Exchange, to the benefit of all market participants.

The Exchange also does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. All Members would be eligible to use a D-Limit reserve order, and all Members would be eligible to execute against any portion of a D-Limit reserve order. Moreover, the proposal would provide potential benefits to all Members to the extent that there is more liquidity available on IEX as a result of increased use of D-Limit orders attributable to the ability to enter such orders as reserve orders.

Further, the proposed conforming edits to IEX Rule 11.190(b)(7) are not designed to address any competitive issue, but rather to provide additional clarity in IEX’s rulebook.

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

Written comments were neither solicited nor received.

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

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) 38 of the Act and Rule 19b–4(f)(6) 39 thereunder. 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.

The Exchange believes that the proposed rule change meets the criteria of subparagraph (f)(6) of Rule 19b–4 thereunder.42 At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) 43 of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments
- Use the Commission’s internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an email to rule-comments@sec.gov. Please include File Number SR–IEX–2021–08 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–2021–08. 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 to 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 offices 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–2021–08, and should be submitted on or before June 1, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.44

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021–09781 Filed 5–7–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a Fee Schedule To Establish Fees for Industry Members Related to the National Market System Plan Governing the Consolidated Audit Trail

May 4, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),1 and Rule 19b–4 thereunder,2 notice is hereby given that on April 21, 2021, Nasdaq GEMX, LLC (“GEMX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, 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 adopt a fee schedule to establish fees for Industry Members related to the National Market...
System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”).¹

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

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

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

Under the CAT NMS Plan, the Operating Committee of the Consolidated Audit Trail, LLC (“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.⁴ The Operating Committee has filed with the SEC a proposal to amend the CAT NMS Plan to implement a revised funding model for the CAT (“CAT Funding Model”) and to establish a fee schedule for Participant CAT fees (“Proposed CAT Fee Plan Amendment”).⁵ The Proposed CAT Fee Plan Amendment describes the CAT Funding Model in detail, including the proposal to charge Industry Members CAT fees. The Participants are required to file with the SEC under Section 19(b) of the Exchange Act any CAT fees applicable to Industry Members that the Operating Committee approves.⁶ Accordingly, the purpose of this proposed rule change is to implement the required fee schedule provisions for CAT fees applicable to Industry Members that are GEMX members in accordance with the CAT Funding Model. The fee schedule provisions will become operative upon the SEC’s approval of the Proposed CAT Fee Plan Amendment.

1) CAT Funding Model

Under the CAT Funding Model set out in the Proposed CAT Fee Plan Amendment, the CAT fees applicable to Participants and Industry Members for the relevant quarter would be designed to cover the total CAT costs associated with developing, implementing and operating the CAT for the relevant quarter ("Total CAT Costs").⁷ The CAT Funding Model would implement a bifurcated funding model, where these costs would be borne by both Participants and Industry Members. Industry Members as a group would pay 75% of the Total CAT Costs (the "Industry Member Allocation"), and Participants as a group would pay 25% of the Total CAT Costs (the "Participant Allocation").⁸

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

(A) CAT Fees for Both Industry Members and Participants

Under the CAT Funding Model, both Participants and Industry Members would contribute to the funding of the CAT by paying a CAT fee.⁹ As permitted by Rule 613, the CAT NMS Plan requires Industry Members to pay a CAT fee. Rule 613(a)(1)(vii)(D) contemplates Industry Members contributing to the payment of CAT costs. Specifically, this provision requires the CAT NMS Plan to address "[h]ow the plan sponsors propose to fund the creation, implementation, and maintenance of the consolidated audit trail, including the proposed allocation of such estimated costs among the plan sponsors, and between the plan sponsors and members of the plan sponsors.”

In addition, as approved by the SEC, the CAT NMS Plan specifically contemplates CAT fees to be paid by both Industry Members and Participants. Section 11.1(b) states that “the Operating Committee shall have discretion to establish funding for the Company, including: (i) Establishing fees that the Participants shall pay; and (ii) establishing fees for Industry Members that shall be implemented by the Participants.”¹⁰ The Commission stated in approving the CAT NMS Plan the following:

The Commission believes that the proposed funding model reflects a reasonable exercise of the Participants’ funding authority to recover the Participants’ costs related to the CAT. The CAT is a regulatory facility jointly owned by the Participants and, as noted above, the Exchange Act specifically permits the Participants to charge

¹⁰ Proposed CAT Fee Plan Amendment at 21054–55.

¹¹ See also Sections 11.1(c), 11.2(c), and 11.3(a) and (b) of the CAT NMS Plan.

¹² Proposed CAT Fee Plan Amendment at 21054–55.

¹³ See also Sections 11.1(c), 11.2(c), and 11.3(a) and (b) of the CAT NMS Plan.
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.  

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

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.” thereby benefitting all market participants. As such, both Participants and Industry Members should contribute to covering the cost of the CAT.  

