup> See Suspension Order at 31664–5.

<sup>71</sup> Suspension Order at 31664–5.

In the Original Proposal, market maker quotes were treated the same as other message traffic for purposes of tiering for Industry Members (other than Execution Venue ATSSs). Commenters noted, however, that charging Industry Members on the basis of message traffic will impact market makers disproportionately because of their continuous quoting obligations. Moreover, in the context of options market makers, message traffic would include bids and offers for every listed options strikes and series, which are not an issue for equities.<sup>74</sup> The Operating Committee proposes to address this concern in two ways. First, the Operating Committee proposes to discount Options Market Maker quotes when calculating the Options Market Makers' tier placement. Specifically, the Operating Committee proposes to impose a discount based on the objective measure of the trade to quote ratio for options. Based on available data from June 2016 through June 2017, the trade to quote ratio for options is 0.01%. Second, the Operating Committee proposes to discount equities market maker quotes when calculating the equities market makers' tier placement. Specifically, the Operating Committee proposes to impose a discount based on the objective measure of the trade to quote ratio for equities. Based on available data for June 2016 through June 2017, this trade to quote ratio for equities is 5.43%.

The practical effect of applying such discounts for quoting activity is to shift market makers' calculated message traffic lower, leading to the potential shift to tiers for lower message traffic and reduced fees. Such an approach would move sixteen Industry Member CAT Reporters that are market makers to a lower tier than in the Original Proposal. For example, under the Original Proposal, Broker-Dealer Firm ABC was placed in the first CAT Fee tier, which had a quarterly fee of \$101,004. With the imposition of the proposed tier changes and the discount, Broker-Dealer Firm ABC, an options market maker, would be ranked in Tier 3 and would be subject to a quarterly fee of \$40,899.

In developing the proposed market maker discounts, the Operating Committee considered various discounts for Options Market Makers and equity market makers, including discounts of 50%, 25%, 0.00002%, as well as the 5.43% for option market makers and 0.01% for equity market makers. Each of these options were

considered in the context of the full model, as changes in each variable in the model affect other variables in the model when allocating the total CAT costs among CAT Reporters. The Operating Committee determined to adopt the proposed discount because it directly relates to the concern regarding the quoting requirement, is an objective discounting method, and has the desired potential to shift market makers to lower fee tiers.

By imposing a discount on Options Market Makers and equities market makers' quoting traffic for the calculation of message traffic, the Exchange believes that the proposed fees for market makers would not impose an undue or inappropriate burden on competition under Section 6 of the Exchange Act. Moreover, the Exchange believes that the proposed fees appropriately take into account the distinctions in the securities trading operations of different Industry Members, and avoid disincentives, such as a reduction in market quality, as required under the funding principles of the CAT NMS Plan.<sup>75</sup> The proposed discounts recognize the different types of trading operations presented by Options Market Makers and equities market makers, as well as the value of the market makers' quoting activity to the market as a whole. Accordingly, the Exchange believes that the proposed discounts will not impact the ability of small Options Market Makers or equities market makers to provide liquidity.

Accordingly, with this Amendment, the Exchange proposes to amend paragraph (b)(1) of the proposed rule change to indicate that the message traffic related to equity market maker quotes and Options Market Maker quotes would be discounted. In addition, the Exchange proposes to define the term "Options Market Maker" in paragraph (a)(1) of the proposed rule change.

#### (C) Comparability/Allocation of Costs

Under the Original Proposal, 75% of CAT costs were allocated to Industry Members (other than Execution Venue ATSSs) and 25% of CAT costs were allocated to Execution Venues. This cost allocation sought to maintain the greatest level of comparability across the funding model, where comparability considered affiliations among or between CAT Reporters. The Commission and commenters expressed concerns regarding whether the proposed 75%/25% allocation of CAT costs is consistent with the Plan's funding principles and the Exchange

Act, including whether the allocation places a burden on competition or reduces market quality. The Commission and commenters also questioned whether the approach of accounting for affiliations among CAT Reporters in setting CAT Fees disadvantages non-affiliated CAT Reporters or otherwise burdens competition in the market for trading services.<sup>76</sup>

In response to these concerns, the Operating Committee determined to revise the proposed funding model to focus the comparability of CAT Fees at the individual entity level, rather than primarily on the comparability of affiliated entities. In light of the interconnected nature of the various aspects of the funding model, the Operating Committee determined to revise various aspects of the model to enhance comparability at the individual entity level. Specifically, to achieve such comparability, the Operating Committee determined to (1) decrease the number of tiers for Industry Members (other than Execution Venue ATSSs) from nine to seven; (2) change the allocation of CAT costs between Equity Execution Venues and Options Execution Venues from 75%/25% to 67%/33%; and (3) adjust tier percentages and recovery allocations for Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATSSs). With these changes, the proposed funding model provides fee comparability for the largest individual entities, with the largest Industry Members (other than Execution Venue ATSSs), Equity Execution Venues and Options Execution Venues each paying a CAT Fee of approximately \$81,000 each quarter.

#### (i) Number of Industry Member Tiers

In the Original Proposal, the proposed funding model had nine tiers for Industry Members (other than Execution Venue ATSSs). The Operating Committee determined that reducing the number of tiers from nine tiers to seven tiers (and adjusting the predefined Industry Member Percentages as well) continues to provide a fair allocation of fees among Industry Members and appropriately distinguishes between Industry Members with differing levels of message traffic. In reaching this conclusion, the Operating Committee considered historical message traffic generated by Industry Members across all exchanges and as submitted to

<sup>74</sup> Suspension Order at 31664.

<sup>75</sup> Section 11.2(b) of the CAT NMS Plan.

<sup>76</sup> See Suspension Order at 31662–3; SIFMA Letter at 3; Sidley Letter at 6–7; Group One Letter at 2; and Belvedere Letter at 2.



FINRA's OATS, and considered the distribution of firms with similar levels of message traffic, grouping together firms with similar levels of message traffic. Based on this, the Operating Committee determined that seven tiers would group firms with similar levels of message traffic, while also achieving greater comparability in the model for the individual CAT Reporters with the greatest market share or message traffic.

In developing the proposed seven tier structure, the Operating Committee considered remaining at nine tiers, as well as reducing the number of tiers down to seven when considering how to address the concerns raised regarding comparability. For each of the alternatives, the Operating Committee considered the assignment of various percentages of Industry Members to each tier as well as various percentages of Industry Member recovery allocations for each alternative. Each of these options was considered in the context of its effects on the full funding model, as changes in each variable in the model affect other variables in the model when allocating the total CAT costs among CAT Reporters. The Operating Committee determined that the seven tier alternative provided the most fee comparability at the individual entity level for the largest CAT Reporters, while both providing logical breaks in tiering for Industry Members with different levels of message traffic and a sufficient number of tiers to provide for the full spectrum of different levels of message traffic for all Industry Members.

(ii) Allocation of CAT Costs Between Equity and Options Execution Venues

The Operating Committee also determined to adjust the allocation of CAT costs between Equity Execution Venues and Options Execution Venues to enhance comparability at the individual entity level. In the Original Proposal, 75% of Execution Venue CAT costs were allocated to Equity Execution Venues, and 25% of Execution Venue CAT costs were allocated to Options Execution Venues. To achieve the goal of increased comparability at the individual entity level, the Operating Committee analyzed a range of alternative splits for revenue recovery between Equity Execution Venues and Options Execution Venues, along with other changes in the proposed funding model. Based on this analysis, the Operating Committee determined to allocate 67 percent of Execution Venue costs recovered to Equity Execution Venues and 33 percent to Options Execution Venues. The Operating Committee determined that a 67%/33%

allocation between Equity Execution Venues and Options Execution Venues enhances the level of fee comparability for the largest CAT Reporters. Specifically, the largest Equity Execution Venues and Options Execution Venues would pay a quarterly CAT Fee of approximately \$81,000.

In developing the proposed allocation of CAT costs between Equity Execution Venues and Options Execution Venues, the Operating Committee considered various different options for such allocation, including keeping the original 75%/25% allocation, as well as shifting to a 70%/30%, 67%/33%, or 57.75%/42.25% allocation. For each of the alternatives, the Operating Committee considered the effect each allocation would have on the assignment of various percentages of Equity Execution Venues to each tier as well as various percentages of Equity Execution Venue recovery allocations for each alternative. Moreover, each of these options was considered in the context of the full model, as changes in each variable in the model affect other variables in the model when allocating the total CAT costs among CAT Reporters. The Operating Committee determined that the 67%/33% allocation between Equity Execution Venues and Options Execution Venues provided the greatest level of fee comparability at the individual entity level for the largest CAT Reporters, while still providing for appropriate fee levels across all tiers for all CAT Reporters.

(iii) Allocation of Costs Between Execution Venues and Industry Members

The Operating Committee determined to allocate 25% of CAT costs to Execution Venues and 75% to Industry Members (other than Execution Venue ATSSs), as it had in the Original Proposal. The Operating Committee determined that this 75%/25% allocation, along with the other changes proposed above, led to the most comparable fees for the largest Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATSSs). The largest Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATSSs) would each pay a quarterly CAT Fee of approximately \$81,000.

As a preliminary matter, the Operating Committee determined that it is appropriate to allocate most of the costs to create, implement and maintain the CAT to Industry Members for several reasons. First, there are many more Industry Members expected to

report to the CAT than Participants (*i.e.*, 1,541 broker-dealer CAT Reporters versus 22 Participants). Second, since most of the costs to process CAT reportable data is generated by Industry Members, Industry Members could be expected to contribute toward such costs. Finally, as noted by the SEC, the CAT "substantially enhance[s] the ability of the SROs and the Commission to oversee today's securities markets,"<sup>77</sup> thereby benefitting all market participants. After making this determination, the Operating Committee analyzed several different cost allocations, as discussed further below, and determined that an allocation where 75% of the CAT costs should be borne by the Industry Members (other than Execution Venue ATSSs) and 25% should be paid by Execution Venues was most appropriate and led to the greatest comparability of CAT Fees for the largest CAT Reporters.

In developing the proposed allocation of CAT costs between Execution Venues and Industry Members (other than Execution Venue ATSSs), the Operating Committee considered various different options for such allocation, including keeping the original 75%/25% allocation, as well as shifting to an 80%/20%, 70%/30%, or 65%/35% allocation. Each of these options was considered in the context of the full model, including the effect on each of the changes discussed above, as changes in each variable in the model affect other variables in the model when allocating the total CAT costs among CAT Reporters. In particular, for each of the alternatives, the Operating Committee considered the effect each allocation had on the assignment of various percentages of Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATSSs) to each relevant tier as well as various percentages of recovery allocations for each tier. The Operating Committee determined that the 75%/25% allocation between Execution Venues and Industry Members (other than Execution Venue ATSSs) provided the greatest level of fee comparability at the individual entity level for the largest CAT Reporters, while still providing for appropriate fee levels across all tiers for all CAT Reporters.

(iv) Affiliations

The funding principles set forth in Section 11.2 of the Plan require that the fees charged to CAT Reporters with the most CAT-related activity (measured by

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

market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venue and/or Industry Members). The proposed funding model satisfies this requirement. As discussed above, under the proposed funding model, the largest Equity Execution Venues, Options Execution Venues, and Industry Members (other than Execution Venue ATSS) pay approximately the same fee. Moreover, the Operating Committee believes that the proposed funding model takes into consideration affiliations between or among CAT Reporters as complexes with multiple CAT Reporters will pay the appropriate fee based on the proposed rule change for each of the CAT Reporters in the complex. For example, a complex with a Tier 1 Equity Execution Venue and Tier 2 Industry Member will pay the same as another complex with a Tier 1 Equity Execution Venue and Tier 2 Industry Member.

(v) Fee Schedule Changes

Accordingly, with this Amendment, the Exchange proposes to amend paragraphs (b)(1) and (2) of the proposed rule change to reflect the changes discussed in this section. Specifically, the Exchange proposes to amend paragraph (b)(1) and (2) to update the number of tiers, and the fees and percentages assigned to each tier to reflect the described changes.

(D) Market Share/Message Traffic

In the Original Proposal, the Operating Committee proposed to charge Execution Venues based on market share and Industry Members (other than Execution Venue ATSS) based on message traffic. Commenters questioned the use of the two different metrics for calculating CAT Fees.<sup>78</sup> The Operating Committee continues to believe that the proposed use of market share and message traffic satisfies the requirements of the Exchange Act and the funding principles set forth in the CAT NMS Plan. Accordingly, the proposed funding model continues to charge Execution Venues based on market share and Industry Members (other than Execution Venue ATSS) based on message traffic.

In drafting the Plan and the Original Proposal, the Operating Committee expressed the view that the correlation between message traffic and size does not apply to Execution Venues, which

they described as producing similar amounts of message traffic regardless of size. The Operating Committee believed that charging Execution Venues based on message traffic would result in both large and small Execution Venues paying comparable fees, which would be inequitable, so the Operating Committee determined that it would be more appropriate to treat Execution Venues differently from Industry Members in the funding model. Upon a more detailed analysis of available data, however, the Operating Committee noted that Execution Venues have varying levels of message traffic. Nevertheless, the Operating Committee continues to believe that a bifurcated funding model—where Industry Members (other than Execution Venue ATSS) are charged fees based on message traffic and Execution Venues are charged based on market share—complies with the Plan and meets the standards of the Exchange Act for the reasons set forth below.

Charging Industry Members based on message traffic is the most equitable means for establishing fees for Industry Members (other than Execution Venue ATSS). This approach will assess fees to Industry Members that create larger volumes of message traffic that are relatively higher than those fees charged to Industry Members that create smaller volumes of message traffic. Since message traffic, along with fixed costs of the Plan Processor, is a key component of the costs of operating the CAT, message traffic is an appropriate criterion for placing Industry Members in a particular fee tier.