(B) 75%/25% Allocation Between Industry Members and Participants  

The CAT NMS Plan as approved by the Commission provides the Operating Committee with discretion to establish CAT fees to be paid by Participants and Industry Members. The CAT Funding Model as set out in the Proposed CAT Fee Plan Amendment contemplates allocating CAT costs between Participants and Industry Members to permit the calculation of CAT fees based on market share for Participants and based on message traffic for Industry Members. Under the CAT Funding Model as proposed, Industry Members as a group would pay 75% of the Total CAT Costs (the “Industry Member Allocation”), and Participants as a group would pay 25% of the Total CAT Costs (the “Participant Allocation”). As discussed in more detail below, the Industry Member Allocation of 75% of the Total CAT Costs is included in proposed paragraphs (a)(2), (b)(2), (c)(2) and (d)(2) of the fee schedule for the Consolidated Audit Trail Funding Fees. In each such paragraph, the calculation of the Industry Member CAT fees is based on 75% of the Total CAT Costs.

(C) Message Traffic  

The Industry Member Allocation would be allocated to each Industry Member based on message traffic. Each Industry Member CAT Reporter would pay a CAT fee that is calculated by multiplying each Industry Member’s percentage of the total message traffic of all Industry Members each quarter by the Industry Member Allocation, subject to certain market making discounts, Minimum Industry Member CAT Fees, and Maximum Industry Member CAT Fees. To implement the use of message traffic in the calculation of Industry Member CAT Fees, the Exchange proposes to describe the use of message traffic in proposed paragraphs (a)(2), (b)(2), (c)(2) and (d)(2) of the fee schedule. In each such paragraph, the Industry Member CAT fees are calculated based on Industry Members’ message traffic in the CAT.

As set out in the Proposed CAT Fee Plan Amendment, message traffic would be calculated based on Industry Members’ Reportable Events reported to the CAT as defined in the CAT Reporting Technical Specifications for Industry Members (“IM Reporting Tech Specs”) as amended from time to time. The Reportable Events may vary over time if the IM Reporting Tech Specs are amended. However, Reportable Events in the current IM Reporting Tech Specs that will be counted as message traffic include, but are not limited to, such events as the New Order Event, the Order Route Event and the Trade Event. In addition, message traffic will not include reporting activity related to Customer information as set forth in the CAT Reporting Customer and Account Technical Specifications for Industry Members.

(D) Market Maker Discounts  

As set out in the Proposed CAT Fee Plan Amendment, the Operating Committee recognized that treating Options Market Maker message traffic and Equity Market Maker message traffic in the same way as other message traffic for purposes of calculating Industry Member CAT fees may result in an undue or inappropriate burden on competition or may lead to a reduction in market quality. For example, charging Industry Members on the basis of message traffic may 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. Accordingly, the Operating Committee determined to discount Options Market Maker message traffic by the trade-to-quote ratio for Listed Options when calculating message traffic for Options Market Makers, and to discount Equity Market Maker message traffic by the trade-to-quote ratio for NMS Stocks when calculating message traffic for Equity Market Makers. The message traffic of Options Market Makers and Equity Market Makers, as discounted, would be counted as part of the total message traffic for all Industry Members. The practical effect of applying such discounts for market making activity would be to lower the CAT fees for Options Market Makers and Equity Market Makers.

(I) Options Market Maker Discount  

Each Industry Member that is an Options Market Maker would have a Reportable Events reported to the CAT in any relevant quarter, regardless of whether all Industry Members are reporting to the CAT or all Reportable Events are required to be reported to the CAT for a relevant quarter. See Proposed CAT Fee Plan Amendment at 21057–58.


21 Section 1.1 of the CAT NMS Plan; Nasdaq General 7 Section 1(ee) defines an “Options Market Maker” as “a broker-dealer registered with an...
discount based on the options trade-to-quote ratio applied to its options market making message traffic when calculating that Industry Member’s message traffic to prevent a potentially disproportionate effect on options market making due to such message traffic. Specifically, for each Options Market Maker, a discount would be applied to (1) all message traffic reported to the CAT by the Options Market Maker related to an order originated by a market maker in its market making account for a security in which it is registered, regardless of where the order is ultimately routed or executed; and (2) all message traffic for which a “quote sent time” is reported by an Options Exchange on behalf of the given Options Market Maker.

The relevant trade-to-quote ratio for the Options Market Maker discount would be calculated each quarter based on the prior quarter’s SIP Data that is included in CAT Data. The discount is calculated by dividing the adjusted trade count (that is, the total number of trades for the quarter minus the total number of trade busts) by the total number of quotes received by the securities information processors (“SIP”). As an example, the trade-to-quote ratio for Listed Options for the fourth quarter of 2020 was 0.017.

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

To implement the Options Market Maker discount, the Exchange proposes to add paragraph (g)(1) to the fee schedule. Paragraph (g)(1) would state that “[w]hen calculating the message traffic of an Industry Member that is an Options Market Maker, the Options Market Maker’s market making message traffic would be discounted by multiplying its Listed Options market making message traffic by the Listed Options trade-to-quote ratio.” In addition, proposed paragraphs (a)(2), (b)(2), (c)(2) and (d)(2) of the fee schedule would state that the message traffic calculation would be subject to applicable discounts for Options Market Maker message traffic for each of the four Industry Member CAT fees.