The Operating Committee also believes that it is appropriate to charge Execution Venues CAT Fees based on their market share. In contrast to Industry Members (other than Execution Venue ATSS), which determine the degree to which they produce the message traffic that constitutes CAT Reportable Events, the CAT Reportable Events of Execution Venues are largely derivative of quotations and orders received from Industry Members that the Execution Venues are required to display. The business model for Execution Venues, however, is focused on executions on their markets. As a result, the Operating Committee believes that it is more equitable to charge Execution Venues based on their market share rather than their message traffic.

Similarly, focusing on message traffic would make it more difficult to draw distinctions between large and small exchanges, including options exchanges in particular. For instance, the Operating Committee analyzed the

message traffic of Execution Venues and Industry Members for the period of April 2017 to June 2017 and placed all CAT Reporters into a nine-tier framework (*i.e.*, a single tier may include both Execution Venues and Industry Members). The Operating Committee's analysis found that the majority of exchanges (15 total) were grouped in Tiers 1 and 2. Moreover, virtually all of the options exchanges were in Tiers 1 and 2.<sup>79</sup> Given the concentration of options exchanges in Tiers 1 and 2, the Operating Committee believes that using a funding model based purely on message traffic would make it more difficult to distinguish between large and small options exchanges, as compared to the proposed bifurcated fee approach.

In addition, the Operating Committee also believes that it is appropriate to treat ATSS as Execution Venues under the proposed funding model since ATSS have business models that are similar to those of exchanges, and ATSS also compete with exchanges. For these reasons, the Operating Committee believes that charging Execution Venues based on market share is more appropriate and equitable than charging Execution Venues based on message traffic.

(E) Time Limit

In the Original Proposal, the Operating Committee did not impose any time limit on the application of the proposed CAT Fees. As discussed above, the Operating Committee developed the proposed funding model by analyzing currently available historical data. Such historical data, however, is not as comprehensive as data that will be submitted to the CAT. Accordingly, the Operating Committee believes that it will be appropriate to revisit the funding model once CAT Reporters have actual experience with the funding model. Accordingly, the Operating Committee proposes to include a sunset provision in the proposed fee model. The proposed CAT Fees will sunset two years after the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. Specifically, the Exchange proposes to add paragraph (d) to the proposed rule change to include this sunset provision. Such a provision will provide the Operating Committee and other market participants with the opportunity to reevaluate the performance of the proposed funding model.

<sup>78</sup> Suspension Order at 31663; FIA Principal Traders Group Letter at 2.

<sup>79</sup> The Participants note that this analysis did not place MIAx PEARL in Tier 1 or Tier 2 since the exchange commenced trading on February 6, 2017.

**(F) Tier Structure/Decreasing Cost per Unit**

In the Original Proposal, the Operating Committee determined to use a tiered fee structure. The Commission and commenters questioned whether the decreasing cost per additional unit (of message traffic in the case of Industry Members, or of share volume in the case of Execution Venues) burdens competition by disadvantaging small Industry Members and Execution Venues and/or by creating barriers to entry in the market for trading services and/or the market for broker-dealer services.<sup>80</sup>

The Operating Committee does not believe that decreasing cost per additional unit places an unfair competitive burden on Small Industry Members and Execution Venues. While the cost per unit of message traffic or share volume necessarily will decrease as volume increases in any tiered fee model using fixed fee percentages and, as a result, Small Industry Members and small Execution Venues may pay a larger fee per message or share, this comment fails to take account of the substantial differences in the absolute fees paid by Small Industry Members and small Execution Venues as opposed to large Industry Members and large Execution Venues. For example, under the revised funding model, Tier 7 Industry Members would pay a quarterly fee of \$105, while Tier 1 Industry Members would pay a quarterly fee of \$81,483. Similarly, a Tier 4 Equity Execution Venue would pay a quarterly fee of \$129, while a Tier 1 Equity Execution Venue would pay a quarterly fee of \$81,048. Thus, Small Industry Members and small Execution Venues are not disadvantaged in terms of the total fees that they actually pay. In contrast to a tiered model using fixed fee percentages, the Operating Committee believes that strictly variable or metered funding models based on message traffic or share volume would be more likely to affect market behavior and may present administrative challenges (*e.g.*, the costs to calculate and monitor fees may exceed the fees charged to the smallest CAT Reporters).

**(G) Other Alternatives Considered**

In addition to the various funding model alternatives discussed above regarding discounts, number of tiers and allocation percentages, the Operating Committee also discussed other possible funding models. For example, the Operating Committee considered allocating the total CAT costs equally

among each of the Participants, and then permitting each Participant to charge its own members as it deems appropriate.<sup>81</sup> The Operating Committee determined that such an approach raised a variety of issues, including the likely inconsistency of the ensuing charges, potential for lack of transparency, and the impracticality of multiple SROs submitting invoices for CAT charges. The Operating Committee therefore determined that the proposed funding model was preferable to this alternative.

**(H) Industry Member Input**

Commenters expressed concern regarding the level of Industry Member input into the development of the proposed funding model, and certain commenters have recommended a greater role in the governance of the CAT.<sup>82</sup> The Participants previously addressed this concern in its letters responding to comments on the Plan and the CAT Fees.<sup>83</sup> As discussed in those letters, the Participants discussed the funding model with the Development Advisory Group (“DAG”), the advisory group formed to assist in the development of the Plan, during its original development.<sup>84</sup> Moreover, Industry Members currently have representation on the Operating Committee and operation of the CAT generally through the Advisory Committee established pursuant to Rule 613(b)(7) and Section 4.13 of the Plan. The Advisory Committee attends all meetings of the Operating Committee, as well as meetings of various subcommittees and working groups, and provides valuable and critical input for the Participants’ and Operating Committee’s consideration. The Operating Committee continues to believe that Industry Members have an appropriate voice regarding the funding of the Company.

**(I) Conflicts of Interest**

Commenters also raised concerns regarding Participant conflicts of interest in setting the CAT Fees.<sup>85</sup> The Participants previously responded to this concern in both the Plan Response Letter and the Fee Rule Response

Letter.<sup>86</sup> As discussed in those letters, the Plan, as approved by the SEC, adopts various measures to protect against the potential conflicts issues raised by the Participants’ fee-setting authority. Such measures include the operation of the Company as a not for profit business league and on a break-even basis, and the requirement that the Participants file all CAT Fees under Section 19(b) of the Exchange Act. The Operating Committee continues to believe that these measures adequately protect against concerns regarding conflicts of interest in setting fees, and that additional measures, such as an independent third party to evaluate an appropriate CAT Fee, are unnecessary.

**(J) Fee Transparency**

Commenters also argued that they could not adequately assess whether the CAT Fees were fair and equitable because the Operating Committee has not provided details as to what the Participants are receiving in return for the CAT Fees.<sup>87</sup> The Operating Committee provided a detailed discussion of the proposed funding model in the Plan, including the expenses to be covered by the CAT Fees. In addition, the agreement between the Company and the Plan Processor sets forth a comprehensive set of services to be provided to the Company with regard to the CAT. Such services include, without limitation: User support services (*e.g.*, a help desk); tools to allow each CAT Reporter to monitor and correct their submissions; a comprehensive compliance program to monitor CAT Reporters’ adherence to Rule 613; publication of detailed Technical Specifications for Industry Members and Participants; performing data linkage functions; creating comprehensive data security and confidentiality safeguards; creating query functionality for regulatory users (*i.e.*, the Participants, and the SEC and SEC staff); and performing billing and collection functions. The Operating Committee further notes that the services provided by the Plan Processor and the costs related thereto were subject to a bidding process.

**(K) Funding Authority**

Commenters also questioned the authority of the Operating Committee to impose CAT Fees on Industry Members.<sup>88</sup> The Participants previously responded to this same comment in the

<sup>81</sup> See FIA Principal Traders Group Letter at 2; Belvedere Letter at 4.

<sup>82</sup> See Suspension Order at 31662; MFA Letter at 1–3.

<sup>83</sup> Letter from Participants to Brent J. Fields, Secretary, SEC (Sept. 23, 2016) (“Plan Response Letter”); Letter from CAT NMS Plan Participants to Brent J. Fields, Secretary, SEC (June 29, 2017) (“Fee Rule Response Letter”).

<sup>84</sup> Fee Rule Response Letter at 2; Plan Response Letter at 18.

<sup>85</sup> See Suspension Order at 31662; FIA Principal Traders Group at 3.

<sup>86</sup> See Plan Response Letter at 16, 18; Fee Rule Response Letter at 11–12.

<sup>87</sup> See FIA Principal Traders Group at 3; SIFMA Letter at 3.

<sup>88</sup> See Suspension Order at 31661–2; SIFMA Letter at 2.

<sup>80</sup> Suspension Order at 31667.

Plan Response Letter and the Fee Rule Response Letter.<sup>89</sup> As the Participants previously noted, SEC Rule 613 specifically contemplates broker-dealers contributing to the funding of the CAT. In addition, as noted by the SEC, the CAT “substantially enhance[s] the ability of the SROs and the Commission to oversee today’s securities markets,”<sup>90</sup> thereby benefitting all market participants. Therefore, the Operating Committing continues to believe that it is equitable for both Participants and Industry Members to contribute to funding the cost of the CAT.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)(4) of the Act,<sup>91</sup> because it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using its facilities. The Exchange believes the proposed rule change is also consistent with Section 6(b)(5) of the Act,<sup>92</sup> which requires, among other things, that the Exchange’s rules 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. As discussed above, the SEC approved the bifurcated, tiered, fixed fee funding model in the CAT NMS Plan, finding it was reasonable and that it equitably allocated fees among Participants and Industry Members. The Exchange believes that the proposed tiered fees adopted pursuant to the funding model approved by the SEC in the CAT NMS Plan are reasonable, equitably allocated and not unfairly discriminatory.

The Exchange believes that this proposal is consistent with the Act because it implements, interprets or clarifies the provisions of the Plan, and is designed to assist the Exchange and its Industry Members 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.”<sup>93</sup> To the extent that this proposal implements, interprets or clarifies the Plan and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

The Exchange believes that the proposed tiered fees are reasonable. First, the total CAT Fees to be collected would be directly associated with the costs of establishing and maintaining the CAT, where such costs include Plan Processor costs and costs related to insurance, third party services and the operational reserve. The CAT Fees would not cover Participant services unrelated to the CAT. In addition, any surplus CAT Fees cannot be distributed to the individual Participants; such surpluses must be used as a reserve to offset future fees. Given the direct relationship between the fees and the CAT costs, the Exchange believes that the total level of the CAT Fees is reasonable.

In addition, the Exchange believes that the proposed CAT Fees are reasonably designed to allocate the total costs of the CAT equitably between and among the Participants and Industry Members, and are therefore not unfairly discriminatory. As discussed in detail above, the proposed tiered fees impose comparable fees on similarly situated CAT Reporters. For example, those with a larger impact on the CAT (measured via message traffic or market share) pay higher fees, whereas CAT Reporters with a smaller impact pay lower fees. Correspondingly, the tiered structure lessens the impact on smaller CAT Reporters by imposing smaller fees on those CAT Reporters with less market share or message traffic. In addition, the fee structure takes into consideration distinctions in securities trading operations of CAT Reporters, including ATSS trading OTC Equity Securities, and equity and options market makers.

Moreover, the Exchange believes that the division of the total CAT costs between Industry Members and Execution Venues, and the division of the Execution Venue portion of total costs between Equity and Options Execution Venues, is reasonably designed to allocate CAT costs among CAT Reporters. The 75%/25% division between Industry Members (other than Execution Venue ATSSs) and Execution Venues maintains the greatest level of comparability across the funding model. For example, the cost allocation establishes fees for the largest Industry

Members (*i.e.*, those Industry Members in Tier 1) that are comparable to the largest Equity Execution Venues and Options Execution Venues (*i.e.*, those Execution Venues in Tier 1). Furthermore, the allocation of total CAT cost recovery recognizes the difference in the number of CAT Reporters that are Industry Members (other than Execution Venue ATSSs) versus CAT Reporters that are Execution Venues. Similarly, the 67%/33% division between Equity Execution Venues and Options Execution Venues also helps to provide fee comparability for the largest CAT Reporters.

Finally, the Exchange 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 fixed fee. Such factors are crucial to estimating a reliable revenue stream for the Company and for permitting CAT Reporters to reasonably predict their payment obligations for budgeting purposes.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

### *B. Self-Regulatory Organization’s Statement on Burden on Competition*

Section 6(b)(8) of the Act<sup>94</sup> require that the Exchange’s rules not impose any burden on competition that is not necessary or appropriate. 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 the proposed rule change implements provisions of the CAT NMS Plan approved by the Commission, and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. Similarly, all national securities exchanges and FINRA are proposing a similar proposed fee change 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 exchanges and FINRA.

Moreover, as previously described, the Exchange believes that the proposed rule change fairly and equitably allocates costs among CAT Reporters. In particular, the proposed fee schedule is structured to impose comparable fees on similarly situated CAT Reporters, and lessen the impact on smaller CAT Reporters. CAT Reporters with similar levels of CAT activity will pay similar fees. For example, Industry Members

<sup>89</sup> See Plan Response Letter at 9; Fee Rule Response Letter at 3–4.

<sup>90</sup> Rule 613 Adopting Release at 45726.

<sup>91</sup> 15 U.S.C. 78f(b)(4).

<sup>92</sup> 15 U.S.C. 78f(b)(6).

<sup>93</sup> Approval Order at 84697.

<sup>94</sup> 15 U.S.C. 78f(b)(8).

(other than Execution Venue ATSSs) with higher levels of message traffic will pay higher fees, and those with lower levels of message traffic will pay lower fees. Similarly, Execution Venue ATSSs and other Execution Venues with larger market share will pay higher fees, and those with lower levels of market share will pay lower fees. Therefore, given that there is generally a relationship between message traffic and market share to the CAT Reporter's size, smaller CAT Reporters generally pay less than larger CAT Reporters. Accordingly, the Exchange does not believe that the CAT Fees would have a disproportionate effect on smaller or larger CAT Reporters. In addition, ATSSs and exchanges will pay the same fees based on market share. Therefore, the Exchange does not believe that the fees will impose any burden on the competition between ATSSs and exchanges. Accordingly, the Exchange believes that the proposed fees will minimize the potential for adverse effects on competition between CAT Reporters in the market.

Furthermore, the tiered, fixed fee funding model limits the disincentives to providing liquidity to the market. Therefore, the proposed fees are structured to limit burdens on competitive quoting and other liquidity provision in the market.

In addition, the Exchange believes that the proposed changes to the Original Proposal, as discussed above in detail, address certain competitive concerns raised by commenters, including concerns related to, among other things, smaller ATSSs, ATSSs trading OTC Equity Securities, market making quoting and fee comparability. As discussed above, the Exchange believes that this Amendment addresses the competitive concerns raised by commenters.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

### **III. Solicitation of Comments on Amendment No. 1**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 is consistent with the Act. In particular, the Commission seeks comment on the following:

#### Allocation of Costs

(1) Commenters' views as to whether the allocation of CAT costs is consistent with the funding principle expressed in the CAT NMS Plan that requires the Operating Committee to "avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality."<sup>95</sup>

(2) Commenters' views as to whether the allocation of 25% of CAT costs to the Execution Venues (including all the Participants) and 75% to Industry Members, will incentivize or disincentivize the Participants to effectively and efficiently manage the CAT costs incurred by the Participants since they will only bear 25% of such costs.

(3) Commenters' views on the determination to allocate 75% of all costs incurred by the Participants from November 21, 2016 to November 21, 2017 to Industry Members (other than Execution Venue ATSSs), when such costs are development and build costs and when Industry Member reporting is scheduled to commence a year later, including views on whether such "fees, costs and expenses . . . [are] fairly and reasonably shared among the Participants and Industry Members" in accordance with the CAT NMS Plan.<sup>96</sup>

(4) Commenters' views on whether an analysis of the ratio of the expected Industry Member-reported CAT messages to the expected SRO-reported CAT messages should be the basis for determining the allocation of costs between Industry Members and Execution Venues.<sup>97</sup>

(5) Any additional data analysis on the allocation of CAT costs, including any existing supporting evidence.

#### Comparability

(6) Commenters' views on the shift in the standard used to assess the comparability of CAT Fees, with the emphasis now on comparability of individual entities instead of affiliated entities, including views as to whether this shift is consistent with the funding principle expressed in the CAT NMS Plan that requires the Operating Committee to establish a fee structure in which the fees charged to "CAT Reporters with the most CAT-related activity (measured by market share and/

or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venues and/or Industry Members)."<sup>98</sup>

(7) Commenters' views as to whether the reduction in the number of tiers for Industry Members (other than Execution Venue ATSSs) from nine to seven, the revised allocation of CAT costs between Equity Execution Venues and Options Execution Venues from a 75%/25% split to a 67%/33% split, and the adjustment of all tier percentages and recovery allocations achieves comparability across individual entities, and whether these changes should have resulted in a change to the allocation of 75% of total CAT costs to Industry Members (other than Execution Venue ATSSs) and 25% of such costs to Execution Venues.

#### Discounts

(8) Commenters' views as to whether the discounts for options market-makers, equities market-makers, and Equity ATSSs trading OTC Equity Securities are clear, reasonable, and consistent with the funding principle expressed in the CAT NMS Plan that requires the Operating Committee to "avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality,"<sup>99</sup> including views as to whether the discounts for market-makers limit any potential disincentives to act as a market-maker and/or to provide liquidity due to CAT fees.

#### Calculation of Costs and Imposition of CAT Fees

(9) Commenters' views as to whether the amendment provides sufficient information regarding the amount of costs incurred from November 21, 2016 to November 21, 2017, particularly, how those costs were calculated, how those costs relate to the proposed CAT Fees, and how costs incurred after November 21, 2017 will be assessed upon Industry Members and Execution Venues;

(10) Commenters' views as to whether the timing of the imposition and collection of CAT Fees on Execution Venues and Industry Members is reasonably related to the timing of when the Company expects to incur such development and implementation costs.<sup>100</sup>

(11) Commenters' views on dividing CAT costs equally among each of the

<sup>95</sup> Section 11.2(e) of the CAT NMS Plan.

<sup>96</sup> Section 11.1(c) of the CAT NMS Plan.

<sup>97</sup> The Notice for the CAT NMS Plan did not provide a comprehensive count of audit trail message traffic from different regulatory data sources, but the Commission did estimate the ratio of all SRO audit trail messages to OATS audit trail messages to be 1.9431. See Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30613, 30721 n.919 and accompanying text (May 17, 2016).

<sup>98</sup> Section 11.2(c) of the CAT NMS Plan.

<sup>99</sup> Section 11.2(e) of the CAT NMS Plan.

<sup>100</sup> Section 11.1(c) of the CAT NMS Plan.

Participants, and then each Participant charging its own members as it deems appropriate, taking into consideration the possibility of inconsistency in charges, the potential for lack of transparency, and the impracticality of multiple SROs submitting invoices for CAT charges.

#### Burden on Competition and Barriers to Entry

(12) Commenters' views as to whether the allocation of 75% of CAT costs to Industry Members (other than Execution Venue ATSs) imposes any burdens on competition to Industry Members, including views on what baseline competitive landscape the Commission should consider when analyzing the proposed allocation of CAT costs.

(13) Commenters' views on the burdens on competition, including the relevant markets and services and the impact of such burdens on the baseline competitive landscape in those relevant markets and services.

(14) Commenters' views on any potential burdens imposed by the fees on competition between and among CAT Reporters, including views on which baseline markets and services the fees could have competitive effects on and whether the fees are designed to minimize such effects.

(15) Commenters' general views on the impact of the proposed fees on economies of scale and barriers to entry.

(16) Commenters' views on the baseline economies of scale and barriers to entry for Industry Members and Execution Venues and the relevant markets and services over which these economies of scale and barriers to entry exist.

(17) Commenters' views as to whether a tiered fee structure necessarily results in less active tiers paying more per unit than those in more active tiers, thus creating economies of scale, with supporting information if possible.

(18) Commenters' views as to how the level of the fees for the least active tiers would or would not affect barriers to entry.

(19) Commenters' views on whether the difference between the cost per unit (messages or market share) in less active tiers compared to the cost per unit in more active tiers creates regulatory economies of scale that favor larger competitors and, if so:

(a) How those economies of scale compare to operational economies of scale; and

(b) Whether those economies of scale reduce or increase the current advantages enjoyed by larger competitors or otherwise alter the competitive landscape.

(20) Commenters' views on whether the fees could affect competition between and among national securities exchanges and FINRA, in light of the fact that implementation of the fees does not require the unanimous consent of all such entities, and, specifically:

(a) Whether any of the national securities exchanges or FINRA are disadvantaged by the fees; and

(b) If so, whether any such disadvantages would be of a magnitude that would alter the competitive landscape.

(21) Commenters' views on any potential burden imposed by the fees on competitive quoting and other liquidity provision in the market, including, specifically:

(a) Commenters' views on the kinds of disincentives that discourage liquidity provision and/or disincentives that the Commission should consider in its analysis;

(b) Commenters' views as to whether the fees could disincentivize the provision of liquidity; and

(c) Commenters' views as to whether the fees limit any disincentives to provide liquidity.

(22) Commenters' views as to whether the amendment adequately responds to and/or addresses comments received on related filings.

#### Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2017-22 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-NYSE-2017-22. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2017-22, and should be submitted on or before January 5, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>101</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

[FR Doc. 2017-27020 Filed 12-14-17; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82259; File No. SR-IEX-2017-16]

### Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing of Amendment No. 2 to the Proposed Rule Change To Amend the Schedule of Fees and Assessments To Adopt a Fee Schedule To Establish Fees for Industry Members Related to the National Market System Plan Governing the Consolidated Audit Trail

December 11, 2017.

On May 9, 2017, Investors Exchange LLC ("IEX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt a fee schedule to establish the fees for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail ("CAT NMS Plan"). The proposed rule change was published in the **Federal Register** for comment on May 22, 2017.<sup>3</sup> The Commission received seven comment letters on the proposed

<sup>101</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 80692 (May 16, 2017), 82 FR 23325 (May 22, 2017) ("Original Proposal").

rule change,<sup>4</sup> and a response to comments from the CAT NMS Plan Participants.<sup>5</sup> On June 30, 2017, the Commission temporarily suspended and initiated proceedings to determine whether to approve or disapprove the proposed rule change.<sup>6</sup> The Commission thereafter received seven comment letters,<sup>7</sup> and a response to comments

<sup>4</sup> Since the CAT NMS Plan Participants' proposed rule changes to adopt fees to be charged to Industry Members to fund the consolidated audit trail are substantively identical, the Commission is considering all comments received on the proposed rule changes regardless of the comment file to which they were submitted. See text accompanying note *infra*, for a list of the CAT NMS Plan Participants. See Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Brent J. Fields, Secretary, Commission (dated June 6, 2017), available at: <https://www.sec.gov/comments/sr-batsbx-2017-38/batsbx201738-1788188-153228.pdf>; Letter from Patricia L. Cerny and Steven O'Malley, Compliance Consultants, to Brent J. Fields, Secretary, Commission (dated June 12, 2017), available at: <https://www.sec.gov/comments/sr-cboe-2017-040/cboe2017040-1799253-153675.pdf>; Letter from Daniel Zinn, General Counsel, OTC Markets Group Inc., to Eduardo A. Aleman, Assistant Secretary, Commission (dated June 13, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-1801717-153703.pdf>; Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission (dated June 22, 2017), available at: <https://www.sec.gov/comments/sr-cboe-2017-040/cboe2017040-1819670-154195.pdf>; Letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, Commission (dated June 23, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-1822454-154283.pdf>; and Letter from Suzanne H. Shatto, Investor, to Commission (dated June 27, 2017), available at: <https://www.sec.gov/comments/sr-batsedgx-2017-22/batsedgx201722-154443.pdf>. The Commission also received a comment letter which is not pertinent to these proposed rule changes. See Letter from Christina Crouch, Smart Ltd., to Brent J. Fields, Secretary, Commission (dated June 5, 2017), available at: <https://www.sec.gov/comments/sr-batsbx-2017-38/batsbx201738-1785545-153152.htm>.

<sup>5</sup> See Letter from CAT NMS Plan Participants to Brent J. Fields, Secretary, Commission (dated June 29, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-1832632-154584.pdf>.

<sup>6</sup> See Securities Exchange Act Release No. 81067 (June 30, 2017), 82 FR 31656 (July 7, 2017).

<sup>7</sup> See Letter from W. Hardy Callcott, Partner, Sidley Austin LLP, to Brent J. Fields, Secretary, Commission (dated July 27, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2148338-157737.pdf>; Letter from Kevin Coleman, General Counsel and Chief Compliance Officer, Belvedere Trading LLC, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2148360-157740.pdf>; Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2151228-157745.pdf>; Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/>

from the Participants.<sup>8</sup> On October 31, 2017, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>9</sup> On November 9, 2017, the Commission extended the time period within which to approve the proposed rule change or disapprove the proposed rule change to January 14, 2018.<sup>10</sup> On December 4, 2017, the Exchange filed Amendment No. 2 to the proposed rule change, as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments from interested persons on Amendment No. 2.

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

On May 9, 2017, Investors Exchange LLC ("IEX" or the "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") proposed rule change SR-IEX-2017-16 (the "Original Proposal"), pursuant to which IEX proposed to adopt a fee schedule to establish the fees for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail (the "CAT NMS Plan" or "Plan").<sup>11</sup> On October 31, 2017, IEX filed an amendment to the Original Proposal ("First Amendment") to amend the Original Proposal. IEX files this proposed rule change (the "Second Amendment") to amend the Original Proposal as amended by the First Amendment.

[batsbyx201711-2150977-157744.pdf](https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2150977-157744.pdf); Letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2150818-157743.pdf>; Letter from John Kinahan, Chief Executive Officer, Group One Trading, L.P., to Brent J. Fields, Secretary, Commission (dated August 10, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-2214568-160619.pdf>; Letter from Joseph Molluso, Executive Vice President and CFO, Virtu Financial, to Brent J. Fields, Commission (dated August 18, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-2238648-160830.pdf>.

<sup>8</sup> See Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Brent J. Fields, Commission, Secretary (dated November 2, 2017), available at <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2674608-161412.pdf>.

<sup>9</sup> Amendment No. 1 to the proposed rule change replaced and superseded the Original Proposal in its entirety. See Securities Exchange Act Release No. 82258 (December 11, 2017).

<sup>10</sup> See Securities Exchange Act Release No. 82049 (November 9, 2017), 82 FR 53549 (November 16, 2017).

<sup>11</sup> Unless otherwise specified, capitalized terms used in this fee filing are defined as set forth herein, the CAT Compliance Rule Series, in the CAT NMS Plan, or the Original Proposal.

The text of the proposed rule change is available at the Exchange's website at [www.iextrading.com](http://www.iextrading.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and the 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 these statement may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

##### 1. Purpose

BOX Options Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc. ("FINRA"), Investors' Exchange LLC, Miami International Securities Exchange, LLC, MIAX PEARL, LLC, NASDAQ BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc. and NYSE National, Inc.<sup>12</sup> (collectively, the "Participants") filed with the Commission, pursuant to Section 11A of the Exchange Act<sup>13</sup> and Rule 608 of Regulation NMS thereunder,<sup>14</sup> the CAT NMS Plan.<sup>15</sup> The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act. The Plan was

<sup>12</sup> Note that Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., LLC, C2 Options Exchange, Incorporated, and Chicago Board Options Exchange, Incorporated, have been renamed Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., respectively.

<sup>13</sup> 15 U.S.C. 78k-1.

<sup>14</sup> 17 CFR 242.608.

<sup>15</sup> See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. See Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.



published for comment in the **Federal Register** on May 17, 2016,<sup>16</sup> and approved by the Commission, as modified, on November 15, 2016.<sup>17</sup> The Plan is designed to create, implement and maintain a consolidated audit trail (“CAT”) that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. The Plan accomplishes this by creating CAT NMS, LLC (the “Company”), of which each Participant is a member, to operate the CAT.<sup>18</sup> Under the CAT NMS Plan, the Operating Committee of the Company (“Operating Committee”) has discretion to establish funding for the Company to operate the CAT, including establishing fees that the Participants will pay, and establishing fees for Industry Members that will be implemented by the Participants (“CAT Fees”).<sup>19</sup> The Participants are required to file with the SEC under Section 19(b) of the Exchange Act any such CAT Fees applicable to Industry Members that the Operating Committee approves.<sup>20</sup> Accordingly, IEX submitted the Original Proposal to propose the Consolidated Audit Trail Funding Fees, which would require Industry Members that are Exchange members to pay the CAT Fees determined by the Operating Committee.

The Commission published the Original Proposal for public comment in the **Federal Register** on May 16, 2017,<sup>21</sup> and received comments in response to the Original Proposal or similar fee filings by other Participants.<sup>22</sup> On June 30, 2017, the Commission suspended, and instituted proceedings to determine whether to approve or disapprove, the Original Proposal.<sup>23</sup> The Commission received seven comment letters in response to those proceedings.<sup>24</sup>

<sup>16</sup> Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

<sup>17</sup> Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (“Approval Order”).

<sup>18</sup> The Plan also serves as the limited liability company agreement for the Company.

<sup>19</sup> Section 11.1(b) of the CAT NMS Plan.

<sup>20</sup> *Id.*

<sup>21</sup> Securities Exchange Act Release No. 80692 (May 16, 2017), 82 FR 23325 (May 22, 2017) (SR–IEX–2017–16).

<sup>22</sup> For a summary of comments, see generally Securities Exchange Act Rel. No. 81067 (June 30, 2017), 82 FR 31656 (July 7, 2017) (“Suspension Order”).

<sup>23</sup> Suspension Order.

<sup>24</sup> See Letter from Stuart J. Kaswell, Executive Vice President, Managing Director and General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, SEC (July 28, 2017); Letter from Theodore R. Lazo, Managing Director and Associate

In response to the comments on the Original Proposal, the Operating Committee determined to make the following changes to the funding model: (1) Adds two additional CAT Fee tiers for Equity Execution Venues; (2) discounts the market share of Execution Venue ATSS exclusively trading OTC Equity Securities as well as the market share of the FINRA over-the-counter reporting facility (“ORF”) by the average shares per trade ratio between NMS Stocks and OTC Equity Securities (calculated as 0.17% based on available data from the second quarter of 2017) when calculating the market share of Execution Venue ATS exclusively trading OTC Equity Securities and FINRA; (3) discounts the Options Market Maker quotes by the trade to quote ratio for options (calculated as 0.01% based on available data for June 2016 through June 2017) when calculating message traffic for Options Market Makers; (4) discounts equity market maker quotes by the trade to quote ratio for equities (calculated as 5.43% based on available data for June 2016 through June 2017) when calculating message traffic for equity market makers; (5) decreases the number of tiers for Industry Members (other than the Execution Venue ATSS) from nine to seven; (6) changes the allocation of CAT costs between Equity Execution Venues and Options Execution Venues from 75%/25% to 67%/33%; (7) adjusts tier percentages and recovery allocations for Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATSS); (8) focuses the comparability of CAT Fees on the individual entity level, rather than primarily on the comparability of affiliated entities; (9) commences invoicing of CAT Reporters as promptly as possible following the latest of the operative date of the Consolidated Audit Trail Funding Fees for each of the Participants and the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants; and (10) requires the proposed fees to automatically expire two years from the operative date of the CAT NMS Plan

General Counsel, SIFMA, to Brent J. Fields, Secretary, SEC (July 28, 2017); Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, SEC (July 28, 2017); Letter from Kevin Coleman, General Counsel & Chief Compliance Officer, Belvedere Trading LLC, to Brent J. Fields, Secretary, SEC (July 28, 2017); Letter from W. Hardy Callcott, Sidley Austin LLP, to Brent J. Fields, Secretary, SEC (July 27, 2017); Letter from John Kinahan, Chief Executive Officer, Group One Trading, L.P., to Brent J. Fields, Secretary, SEC (Aug. 10, 2017); and Letter from Joseph Molluso, Executive Vice President, Virtu Financial, to Brent J. Fields, Secretary, SEC (Aug. 18, 2017).

amendment adopting CAT Fees for Participants. On October 31, 2017, IEX filed the First Amendment and proposed to amend the Original Proposal to reflect these changes.

IEX submits this Second Amendment to the revise the proposal as set forth in the First Amendment to discount the OTC Equity Securities market share of all Execution Venue ATSS trading OTC Equity Securities, rather than applying the discount solely to those Execution Venue ATSS that exclusively trade OTC Equity Securities, when calculating the market share of Execution Venue ATS trading OTC Equity Securities. As discussed in the First Amendment:

The Operating Committee determined to discount the market share of Execution Venue ATSS exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF in recognition of the different trading characteristics of the OTC Equity Securities market as compared to the market in NMS Stocks. Many OTC Equity Securities are priced at less than one dollar—and a significant number at less than one penny—per share and low-priced shares tend to trade in larger quantities. Accordingly, a disproportionately large number of shares are involved in transactions involving OTC Equity Securities versus NMS Stocks. Because the proposed fee tiers are based on market share calculated by share volume, Execution Venue ATSS exclusively trading OTC Equity Securities and FINRA would likely be subject to higher tiers than their operations may warrant.<sup>25</sup>

The Operating Committee believes that this argument applies equally to both Execution Venue ATSS exclusively trading OTC Equity Securities and to Execution Venue ATSS that trade OTC Equity Securities as well as other securities. Accordingly, IEX proposes to amend paragraph (b)(2) of the Consolidated Audit Trail Funding Fees to apply the discount to all Execution Venue ATSS trading OTC Equity Securities. Specifically, IEX proposes to change the parenthetical regarding the OTC Equity Securities discount in paragraph (b)(2) of the proposed fee schedule from “with a discount for Equity ATSS exclusively trading OTC Equity Securities based on the average shares per trade ratio between NMS Stocks and OTC Equity Securities” to “with a discount for OTC Equity Securities market share of Equity ATSS trading OTC Equity Securities based on the average shares per trade ratio between NMS Stocks and OTC Equity Securities.”

## 2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions

<sup>25</sup> See SR–IEX–2017–16, Amendment 2, Section 3(a), at page 23.



of Section 6(b)(5) of the Act,<sup>26</sup> which require, 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 dealer, and Section 6(b)(4) of the Act,<sup>27</sup> which requires that the Exchange's rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using its facilities. IEX believes that the proposed change is consistent with the Act, and that the proposed fees are reasonable, equitably allocated and not unfairly discriminatory. In particular, IEX believes that the proposed change would treat all Equity ATSS trading OTC Equity Securities in a comparable manner when calculating applicable fees. In addition, the fee structure takes into consideration distinctions in securities trading operations of CAT Reporters, including all ATSS trading OTC Equity Securities.

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

Section 6(b)(8) of the Act<sup>28</sup> require that the Exchange's rules not impose any burden on competition that is not necessary or appropriate. IEX 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. As previously described, IEX believes that the proposed rule change fairly and equitably allocates costs among CAT Reporters. In particular, the proposed fee schedule is structured to impose comparable fees on similarly situated CAT Reporters. IEX believes that the proposed change would treat all Equity ATSS trading OTC Equity Securities in a comparable manner when calculating applicable fees. In addition, the fee structure takes into consideration distinctions in securities trading operations of CAT Reporters, including all ATSS trading OTC Equity Securities. Moreover, the Operating Committee believes that the proposed changes address certain competitive concerns raised by commenters related to ATSS trading OTC Equity Securities.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

IEX set forth responses to comments received regarding the Original Proposal in the First Amendment. In addition, the proposed changes set forth in this Second Amendment further respond to comments made regarding ATSS trading OTC Equity Securities.

#### **III. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal, as amended by Amendment No. 1 and Amendment No. 2, is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-IEX-2017-16 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-IEX-2017-16. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit

personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-IEX-2017-16, and should be submitted on or before January 5, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>29</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

[FR Doc. 2017-27019 Filed 12-14-17; 8:45 am]

**BILLING CODE 8011-01-P**

---

## **SMALL BUSINESS ADMINISTRATION**

**[Disaster Declaration #15293 and #15294; U.S. VIRGIN ISLANDS Disaster Number VI-00009]**

### **Presidential Declaration Amendment of a Major Disaster for the U.S. Virgin Islands**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 4.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the U.S. Virgin Islands (FEMA-4335-DR), dated 09/07/2017.

*Incident:* Hurricane Irma.

*Incident Period:* 09/05/2017 through 09/07/2017.

**DATES:** Issued on 12/08/2017.

*Physical Loan Application Deadline Date:* 01/08/2018.

*Economic Injury (EIDL) Loan Application Deadline Date:* 06/07/2018.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for the U.S. Virgin Islands, dated 09/07/2017, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 01/08/2018.

All other information in the original declaration remains unchanged.

<sup>29</sup> 17 CFR 200.30-3(a)(12).

<sup>26</sup> 15 U.S.C. 78f(b)(5).

<sup>27</sup> 15 U.S.C. 78f(b)(4).

<sup>28</sup> 15 U.S.C. 78f(b)(8).

(Catalog of Federal Domestic Assistance Number 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2017-27035 Filed 12-14-17; 8:45 am]

**BILLING CODE 8025-01-P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #15320 and #15321; U.S. VIRGIN ISLANDS Disaster Number VI-00011]**

### Presidential Declaration Amendment of a Major Disaster for the U.S. Virgin Islands

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 4.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the U.S. VIRGIN ISLANDS (FEMA-4340-DR), dated 09/20/2017.

*Incident:* Hurricane Maria.

*Incident Period:* 09/16/2017 through 09/22/2017.

**DATES:** Issued on 12/08/2017.

*Physical Loan Application Deadline Date:* 01/08/2018.

*Economic Injury (EIDL) Loan Application Deadline Date:* 06/20/2018.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for the U.S. VIRGIN ISLANDS, dated 09/20/2017, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 01/08/2018.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

**James E. Rivera,**

*Associate Administrator, for Disaster Assistance.*

[FR Doc. 2017-27036 Filed 12-14-17; 8:45 am]

**BILLING CODE 8025-01-P**

## SOCIAL SECURITY ADMINISTRATION

**[Docket No. SSA-2017-0053]**

### Cost-of-Living Increase and Other Determinations for 2018

**AGENCY:** Social Security Administration.  
**ACTION:** Notice.

**SUMMARY:** We are republishing the Cost-of-Living Increase and Other Determinations for 2018 with revisions to the average wage index and certain related dollar amounts. Under title II of the Social Security Act (Act), there will be a 2.0 percent cost-of-living increase in Social Security benefits effective December 2017. In addition, the national average wage index for 2016 is \$48,642.15. The cost-of-living increase and national average wage index affect other program parameters as described below.

#### FOR FURTHER INFORMATION CONTACT:

Susan C. Kunkel, Office of the Chief Actuary, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-3000. Information relating to this announcement is available on our internet site at [www.socialsecurity.gov/oact/cola/index.html](http://www.socialsecurity.gov/oact/cola/index.html). For information on eligibility or claiming benefits, call 1-800-772-1213 (TTY 1-800-325-0778), or visit our internet site at [www.socialsecurity.gov](http://www.socialsecurity.gov).

**SUPPLEMENTARY INFORMATION:** Because of the 2.0 percent cost-of-living increase, the following items will increase for 2018:

- (1) The maximum Federal Supplemental Security Income (SSI) monthly payment amounts for 2018 under title XVI of the Act will be \$750 for an eligible individual, \$1,125 for an eligible individual with an eligible spouse, and \$376 for an essential person;
- (2) The special benefit amount under title VIII of the Act for certain World War II veterans will be \$562.50 for 2018;
- (3) The student earned income exclusion under title XVI of the Act will be \$1,820 per month in 2018, but not more than \$7,350 for all of 2018;
- (4) The dollar fee limit for services performed as a representative payee will be \$42 per month (\$80 per month in the case of a beneficiary who is disabled and has an alcoholism or drug addiction condition that leaves him or her incapable of managing benefits) in 2018; and
- (5) The dollar limit on the administrative-cost fee assessment charged to an appointed representative such as an attorney, agent, or other

person who represents claimants will be \$93 beginning in December 2017.

The national average wage index for 2016 is \$48,642.15. This index affects the following amounts:

- (1) The Old-Age, Survivors, and Disability Insurance (OASDI) contribution and benefit base will be \$128,400 for remuneration paid in 2018 and self-employment income earned in taxable years beginning in 2018;
  - (2) The monthly exempt amounts under the OASDI retirement earnings test for taxable years ending in calendar year 2018 will be \$1,420 for beneficiaries who will attain their Normal Retirement Age (NRA) (defined in the *Retirement Earnings Test Exempt Amounts* section below) after 2018 and \$3,780 for those who attain NRA in 2018;
  - (3) The dollar amounts (“bend points”) used in the primary insurance amount (PIA) formula for workers who become eligible for benefits, or who die before becoming eligible, in 2018 will be \$895 and \$5,397;
  - (4) The bend points used in the formula for computing maximum family benefits for workers who become eligible for benefits, or who die before becoming eligible, in 2018 will be \$1,144, \$1,651, and \$2,154;
  - (5) The taxable earnings a person must have to be credited with a quarter of coverage in 2018 will be \$1,320;
  - (6) The “old-law” contribution and benefit base under title II of the Act will be \$95,400 for 2018;
  - (7) The monthly amount deemed to constitute substantial gainful activity (SGA) for statutorily blind persons in 2018 will be \$1,970. The corresponding amount for non-blind disabled persons will be \$1,180;
  - (8) The earnings threshold establishing a month as a part of a trial work period will be \$850 for 2018; and
  - (9) Coverage thresholds for 2018 will be \$2,100 for domestic workers and \$1,800 for election officials and election workers.
- According to section 215(i)(2)(D) of the Act, we must publish the benefit increase percentage and the revised table of “special minimum” benefits within 45 days after the close of the third calendar quarter of 2017. We must also publish the following by November 1: The national average wage index for 2016 (215(a)(1)(D)), the OASDI fund ratio for 2017 (section 215(i)(2)(C)(ii)), the OASDI contribution and benefit base for 2018 (section 230(a)), the earnings required to be credited with a quarter of coverage in 2018 (section 213(d)(2)), the monthly exempt amounts under the Social Security retirement earnings test for 2018 (section 203(f)(8)(A)), the

formula for computing a PIA for workers who first become eligible for benefits or die in 2018 (section 215(a)(1)(D)), and the formula for computing the maximum benefits payable to the family of a worker who first becomes eligible for old-age benefits or dies in 2018 (section 203(a)(2)(C)).

**Cost-of-Living Increases**

*General*

The cost-of-living increase is 2.0 percent for monthly benefits under title II and for monthly payments under title XVI of the Act. Under title II, OASDI benefits will increase by 2.0 percent for individuals eligible for December 2017 benefits, payable in January 2018. We base this increase on the authority contained in section 215(i) of the Act.

Pursuant to section 1617 of the Act, Federal SSI payment levels will also increase by 2.0 percent effective for payments made for January 2018 but paid on December 29, 2017.

*Computation*

Computation of the cost-of-living increase is based on an increase in a Consumer Price Index produced by the Bureau of Labor Statistics. At the time the Act was amended to provide cost-of-living increases, only one Consumer Price Index existed, namely the Consumer Price Index for Urban Wage Earners and Clerical Workers. Although the Bureau of Labor Statistics has since developed other consumer price indices, we follow precedent by continuing to use the Consumer Price Index for Urban Wage Earners and Clerical Workers. We refer to this index in the following paragraphs as the CPI.

Section 215(i)(1)(B) of the Act defines a “computation quarter” to be a third calendar quarter in which the average CPI exceeded the average CPI in the previous computation quarter. The last cost-of-living increase, effective for those eligible to receive title II benefits for December 2016, was based on the CPI increase from the third quarter of 2014 to the third quarter of 2016.

Therefore, the last computation quarter is the third quarter of 2016. The law states that a cost-of-living increase for benefits is determined based on the percentage increase, if any, in the CPI from the last computation quarter to the third quarter of the current year. Therefore, we compute the increase in the CPI from the third quarter of 2016 to the third quarter of 2017.

Section 215(i)(1) of the Act states that the CPI for a cost-of-living computation quarter is the arithmetic mean of this index for the 3 months in that quarter. In accordance with 20 CFR 404.275, we

round the arithmetic mean, if necessary, to the nearest 0.001. The CPI for each month in the quarter ending September 30, 2016, the last computation quarter, is: For July 2016, 234.771; for August 2016, 234.904; and for September 2016, 235.495. The arithmetic mean for the calendar quarter ending September 30, 2016 is 235.057. The CPI for each month in the quarter ending September 30, 2017, is: For July 2017, 238.617; for August 2017, 239.448; and for September 2017, 240.939. The arithmetic mean for the calendar quarter ending September 30, 2017 is 239.668. The CPI for the calendar quarter ending September 30, 2017, exceeds that for the calendar quarter ending September 30, 2016 by 2.0 percent (rounded to the nearest 0.1). Therefore, beginning December 2017 a cost-of-living benefit increase of 2.0 percent is effective for benefits under title II of the Act.

Section 215(i) also specifies that a benefit increase under title II, effective for December of any year, will be limited to the increase in the national average wage index for the prior year if the OASDI fund ratio for that year is below 20.0 percent. The OASDI fund ratio for a year is the ratio of the combined assets of the OASDI Trust Funds at the beginning of that year to the combined expenditures of these funds during that year. For 2017, the OASDI fund ratio is assets of \$2,847,687 million divided by estimated expenditures of \$954,027 million, or 298.5 percent. Because the 298.5 percent OASDI fund ratio exceeds 20.0 percent, the benefit increase for December 2017 is not limited.

**Program Amounts That Change Based on the Cost-of-Living Increase**

The following program amounts change based on the cost-of-living increase: (1) Title II benefits; (2) title XVI payments; (3) title VIII benefits; (4) the student earned income exclusion; (5) the fee for services performed by a representative payee; and (6) the appointed representative fee assessment.

*Title II Benefit Amounts*

In accordance with section 215(i) of the Act, for workers and family members for whom eligibility for benefits (that is, the worker’s attainment of age 62, or disability or death before age 62) occurred before 2018, benefits will increase by 2.0 percent beginning with benefits for December 2017, which are payable in January 2018. For those first eligible after 2017, the 2.0 percent increase will not apply.

For eligibility after 1978, we determine benefits using a formula

provided by the Social Security Amendments of 1977 (Pub. L. 95–216), as described later in this notice.

For eligibility before 1979, we determine benefits by using a benefit table. The table is available on the internet at [www.socialsecurity.gov/oact/ProgData/tableForm.html](http://www.socialsecurity.gov/oact/ProgData/tableForm.html) or by writing to: Social Security Administration, Office of Public Inquiries, Windsor Park Building, 6401 Security Boulevard, Baltimore, MD 21235.

Section 215(i)(2)(D) of the Act requires that, when we determine an increase in Social Security benefits, we will publish in the **Federal Register** a revision of the range of the PIAs and maximum family benefits based on the dollar amount and other provisions described in section 215(a)(1)(C)(i). We refer to these benefits as “special minimum” benefits. These benefits are payable to certain individuals with long periods of low earnings. To qualify for these benefits, an individual must have at least 11 years of coverage. To earn a year of coverage for purposes of the special minimum benefit, a person must earn at least a certain proportion of the old-law contribution and benefit base (described later in this notice). For years before 1991, the proportion is 25 percent; for years after 1990, it is 15 percent. In accordance with section 215(a)(1)(C)(i), the table below shows the revised range of PIAs and maximum family benefit amounts after the 2.0 percent benefit increase.

**SPECIAL MINIMUM PIAs AND MAXIMUM FAMILY BENEFITS PAYABLE FOR DECEMBER 2017**

Number of years of coverage	PIA	Maximum family benefit
11 .....	\$40.80	\$62.10
12 .....	83.30	126.10
13 .....	125.90	190.10
14 .....	168.30	253.60
15 .....	210.50	317.10
16 .....	253.30	381.20
17 .....	295.80	445.40
18 .....	338.30	508.80
19 .....	380.80	572.70
20 .....	423.50	636.00
21 .....	466.00	700.40
22 .....	508.20	764.00
23 .....	551.50	828.80
24 .....	593.90	892.00
25 .....	636.00	955.30
26 .....	679.30	1,020.10
27 .....	721.30	1,083.70
28 .....	763.80	1,147.20
29 .....	806.40	1,211.50
30 .....	848.80	1,274.60

*Title XVI Payment Amounts*

In accordance with section 1617 of the Act, maximum Federal SSI

payments amounts for the aged, blind, and disabled will increase by 2.0 percent effective January 2018. For 2017, we derived the monthly payment amounts for an eligible individual, an eligible individual with an eligible spouse, and for an essential person—\$735, \$1,103, and \$368, respectively—from yearly, unrounded Federal SSI payment amounts of \$8,830.84, \$13,244.80, and \$4,425.55. For 2018, these yearly unrounded amounts respectively increase by 2.0 percent to \$9,007.46, \$13,509.70, and \$4,514.06. We must round each of these resulting amounts, when not a multiple of \$12, to the next lower multiple of \$12. Therefore, the annual amounts, effective for 2018, are \$9,000, \$13,500, and \$4,512. Dividing the yearly amounts by 12 gives the respective monthly amounts for 2018—\$750, \$1,125, and \$376. For an eligible individual with an eligible spouse, we equally divide the amount payable between the two spouses.

#### *Title VIII Benefit Amount*

Title VIII of the Act provides for special benefits to certain World War II veterans who reside outside the United States. Section 805 of the Act provides that “[t]he benefit under this title payable to a qualified individual for any month shall be in an amount equal to 75 percent of the Federal benefit rate [the maximum amount for an eligible individual] under title XVI for the month, reduced by the amount of the qualified individual’s benefit income for the month.” Therefore, the monthly benefit for 2018 under this provision is 75 percent of \$750, or \$562.50.

#### *Student Earned Income Exclusion*

A blind or disabled child who is a student regularly attending school, college, university, or a course of vocational or technical training can have limited earnings that do not count against his or her SSI payments. The maximum amount of such income that we may exclude in 2017 is \$1,790 per month, but not more than \$7,200 in all of 2017. These amounts increase based on a formula set forth in regulation 20 CFR 416.1112.

To compute each of the monthly and yearly maximum amounts for 2018, we increase the unrounded amount for 2017 by the latest cost-of-living increase. If the amount so calculated is not a multiple of \$10, we round it to the nearest multiple of \$10. The unrounded monthly amount for 2017 is \$1,786.71. We increase this amount by 2.0 percent to \$1,822.44, which we then round to \$1,820. Similarly, we increase the unrounded yearly amount for 2017,

\$7,202.19, by 2.0 percent to \$7,346.23 and round this to \$7,350. Therefore, the maximum amount of the income exclusion applicable to a student in 2018 is \$1,820 per month but not more than \$7,350 in all of 2018.

#### *Fee for Services Performed as a Representative Payee*

Sections 205(j)(4)(A)(i) and 1631(a)(2)(D)(i) of the Act permit a qualified organization to collect a monthly fee from a beneficiary for expenses incurred in providing services as the beneficiary’s representative payee. In 2017, the fee is limited to the lesser of: (1) 10 percent of the monthly benefit involved; or (2) \$41 each month (\$78 each month when the beneficiary is entitled to disability benefits and has an alcoholism or drug addiction condition that makes the individual incapable of managing such benefits). The dollar fee limits are subject to increase by the cost-of-living increase, with the resulting amounts rounded to the nearest whole dollar amount. Therefore, we increase the current amounts by 2.0 percent to \$42 and \$80 for 2018.

#### *Appointed Representative Fee Assessment*

Under sections 206(d) and 1631(d) of the Act, whenever we pay a fee to a representative such as an attorney, agent, or other person who represents claimants, we must impose on the representative an assessment to cover administrative costs. The assessment is no more than 6.3 percent of the representative’s authorized fee or, if lower, a dollar amount that is subject to increase by the cost-of-living increase. We derive the dollar limit for December 2017 by increasing the unrounded limit for December 2016, \$91.47, by 2.0 percent, which is \$93.30. We then round \$93.30 to the next lower multiple of \$1. The dollar limit effective for December 2017 is, therefore, \$93.

#### **National Average Wage Index for 2016**

##### *Computation*

We determined the national average wage index for calendar year 2016 based on the 2015 national average wage index of \$48,098.63, published in the **Federal Register** on October 27, 2016 (81 FR 74859), and the percentage increase in average wages from 2015 to 2016, as measured by annual wage data. We tabulate the annual wage data, including contributions to deferred compensation plans, as required by section 209(k) of the Act. The average amounts of wages calculated from these data were \$46,119.78 for 2015 and \$46,640.94 for

2016. To determine the national average wage index for 2016 at a level consistent with the national average wage indexing series for 1951 through 1977 (published December 29, 1978, at 43 FR 61016), we multiply the 2015 national average wage index of \$48,098.63 by the percentage increase in average wages from 2015 to 2016 (based on SSA-tabulated wage data) as follows. We round the result to the nearest cent.

##### *National Average Wage Index Amount*

Multiplying the national average wage index for 2015 (\$48,098.63) by the ratio of the average wage for 2016 (\$46,640.94) to that for 2015 (\$46,119.78) produces the 2016 index, \$48,642.15. The national average wage index for calendar year 2016 is about 1.13 percent higher than the 2015 index.

#### **Program Amounts That Change Based on the National Average Wage Index**

Under the Act, the following amounts change with annual changes in the national average wage index: (1) The OASDI contribution and benefit base; (2) the exempt amounts under the retirement earnings test; (3) the dollar amounts, or bend points, in the PIA formula; (4) the bend points in the maximum family benefit formula; (5) the earnings required to credit a worker with a quarter of coverage; (6) the old-law contribution and benefit base (as determined under section 230 of the Act as in effect before the 1977 amendments); (7) the substantial gainful activity (SGA) amount applicable to statutorily blind individuals; and (8) the coverage threshold for election officials and election workers. Additionally, under section 3121(x) of the Internal Revenue Code, the domestic employee coverage threshold is based on changes in the national average wage index.

Two amounts also increase under regulatory requirements—the SGA amount applicable to non-blind disabled persons, and the monthly earnings threshold that establishes a month as part of a trial work period for disabled beneficiaries.

#### **OASDI Contribution and Benefit Base**

##### *General*

The OASDI contribution and benefit base is \$128,400 for remuneration paid in 2018 and self-employment income earned in taxable years beginning in 2018. The OASDI contribution and benefit base serves as the maximum annual earnings on which OASDI taxes are paid. It is also the maximum annual earnings used in determining a person’s OASDI benefits.

### Computation

Section 230(b) of the Act provides the formula used to determine the OASDI contribution and benefit base. Under the formula, the base for 2018 is the larger of: (1) The 1994 base of \$60,600 multiplied by the ratio of the national average wage index for 2016 to that for 1992; or (2) the current base (\$127,200). If the resulting amount is not a multiple of \$300, we round it to the nearest multiple of \$300.

### OASDI Contribution and Benefit Base Amount

Multiplying the 1994 OASDI contribution and benefit base (\$60,600) by the ratio of the national average wage index for 2016 (\$48,642.15 as determined above) to that for 1992 (\$22,935.42) produces \$128,522.36. We round this amount to \$128,400. Because \$128,400 exceeds the current base amount of \$127,200, the OASDI contribution and benefit base is \$128,400 for 2018.

### Retirement Earnings Test Exempt Amounts

#### General

We withhold Social Security benefits when a beneficiary under the NRA has earnings over the applicable retirement earnings test exempt amount. The NRA is the age when retirement benefits (before rounding) are equal to the PIA. The NRA is age 66 for those born in 1943–54, and it gradually increases to age 67 for those born in 1960 or later. A higher exempt amount applies in the year in which a person attains NRA, but only for earnings in months before such attainment. A lower exempt amount applies at all other ages below NRA. Section 203(f)(8)(B) of the Act provides formulas for determining the monthly exempt amounts. The annual exempt amounts are exactly 12 times the monthly amounts.

For beneficiaries who attain NRA in the year, we withhold \$1 in benefits for every \$3 of earnings over the annual exempt amount for months before NRA. For all other beneficiaries under NRA, we withhold \$1 in benefits for every \$2 of earnings over the annual exempt amount.

#### Computation

Under the formula that applies to beneficiaries attaining NRA after 2018, the lower monthly exempt amount for 2018 is the larger of: (1) The 1994 monthly exempt amount multiplied by the ratio of the national average wage index for 2016 to that for 1992; or (2) the 2017 monthly exempt amount (\$1,410). If the resulting amount is not a multiple

of \$10, we round it to the nearest multiple of \$10.

Under the formula that applies to beneficiaries attaining NRA in 2018, the higher monthly exempt amount for 2018 is the larger of: (1) The 2002 monthly exempt amount multiplied by the ratio of the national average wage index for 2016 to that for 2000; or (2) the 2017 monthly exempt amount (\$3,740). If the resulting amount is not a multiple of \$10, we round it to the nearest multiple of \$10.

#### Lower Exempt Amount

Multiplying the 1994 retirement earnings test monthly exempt amount of \$670 by the ratio of the national average wage index for 2016 (\$48,642.15) to that for 1992 (\$22,935.42) produces \$1,420.96. We round this to \$1,420. Because \$1,420 exceeds the current exempt amount of \$1,410, the lower retirement earnings test monthly exempt amount is \$1,420 for 2018. The lower annual exempt amount is \$17,040 under the retirement earnings test.

#### Higher Exempt Amount

Multiplying the 2002 retirement earnings test monthly exempt amount of \$2,500 by the ratio of the national average wage index for 2016 (\$48,642.15) to that for 2000 (\$32,154.82) produces \$3,781.87. We round this to \$3,780. Because \$3,780 exceeds the current exempt amount of \$3,740, the higher retirement earnings test monthly exempt amount is \$3,780 for 2018. The higher annual exempt amount is \$45,360 under the retirement earnings test.

### Primary Insurance Amount Formula

#### General

The Social Security Amendments of 1977 provided a method for computing benefits that generally applies when a worker first becomes eligible for benefits after 1978. This method uses the worker's average indexed monthly earnings (AIME) to compute the PIA. We adjust the formula each year to reflect changes in general wage levels, as measured by the national average wage index.

We also adjust, or index, a worker's earnings to reflect the change in the general wage levels that occurred during the worker's years of employment. Such indexing ensures that a worker's future benefit level will reflect the general rise in the standard of living that will occur during his or her working lifetime. To compute the AIME, we first determine the required number of years of earnings. We then select the number of years with the highest indexed earnings,

add the indexed earnings for those years, and divide the total amount by the total number of months in those years. We then round the resulting average amount down to the next lower dollar amount. The result is the AIME.

#### Computing the PIA

The PIA is the sum of three separate percentages of portions of the AIME. In 1979 (the first year the formula was in effect), these portions were the first \$180, the amount between \$180 and \$1,085, and the amount over \$1,085. We call the dollar amounts in the formula governing the portions of the AIME the "bend points" of the formula. Therefore, the bend points for 1979 were \$180 and \$1,085.

To obtain the bend points for 2018, we multiply each of the 1979 bend-point amounts by the ratio of the national average wage index for 2016 to that average for 1977. We then round these results to the nearest dollar. Multiplying the 1979 amounts of \$180 and \$1,085 by the ratio of the national average wage index for 2016 (\$48,642.15) to that for 1977 (\$9,779.44) produces the amounts of \$895.31 and \$5,396.70. We round these to \$895 and \$5,397. Therefore, the portions of the AIME to be used in 2018 are the first \$895, the amount between \$895 and \$5,397, and the amount over \$5,397.

Therefore, for individuals who first become eligible for old-age insurance benefits or disability insurance benefits in 2018, or who die in 2018 before becoming eligible for benefits, their PIA will be the sum of:

- (a) 90 percent of the first \$895 of their AIME, plus
- (b) 32 percent of their AIME over \$895 and through \$5,397, plus
- (c) 15 percent of their AIME over \$5,397.

We round this amount to the next lower multiple of \$0.10 if it is not already a multiple of \$0.10. This formula and the rounding adjustment are stated in section 215(a) of the Act.

### Maximum Benefits Payable to a Family

#### General

The 1977 amendments continued the policy of limiting the total monthly benefits that a worker's family may receive based on the worker's PIA. Those amendments also continued the relationship between maximum family benefits and PIAs but changed the method of computing the maximum benefits that may be paid to a worker's family. The Social Security Disability Amendments of 1980 (Pub. L. 96–265) established a formula for computing the maximum benefits payable to the family

of a disabled worker. This formula applies to the family benefits of workers who first become entitled to disability insurance benefits after June 30, 1980, and who first become eligible for these benefits after 1978. For disabled workers initially entitled to disability benefits before July 1980 or whose disability began before 1979, we compute the family maximum payable the same as the old-age and survivor family maximum.

#### *Computing the Old-Age and Survivor Family Maximum*

The formula used to compute the family maximum is similar to that used to compute the PIA. It involves computing the sum of four separate percentages of portions of the worker's PIA. In 1979, these portions were the first \$230, the amount between \$230 and \$332, the amount between \$332 and \$433, and the amount over \$433. We refer to such dollar amounts in the formula as the "bend points" of the family-maximum formula.

To obtain the bend points for 2018, we multiply each of the 1979 bend-point amounts by the ratio of the national average wage index for 2016 to that average for 1977. Then we round this amount to the nearest dollar. Multiplying the amounts of \$230, \$332, and \$433 by the ratio of the national average wage index for 2016 (\$48,642.15) to that for 1977 (\$9,779.44) produces the amounts of \$1,144.00, \$1,651.34, and \$2,153.71. We round these amounts to \$1,144, \$1,651, and \$2,154. Therefore, the portions of the PIAs to be used in 2018 are the first \$1,144, the amount between \$1,144 and \$1,651, the amount between \$1,651 and \$2,154, and the amount over \$2,154.

Thus, for the family of a worker who becomes age 62 or dies in 2018 before age 62, we will compute the total benefits payable to them so that it does not exceed:

- (a) 150 percent of the first \$1,144 of the worker's PIA, plus
- (b) 272 percent of the worker's PIA over \$1,144 through \$1,651, plus
- (c) 134 percent of the worker's PIA over \$1,651 through \$2,154, plus
- (d) 175 percent of the worker's PIA over \$2,154.

We then round this amount to the next lower multiple of \$0.10 if it is not already a multiple of \$0.10. This formula and the rounding adjustment are stated in section 203(a) of the Act.

#### **Quarter of Coverage Amount**

##### *General*

The earnings required for a quarter of coverage in 2018 is \$1,320. A quarter of

coverage is the basic unit for determining if a worker is insured under the Social Security program. For years before 1978, we generally credited an individual with a quarter of coverage for each quarter in which wages of \$50 or more were paid, or with 4 quarters of coverage for every taxable year in which \$400 or more of self-employment income was earned. Beginning in 1978, employers generally report wages yearly instead of quarterly. With the change to yearly reporting, section 352(b) of the Social Security Amendments of 1977 amended section 213(d) of the Act to provide that a quarter of coverage would be credited for each \$250 of an individual's total wages and self-employment income for calendar year 1978, up to a maximum of 4 quarters of coverage for the year. The amendment also provided a formula for years after 1978.

##### *Computation*

Under the prescribed formula, the quarter of coverage amount for 2018 is the larger of: (1) The 1978 amount of \$250 multiplied by the ratio of the national average wage index for 2016 to that for 1976; or (2) the current amount of \$1,300. Section 213(d) provides that if the resulting amount is not a multiple of \$10, we round it to the nearest multiple of \$10.

##### *Quarter of Coverage Amount*

Multiplying the 1978 quarter of coverage amount (\$250) by the ratio of the national average wage index for 2016 (\$48,642.15) to that for 1976 (\$9,226.48) produces \$1,318.00. We then round this amount to \$1,320. Because \$1,320 exceeds the current amount of \$1,300, the quarter of coverage amount is \$1,320 for 2018.

#### **Old-Law Contribution and Benefit Base**

##### *General*

The old-law contribution and benefit base for 2018 is \$95,400. This base would have been effective under the Act without the enactment of the 1977 amendments.

The old-law contribution and benefit base is used by:

- (a) the Railroad Retirement program to determine certain tax liabilities and tier II benefits payable under that program to supplement the tier I payments that correspond to basic Social Security benefits,
- (b) the Pension Benefit Guaranty Corporation to determine the maximum amount of pension guaranteed under the Employee Retirement Income Security Act (section 230(d) of the Act),
- (c) Social Security to determine a year of coverage in computing the special

minimum benefit, as described earlier, and

(d) Social Security to determine a year of coverage (acquired whenever earnings equal or exceed 25 percent of the old-law base for this purpose only) in computing benefits for persons who are also eligible to receive pensions based on employment not covered under section 210 of the Act.

##### *Computation*

The old-law contribution and benefit base is the larger of: (1) The 1994 old-law base (\$45,000) multiplied by the ratio of the national average wage index for 2016 to that for 1992; or (2) the current old-law base (\$94,500). If the resulting amount is not a multiple of \$300, we round it to the nearest multiple of \$300.

##### *Old-Law Contribution and Benefit Base Amount*

Multiplying the 1994 old-law contribution and benefit base (\$45,000) by the ratio of the national average wage index for 2016 (\$48,642.15) to that for 1992 (\$22,935.42) produces \$95,437.40. We round this amount to \$95,400. Because \$95,400 exceeds the current amount of \$94,500, the old-law contribution and benefit base is \$95,400 for 2018.

#### **Substantial Gainful Activity Amounts**

##### *General*

A finding of disability under titles II and XVI of the Act requires that a person, except for a title XVI disabled child, be unable to engage in SGA. A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The monthly earnings considered as SGA depends on the nature of a person's disability. Section 223(d)(4)(A) of the Act specifies the SGA amount for statutorily blind individuals under title II while our regulations (20 CFR 404.1574 and 416.974) specify the SGA amount for non-blind individuals.

##### *Computation*

The monthly SGA amount for statutorily blind individuals under title II for 2018 is the larger of: (1) The amount for 1994 multiplied by the ratio of the national average wage index for 2016 to that for 1992; or (2) the amount for 2017. The monthly SGA amount for non-blind disabled individuals for 2018 is the larger of: (1) the amount for 2000 multiplied by the ratio of the national average wage index for 2016 to that for 1998; or (2) the amount for 2017. In either case, if the resulting amount is not a multiple of \$10, we round it to the nearest multiple of \$10.

*SGA Amount for Statutorily Blind Individuals*

Multiplying the 1994 monthly SGA amount for statutorily blind individuals (\$930) by the ratio of the national average wage index for 2016 (\$48,642.15) to that for 1992 (\$22,935.42) produces \$1,972.37. We then round this amount to \$1,970. Because \$1,970 exceeds the current amount of \$1,950, the monthly SGA amount for statutorily blind individuals is \$1,970 for 2018.

*SGA Amount for Non-Blind Disabled Individuals*

Multiplying the 2000 monthly SGA amount for non-blind individuals (\$700) by the ratio of the national average wage index for 2016 (\$48,642.15) to that for 1998 (\$28,861.44) produces \$1,179.76. We then round this amount to \$1,180. Because \$1,180 exceeds the current amount of \$1,170, the monthly SGA amount for non-blind disabled individuals is \$1,180 for 2018.

**Trial Work Period Earnings Threshold***General*

During a trial work period of 9 months in a rolling 60-month period, a beneficiary receiving Social Security disability benefits may test his or her ability to work and still receive monthly benefit payments. To be considered a trial work period month, earnings must be over a certain level. In 2018, any month in which earnings exceed \$850 is considered a month of services for an individual's trial work period.

*Computation*

The method used to determine the new amount is set forth in our regulations at 20 CFR 404.1592(b). Monthly earnings in 2018, used to determine whether a month is part of a trial work period, is the larger of: (1) The amount for 2001 (\$530) multiplied by the ratio of the national average wage index for 2016 to that for 1999; or (2) the amount for 2017. If the amount so calculated is not a multiple of \$10, we round it to the nearest multiple of \$10.

*Trial Work Period Earnings Threshold Amount*

Multiplying the 2001 monthly earnings threshold (\$530) by the ratio of the national average wage index for 2016 (\$48,642.15) to that for 1999 (\$30,469.84) produces \$846.09. We then round this amount to \$850. Because \$850 exceeds the current amount of \$840, the monthly earnings threshold is \$850 for 2018.

**Domestic Employee Coverage Threshold***General*

The minimum amount a domestic worker must earn so that such earnings are covered under Social Security or Medicare is the domestic employee coverage threshold. For 2018, this threshold is \$2,100. Section 3121(x) of the Internal Revenue Code provides the formula for increasing the threshold.

*Computation*

Under the formula, the domestic employee coverage threshold for 2018 is equal to the 1995 amount of \$1,000 multiplied by the ratio of the national average wage index for 2016 to that for 1993. If the resulting amount is not a multiple of \$100, we round it to the next lower multiple of \$100.

*Domestic Employee Coverage Threshold Amount*

Multiplying the 1995 domestic employee coverage threshold (\$1,000) by the ratio of the national average wage index for 2016 (\$48,642.15) to that for 1993 (\$23,132.67) produces \$2,102.75. We then round this amount to \$2,100. Therefore, the domestic employee coverage threshold amount is \$2,100 for 2018.

**Election Official and Election Worker Coverage Threshold***General*

The minimum amount an election official and election worker must earn so the earnings are covered under Social Security or Medicare is the election official and election worker coverage threshold. For 2018, this threshold is \$1,800. Section 218(c)(8)(B) of the Act provides the formula for increasing the threshold.

*Computation*

Under the formula, the election official and election worker coverage threshold for 2018 is equal to the 1999 amount of \$1,000 multiplied by the ratio of the national average wage index for 2016 to that for 1997. If the amount we determine is not a multiple of \$100, it we round it to the nearest multiple of \$100.

*Election Official and Election Worker Coverage Threshold Amount*

Multiplying the 1999 coverage threshold amount (\$1,000) by the ratio of the national average wage index for 2016 (\$48,642.15) to that for 1997 (\$27,426.00) produces \$1,773.58. We then round this amount to \$1,800. Therefore, the election official and

election worker coverage threshold amount is \$1,800 for 2018.

(Catalog of Federal Domestic Assistance: Program Nos. 96.001 Social Security-Disability Insurance; 96.002 Social Security-Retirement Insurance; 96.004 Social Security-Survivors Insurance; 96.006 Supplemental Security Income)

**Nancy A. Berryhill,**

*Acting Commissioner of Social Security.*

[FR Doc. 2017-27105 Filed 12-14-17; 8:45 am]

**BILLING CODE 4191-02-P**

**DEPARTMENT OF STATE**

[Public Notice: 10216]

**Advisory Committee on International Postal and Delivery Services**

**AGENCY:** Department of State.

**ACTION:** Notice of charter renewal of the Advisory Committee on International Postal and Delivery Services (IPoDS).

This notice announces the renewal of the charter or the Advisory Committee on International Postal and Delivery Services (IPoDS). In accordance with the provisions of the 2006 Postal Accountability and Enhancement Act (Pub. L. 109-435) and the Federal Advisory Committee Act (Pub. L. 92-463), the Committee's charter has been extended until November 14, 2019.

The Department of State uses the IPoDS Committee to keep informed of the interests and problems of users and providers of international postal and delivery services. In addition to representative members from affected stakeholder groups, the Committee also includes Federal members from the Department of Commerce, the Department of Homeland Security, the Office of the United States Trade Representative, the Postal Regulatory Commission, the Military Postal Service Agency, and the United States Postal Service. Members are appointed by the Assistant Secretary of State for International Organization Affairs.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sherece Robinson of the Office of Specialized and Technical Agencies (IO/STA), Bureau of International Organization Affairs, U.S. Department of State, at tel. (202) 663-2649, by email at [RobinsonSA2@state.gov](mailto:RobinsonSA2@state.gov) or by mail at IO/STA, L409 (SA1); Department of



State; 2401 E Street NW; Washington, DC 20037.

**Joseph P. Murphy,**

*Designated Federal Officer, Advisory Committee on International Postal and Delivery Services, Department of State.*

[FR Doc. 2017-27029 Filed 12-14-17; 8:45 am]

**BILLING CODE 4710-19-P**

**DEPARTMENT OF STATE**

[Public Notice: 10217]

**60-Day Notice of Proposed Information Collection: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery**

**ACTION:** Notice of request for public comment.

**SUMMARY:** The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

**DATES:** The Department will accept comments from the public up to February 13, 2018.

**ADDRESSES:** You may submit comments by any of the following methods:

- *Web:* Persons with access to the internet may comment on this notice by going to [www.Regulations.gov](http://www.Regulations.gov). You can search for the document by entering "Docket Number: DOS-2017-0044" in the Search field. Then click the "Comment Now" button and complete the comment form.

- *Email:* [watkinspk@state.gov](mailto:watkinspk@state.gov).

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

**FOR FURTHER INFORMATION CONTACT:**

Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Pamela Watkins, Department of State, Office of Directives Management, 1800 G Street NW, Suite 2400, Washington, DC 20522-2202 who may be reached at [watkinspk@state.gov](mailto:watkinspk@state.gov).

**SUPPLEMENTARY INFORMATION:**

- *Title of Information Collection:* Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

- *OMB Control Number:* 1405-0193.

- *Type of Request:* Extension of a Currently Approved Collection.

- *Originating Office:* Office of Directives Management, A/GIS/DIR.

- *Form Number:* Various public surveys.

- *Respondents:* Individuals responding to Department of State customer service evaluation requests.

- *Estimated Number of Respondents:* 1,000,000.

- *Estimated Number of Responses:* 1,000,000.

- *Average Time Per Response:* 3.5 minutes.

- *Total Estimated Burden Time:* 58,333 annual hours.

- *Frequency:* Once per request.

- *Obligation to Respond:* Voluntary. We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.

- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.

- Enhance the quality, utility, and clarity of the information to be collected.

- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

**Abstract of Proposed Collection**

The "30-Day Notice of Proposed Information Collection: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery" was published on June 22, 2017 (82 FR 28543), and renewed with a new expiration date of 7-31-2020. The publication of this **Federal Register** notice increases the number of respondents from 325,000 to 1,000,000 to continue to allow the Department to collect qualitative customer feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery.

**Methodology**

Respondents will fill out a brief customer survey after completing their interaction with a Department Program Office or Embassy. Surveys are designed

to gather feedback on the customer's experiences.

**Janet Freer,**

*Director, Office of Directives Management, Department of State.*

[FR Doc. 2017-27044 Filed 12-14-17; 8:45 am]

**BILLING CODE 4710-24-P**

**DEPARTMENT OF STATE**

[Public Notice: 10230]

**Notice of Determinations; Culturally Significant Objects Imported for Exhibition Determinations: "Ten Americans: After Paul Klee" Exhibition**

**SUMMARY:** Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition "Ten Americans: After Paul Klee," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Phillips Collection, Washington, District of Columbia, from on or about February 3, 2018, until on or about May 6, 2018, and at possible additional exhibitions or venues yet to be determined, is in the national interest.

**FOR FURTHER INFORMATION CONTACT:**

Elliot Chiu in the Office of the Legal Adviser, U.S. Department of State (telephone: 202-632-6471; email: [section2459@state.gov](mailto:section2459@state.gov)). The mailing address is U.S. Department of State, L/PD, SA-5, Suite 5H03, Washington, DC 20522-0505.

**SUPPLEMENTARY INFORMATION:** The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236-3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257-1 of December 11, 2015). I have ordered that Public Notice of these determinations be published in the **Federal Register**.

**Alyson Grunder,**

*Deputy Assistant Secretary for Policy, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2017-27041 Filed 12-14-17; 8:45 am]

**BILLING CODE 4710-05-P**



**SURFACE TRANSPORTATION BOARD**

[Docket Nos. AB 1106X; AB 6 (Sub-No. 488X)]

**ABE Fairmont, LLC—Abandonment Exemption—in Fillmore County, Neb.; BNSF Railway Company—Discontinuance of Service Exemption—in Fillmore County, Neb.**

On July 7, 2014, ABE Fairmont, LLC (ABE), and BNSF Railway Company (BNSF) (collectively, Petitioners) jointly filed a petition requesting exemptions under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903. ABE requests an exemption to permit it to abandon approximately 2.77 miles of rail line between milepost 0.93 near the east-west mainline of BNSF Railway Company (BNSF) at Fairmont, Neb., and milepost 3.70 at the north property line of Fillmore County Road H near Fairmont, Neb. (the Line). The Line extends southward from a connection with BNSF's east-west main line (at BNSF milepost 114.73) at Fairmont, Fillmore County, Neb. BNSF requests an exemption to permit it to discontinue its trackage rights operations over approximately 0.77 miles of the Line between milepost 0.93 and milepost 1.70, near Fairmont. The Line traverses United States Postal Zip Code 68354.

On July 24, 2014, these proceedings were held in abeyance at Petitioners' request pending discussions between Petitioners and The Andersons, Inc. d/b/a O'Malley Grain Company (The Andersons), a shipper that receives service over the Line via a private spur line that it owns and that connects to the Line.

On June 16, 2017, Petitioners informed the Board that the matters that prompted the abeyance request had been resolved and requested that the proceedings be reinstated on the Board's active docket. On August 17, 2017, the Board removed the proceeding from abeyance and requested additional information. On September 26, 2017, Petitioners filed a supplement to their July 2014 petition. Petitioners propose that ABE abandon (and BNSF discontinue service over part of) the Line but that BNSF continue to provide contract carriage over it outside the Board's jurisdiction. Petitioners assert that the two shippers on the Line, Flint Hill Resources Fairmont, LLC (FHR-Fairmont), and The Andersons, would continue to be served by BNSF pursuant to contract and that one of those shippers, FHR-Fairmont, intends to purchase the Line following abandonment.

Petitioners state that based on the information in their possession, the Line does not contain any federally granted rights-of-way. They state that any documentation in their possession will be made available promptly to those requesting it.

As a condition to this exemption, any employee adversely affected by the abandonment and discontinuance of service shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by February 2, 2018.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a \$1,800 filing fee. See 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment, the Line may be suitable for other public use, including interim trail use.<sup>1</sup> Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than January 4, 2018. Each trail request must be accompanied by a \$300 filing fee. See 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to Docket No. AB 1106X and Docket No. AB 6 (Sub-No. 488X) and must be sent to: (1) Surface Transportation Board, 395 E Street SW, Washington, DC 20423-0001; (2) Karl Morell, 655 Fifteenth Street NW, Suite 225, Washington, DC 20005; and (3) Thomas McFarland, 208 South LaSalle Street, Suite 1890, Chicago, IL 60604. Replies to this petition are due on or before January 4, 2018.

Persons seeking further information concerning abandonment and discontinuance procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245-0238 or refer to the full abandonment and discontinuance regulations at 49 CFR part 1152. Assistance for the hearing impaired is available through the Federal Information Relay Service at 1-800-877-8339.

An environmental assessment (EA) prepared by OEA was served upon all

<sup>1</sup> As noted above, however, following abandonment of the Line as common carrier track, Petitioners propose that BNSF service will continue over the Line under contract.

parties of record, among others, on November 24, 2017. Other interested persons may contact OEA to obtain a copy of the EA, and it is available on the Board's website at [www.stb.gov](http://www.stb.gov). The deadline for submission of comments on the EA is December 22, 2017.

Board decisions and notices are available on our website at [WWW.STB.GOV](http://WWW.STB.GOV).

Decided: December 12, 2017.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. 2017-27089 Filed 12-14-17; 8:45 am]

**BILLING CODE 4915-01-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration**

**Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew a generic information collection. As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, FAA has an approved Generic Information Collection Request (Generic ICR): "Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery".

**DATES:** Written comments should be submitted by February 13, 2018.

**ADDRESSES:** Send comments to the FAA at the following address: Barbara Hall, Federal Aviation Administration, ASP-110, 10101 Hillwood Parkway, Fort Worth, TX 76177.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including: (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be

minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

**FOR FURTHER INFORMATION CONTACT:**

Barbara Hall at (940) 594-5913, or by email at: [Barbara.L.Hall@faa.gov](mailto:Barbara.L.Hall@faa.gov).

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 2120-0746.

*Title:* Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

*Form Numbers:* There are no FAA forms associated with this generic information collection.

*Type of Review:* Renewal of a generic information collection.

*Background:* The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior

fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

*Respondents:* Approximately 11,000 Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

*Frequency:* Once per request.

*Estimated Average Burden per*

*Response:* 10 minutes.

*Estimated Total Annual Burden:* 1833 hours.

Issued in Fort Worth, TX, on December 8, 2017.

**Barbara L. Hall,**

*FAA Information Collection Clearance Officer, Performance, Policy, and Records Management Branch, ASP-110.*

[FR Doc. 2017-26976 Filed 12-14-17; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Thirteenth RTCA SC-230 Airborne Weather Detection Systems Plenary

**AGENCY:** Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

**ACTION:** Thirteenth RTCA SC-230 Airborne Weather Detection Systems Plenary.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of Thirteenth RTCA SC-230 Airborne Weather Detection Systems Plenary.

**DATES:** The meeting will be held January 10-11, 2018 11:00 a.m.-2:00 p.m.

**ADDRESSES:** The meeting will be held at: Virtual: <https://rtca.webex.com/rtca/j.php?MTID=m06b838012ad10a9ef5a8c305a58ce21f>, Join by phone: U.S./Canada Toll Free: 1-855-358-5393, Meeting ID: 635 383 355, Password: BavWpZr3.

**FOR FURTHER INFORMATION CONTACT:**

Karan Hofmann at [khofmann@rtca.org](mailto:khofmann@rtca.org) or 202-330-0680, or The RTCA Secretariat, 1150 18th Street NW, Suite 910, Washington, DC, 20036, or by telephone at (202) 833-9339, fax at (202) 833-9434, or website at <http://www.rtca.org>.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., App.), notice is hereby given for a meeting of the Thirteenth RTCA SC-230 Airborne Weather Detection Systems Plenary. The agenda will include the following:

**Wednesday, January 10, 2018—11:00 a.m.—2:00 p.m.**

1. Welcome and Administrative Remarks
2. Introductions
3. Agenda Review
4. Meeting Minutes Review and Approval of last Plenary
5. Review of proposed Change 1 for DO-220A and DO-213A
6. Discussion on PWS, ADWRS, and Turbulence files availability

**Thursday, January 11, 2018—11:00 a.m.—2:00 p.m.**

1. Review of proposed Change 1 for DO-220A and DO-213A
2. Decision to approve release of DO-220A and DO-213A FOR FINAL REVIEW AND COMMENT
3. Action Item Review
4. Any other Business
5. Date and Place of Next Meeting
6. Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 12, 2017.

**Mohannad Dawoud,**

*Management & Program Analyst, Partnership Contracts Branch, ANG-A17, NextGen, Procurement Services Division, Federal Aviation Administration.*

[FR Doc. 2017-27042 Filed 12-14-17; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### Notice of Final Federal Agency Actions on Proposed Highway in Idaho

**AGENCY:** Federal Highway Administration (FHWA), Department of Transportation (DOT).

**ACTION:** Notice of limitation on claims for judicial review of actions by FHWA.

**SUMMARY:** This notice announces actions taken by the FHWA. The actions relate to a proposed highway project, US 20/26 Corridor Study, Junction I-84 to Eagle Road in Ada and Canyon Counties in the State of Idaho, FHWA Project Number STP-3230(106), Idaho Transportation Department (ITD) Key Number 07826.

**DATES:** By this notice, the FHWA is advising the public of final agency

actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or prior to May 11, 2018. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

**FOR FURTHER INFORMATION CONTACT:** For FHWA: Mr. Peter Hartman, Division Administrator, Federal Highway Administration, 3050 Lake Harbor Lane Suite 126, Boise, Idaho 83703; telephone: (208) 334-9180; email: [Idaho.FHWA@dot.gov](mailto:Idaho.FHWA@dot.gov). The FHWA Idaho Division Office's normal business hours are 7:00 a.m. to 4:30 p.m. (Mountain Standard Time), Monday through Friday, except Federal Holidays. For ITD: Ms. Sue Sullivan, Environmental Section Manager, Idaho Transportation Department, 3311 W State St., P.O. Box 7129, Boise, ID 83707-1129 (208) 334-8203. Normal business hours are 8:00 a.m. to 5:00 p.m. (Mountain Standard Time), Monday through Friday, except Federal Holidays.

**SUPPLEMENTARY INFORMATION:** Effective October 30, 2017, the Federal Highway Administration (FHWA) assumed environmental responsibilities for this project pursuant to 23 U.S.C 327. Notice is hereby given that the FHWA has taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing approvals for the following highway project in the State of Idaho: US 20/26 Corridor Study, Junction I-84 to Eagle Road in Ada and Canyon Counties. The project will widen and improve approximately 15 miles of US 20/26 between Junction I-84 and Eagle Road to accommodate the forecasted increase in traffic through 2040. The project spans multiple local jurisdictions, including City of Boise, City of Eagle, City of Meridian, City of Nampa, Ada County, and Canyon County. The project would widen the highway from a two lane, mostly rural road; to an urban six travel lane divided median arterial with a minimum median width of four feet, including 23 signalized intersections. Additional ROW would be acquired so the road and intersections could be widened varying in width from 140 feet to 200 feet.

Improvements would also extend onto cross streets; for example, cross streets will be widened, right turn lanes may be added and sidewalks may wrap around and extend for a short distance onto the cross streets. Continuous Flow Intersections (CFI) will be included with the Proposed Action at the intersections of Middleton Road, Star Road, Linder Road, Meridian Road, Locust Grove Road, and Eagle Road. The project includes adding facilities for pedestrians and bicyclists (sidewalks and bike lanes, or a multi-use path), adding standard width roadway shoulders, signage, traffic signals, new access control measures, and improvements to intersections. The project will also relocate some utilities and make changes to irrigation canals. Facilities will be constructed to control and treat storm water runoff, which would include a combination of curbs, gutters, catch basins, underground seepage beds, roadside ditches, and/or surface ponds constructed within the proposed ROW.

The actions by the FHWA, and the laws under which such actions were taken, are described in the Environmental Assessment (EA) for the project approved on February 6, 2017 and a Finding of No Significant Impact (FONSI) issued on October 30, 2017. The EA, FONSI and other project records are available by contacting the FHWA or the Idaho Transportation Department at the addresses provided above. The EA and FONSI can be viewed and downloaded from the project website at <http://apps.itd.idaho.gov/apps/us2026CorridorStudy/default.html>.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321-4370h]; Federal-Aid Highway Act [Title 23] and associated regulations [CFR part 23].
2. Hazardous Materials: Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601-9675]; Superfund Amendments and Reauthorization Act of 1986 [Pub. L. 99-499]; Resource Conservation and Recovery Act [42 U.S.C. 6901-6992(k)].
3. Air: Clean Air Act, [42 U.S.C. 7401-7671(q)](transportation conformity);

Intermodal Surface Transportation Efficiency Act of 1991, Congestion Mitigation and Air Quality Improvement Program (Sec 1008 U.S.C. 149).

4. Noise: 23 U.S.C. 109(i) (Pub. L. 91-605) (Pub. L. 93-87).

5. Wildlife: Endangered Species Act [16 U.S.C. 1531-1544]; Fish and Wildlife Coordination Act [16 U.S.C. 661-667(e)]; Migratory Bird Treaty Act [16 U.S.C. 703-712]. Plant Protection Act [7 U.S.C. 7701 *et seq.*].

6. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, [54 U.S.C. 306108]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)-470(mm)]; Archeological and Historic Preservation Act [16 U.S.C. 469-469 c-2]; Native American Grave Protection and Repatriation Act [25 U.S.C. 3001-3013].

7. Land: Section 4(f) of The Department of Transportation Act: [49 U.S.C. 303] Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201-4209]. Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 [42 U.S.C. 6901, *et seq.*].

8. Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 2000(d)-2000(d)(1)]; Uniform Relocation Assistance and Real Property Acquisition Act [42 U.S.C. 61].

9. Wetlands and Water Resources: Clean Water Act [33 U.S.C. 1251-1387 (Sections 319, 401, and 404)]; Flood Disaster Protection Act [42 U.S.C. 4012a 4106]; Transportation Equity Act for the 21st Century (TEA-21) [23 U.S.C. 103(b)(6)(m), 133(b)(11)] (wetlands mitigation banking).

10. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 11988 Floodplain Management; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

**Authority:** 23 U.S.C. 139(l)(1).

Issued on: December 7, 2017.

**Peter J. Hartman,**  
FHWA Idaho Division Administrator, Boise, Idaho.

[FR Doc. 2017-26946 Filed 12-14-17; 8:45 am]

**BILLING CODE 4910-RY-P**

# Reader Aids

Federal Register

Vol. 82, No. 240

Friday, December 15, 2017

## CUSTOMER SERVICE AND INFORMATION

### Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids **202-741-6000**

**Laws 741-6000**

### Presidential Documents

Executive orders and proclamations **741-6000**

**The United States Government Manual 741-6000**

### Other Services

Electronic and on-line services (voice) **741-6020**

Privacy Act Compilation **741-6050**

Public Laws Update Service (numbers, dates, etc.) **741-6043**

## ELECTRONIC RESEARCH

### World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: [www.fdsys.gov](http://www.fdsys.gov).

Federal Register information and research tools, including Public Inspection List, indexes, and Code of Federal Regulations are located at: [www.ofr.gov](http://www.ofr.gov).

### E-mail

**FEDREGTOC** (Daily Federal Register Table of Contents Electronic Mailing List) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to <https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new>, enter your email address, then follow the instructions to join, leave, or manage your subscription.

**PENS** (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to <http://listserv.gsa.gov/archives/publaws-l.html> and select *Join or leave the list (or change settings)*; then follow the instructions.

**FEDREGTOC** and **PENS** are mailing lists only. We cannot respond to specific inquiries.

**Reference questions.** Send questions and comments about the Federal Register system to: [fedreg.info@nara.gov](mailto:fedreg.info@nara.gov)

The Federal Register staff cannot interpret specific documents or regulations.

**CFR Checklist.** Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at <http://bookstore.gpo.gov/>.

## FEDERAL REGISTER PAGES AND DATE, DECEMBER

56859-57104.....	1
57105-57330.....	4
57331-57536.....	5
57537-57656.....	6
57657-57818.....	7
57819-58096.....	8
58097-58332.....	11
58333-58532.....	12
58533-58706.....	13
58707-59502.....	14
59503-59946.....	15

## CFR PARTS AFFECTED DURING DECEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

### 3 CFR

<b>Proclamations:</b>	
6920 (Amended by Proc. 9682) .....	58089
9558 (Amended by Proc. 9681) .....	58081
9679.....	57533
9680.....	57535
9681.....	58081
9682.....	58089
9683.....	58331
9684.....	58531
9685.....	58699
<b>Executive Orders:</b>	
11580 (Revoked by EO 13816).....	58701
13816.....	58701

<b>Administrative Orders:</b>	
<b>Memorandums:</b>	
Memorandum of December 8, 2017 .....	58705
<b>Presidential Determinations:</b>	
No. 2018-1 of November 15, 2017 .....	59503
<b>Space Policy Directive 1 of December 11, 2017 .....</b>	<b>59501</b>

### 7 CFR

3.....	57331
12.....	58333
402.....	58707
407.....	58707
457.....	58707
900.....	58097
1200.....	58097

<b>Proposed Rules:</b>	
906.....	57164
966.....	58133
985.....	56922
986.....	57106
1006.....	58135

### 8 CFR

1240.....	57336
-----------	-------

### 10 CFR

72.....	57819
710.....	57105

### 12 CFR

607.....	58533
----------	-------

<b>Proposed Rules:</b>	
Ch. II.....	58764, 59547
201.....	57886
252.....	59528, 59533

### 13 CFR

300.....	57034
301.....	57034

302.....	57034
303.....	57034
304.....	57034
305.....	57034
307.....	57034
309.....	57034
314.....	57034

### 14 CFR

39.....	56859, 56865, 57340, 57343, 57537, 57539, 58098, 58102, 58107, 58110, 58533, 58707, 58709, 58713, 58715, 58718
71.....	57541, 58334
91.....	58546, 58722
97.....	57115, 57117

### Proposed Rules:

27.....	57685
29.....	57687
39.....	57172, 57383, 57390, 57552, 58137, 58140, 58362, 58566, 58772, 59555, 59557, 59560
71.....	57554, 57556, 57558, 57888, 58142, 58144
241.....	58777
399.....	58778

### 15 CFR

801.....	58551
----------	-------

### 16 CFR

312.....	58076
1112.....	57119, 59505
1130.....	59505
1232.....	59505
1250.....	57119
1460.....	58728

### Proposed Rules:

315.....	57889
----------	-------

### 17 CFR

229.....	58731
232.....	58731
239.....	58731
249.....	58731
270.....	58731
274.....	58731

### 19 CFR

4.....	57821
12.....	57346
133.....	59511

### 20 CFR

404.....	59514
641.....	56869

### 21 CFR

14.....	58553
510.....	58554

520.....58554  
 522.....58554  
 524.....58554  
 529.....58554  
 558.....58554  
 1308.....58557

**Proposed Rules:**

Ch. 1.....57560  
 15.....58572  
 884.....57174  
 1308.....58575

**22 CFR**

**Proposed Rules:**

50.....58778  
 51.....58778

**24 CFR**

5.....58335  
 891.....58335  
 960.....58335  
 982.....58335

**27 CFR**

9.....57657, 57659  
 24.....57351  
 27.....57351

**Proposed Rules:**

24.....57392, 57688  
 27.....57392

**28 CFR**

**Proposed Rules:**

16.....57181

**29 CFR**

2550.....57664  
 4022.....59515  
 4044.....59515

**Proposed Rules:**

101.....58783  
 102.....58783  
 531.....57395, 59562

**30 CFR**

936.....58559  
 950.....57664

**32 CFR**

9.....57825  
 10.....57825  
 11.....57825  
 12.....57825  
 13.....57825  
 14.....57825  
 15.....57825  
 16.....57825  
 17.....57825  
 45.....58562  
 232.....58739

**33 CFR**

100.....59517  
 117.....56886, 57353, 57674,  
 57825, 58113, 58562, 59517  
 165.....57354, 57826, 57828,  
 58113, 58742

**Proposed Rules:**

100.....58578  
 117.....57561, 58145, 59562  
 165.....57413, 58147, 58149,  
 58151

**37 CFR**

6.....56887  
 201.....56890  
 202.....56890

**Proposed Rules:**

201.....56926, 58153

**38 CFR**

3.....57830

**39 CFR**

20.....57356

**Proposed Rules:**

111.....58580  
 3010.....58280  
 3020.....58280  
 3050.....58280  
 3055.....58280

**40 CFR**

52.....57123, 57125, 57126,  
 57130, 57132, 57133, 57362,  
 57677, 57835, 57836, 57848,

57849, 57853, 57854, 58115,  
 58116, 58118, 58341, 58342,  
 58347, 58563, 58745, 58747,  
 59519, 59521  
 80.....58486  
 81.....57853, 57854  
 82.....58122  
 174.....57135, 57137  
 180.....57140, 57144, 57149,  
 57151, 57367, 57854, 57860,  
 57867, 57872  
 300.....56890  
 770.....57874  
 1601.....57875

**Proposed Rules:**

52.....57183, 57415, 57418,  
 57689, 57694, 57892, 58790  
 80.....58364  
 81.....57892  
 82.....58154  
 131.....58156  
 180.....57193  
 300.....56939

**42 CFR**

414.....59216  
 416.....59216  
 419.....59216  
 510.....57066  
 512.....57066

**43 CFR**

3160.....58050  
 3170.....58050

**44 CFR**

64.....57680

**45 CFR**

1149.....58348  
 1158.....58348

**Proposed Rules:**

1304.....57905

**46 CFR**

67.....58749  
 296.....56895  
 356.....56899  
 393.....56902

**47 CFR**

1.....57876, 58749  
 10.....57158  
 11.....57158  
 25.....58759  
 51.....57161  
 64.....56909  
 69.....57161  
 73.....57684, 57876

**Proposed Rules:**

76.....58365  
 95.....58374

**48 CFR**

604.....58350  
 636.....58351  
 637.....58351  
 642.....58350  
 652.....58351

**49 CFR**

801.....58354  
 1104.....57370  
 1109.....57370  
 1111.....57370  
 1114.....57370  
 1130.....57370

**Proposed Rules:**

174.....58582

**50 CFR**

300.....58564  
 622.....56917, 59523  
 635.....57543, 57885, 58761  
 648.....57382, 59526  
 665.....57551, 58129  
 679.....57162

**Proposed Rules:**

17.....57562, 57698  
 80.....59564  
 223.....57565  
 224.....57565  
 Ch. III.....57699  
 600.....57419  
 648.....58164, 58583  
 679.....57906, 57924, 58374

---

---

**LIST OF PUBLIC LAWS**

---

**Note:** No public bills which have become law were received by the Office of the Federal Register for inclusion

in today's **List of Public Laws**.

Last List December 14, 2017

---

---

**Public Laws Electronic Notification Service (PENS)**

---

**PENS** is a free electronic mail notification service of newly

enacted public laws. To subscribe, go to <http://listserv.gsa.gov/archives/publaws-l.html>

**Note:** This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.