(E) Minimum Industry Member CAT Fee

Each Industry Member would be required to pay a Minimum Industry Member CAT Fee of $125 per quarter if its CAT fee would be less than $125 per quarter when calculated based on message traffic. All Industry Members required to report to the CAT, including those that have not yet begun to report to the CAT due to the phased implementation schedule for the CAT, would be subject to the Minimum Industry Member CAT Fee. If any Industry Member is required to pay the Minimum Industry Member CAT Fee, the total additional amount paid by all such Industry Members over the amount they otherwise would have paid as a result of their message traffic calculation would be discounted from all Industry Members other than those that were subject to a Minimum Industry Member

Note that the total message traffic of all Industry Members during the relevant time period will be calculated using the discounted total for all Equity Market Makers. See Proposed CAT Fee Plan Amendment at 21056.
CAT Fee in accordance with their message traffic percentage.\textsuperscript{31} To implement the Minimum Industry Member CAT Fee, the Exchange proposes to add paragraph (h) to the fee schedule. Proposed paragraph (b)(1) of the fee schedule would state that “[t]he Minimum Industry Member CAT Fee is $125 per quarter.” Proposed paragraph (h)(2) of the fee schedule would state that “[i]f any Industry Member is required to pay the Minimum Industry Member CAT Fee, the total additional amount paid by all such Industry Members over the amount they otherwise would have paid as a result of their message traffic calculation would be discounted from all Industry Members other than those that were subject to a Minimum Industry Member CAT Fee in accordance with their message traffic percentage (“Minimum Industry Member CAT Fee Re-Allocation”).” In addition, proposed paragraphs (a)(2), (b)(2), (c)(2) and (d)(2) of the fee schedule describes the Minimum Industry Member CAT Fee Re-Allocation for each of the four Industry Member CAT fees.

(F) Maximum Industry Member CAT Fee

An Industry Member’s CAT fee also would be subject to a Maximum Industry Member CAT Fee.\textsuperscript{32} The Maximum Industry Member CAT Fee would be the fee calculated based on 8% of the total message traffic for all Industry Members. If an Industry Member’s fee is subject to the Maximum Industry Member CAT Fee, any excess amount paid by the Industry Member would have paid as a fee above such Maximum Industry Member CAT Fee will be re-allocated among all Industry Members (including any Industry Member subject to the Maximum Industry Member CAT Fee and any Industry Members subject to the Minimum Industry Member CAT Fee) in accordance with each Industry Member’s percentage of total message traffic.

To implement the Maximum Industry Member CAT Fee, the Exchange proposes to add proposed paragraph (f) to the “Consolidated Audit Trail Funding Fees” section of its fee schedule. Proposed paragraph (f)(1) would state that “[t]he Maximum Industry Member CAT Fee for each quarter is 8% of the total CAT costs for the relevant quarter.” In addition, proposed paragraph (f)(2) would state that if an Industry Member’s CAT Fee that is calculated pursuant to paragraph (a)(2), (b)(2), (c)(2), (d)(2), as applicable, without reference to the Maximum Industry Member CAT Fee and the Maximum Industry Member CAT Fee Re-Allocation, is greater than the Maximum Industry Member CAT Fee, then the Industry Member will be subject to the Maximum Industry Member CAT Fee. If any Industry Member is subject to the Maximum Industry Member CAT Fee, then any excess amount which the Industry Member otherwise would have paid as a fee above such Maximum Industry Member CAT Fee will be re-allocated among all Industry Members, including any Industry Member that is subject to the Maximum Industry Member CAT Fee or subject to the Minimum Industry Member CAT Fee in accordance with their message traffic percentage (“Maximum Industry Member CAT Fee Re-Allocation”).

Furthermore, proposed paragraphs (a)(1), (b)(1), (c)(1) and (d)(1) would state that an Industry Member’s CAT fee calculated pursuant to (a)(1), (b)(1), (c)(1) and (d)(1) would include any applicable Maximum Industry Member CAT Fee Re-Allocation. Finally, proposed paragraphs (a)(2), (b)(2), (c)(2) and (d)(2) would state that an Industry Member’s CAT fee calculated pursuant to paragraph (a)(2), (b)(2), (c)(2) or (d)(2) is subject to the Maximum Industry Member CAT Fee and the Maximum Industry Member CAT Fee Re-Allocation.

(G) Total CAT Costs

As set out in the Proposed CAT Fee Plan Amendment, the Total CAT Costs for the year would be comprised of all fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during this period.\textsuperscript{33} For purposes of the Historical CAT Assessment, the Total CAT Costs would be $193,273,342, as set forth in the Proposed CAT Fee Plan Amendment. Accordingly, the quarterly CAT fee for the Historical CAT Assessment will be calculated based on costs of $36,238,752, which is 1/4th of 75% of the Total CAT Costs. This amount is set forth in proposed paragraph (b)(2) of the fee schedule.

In addition, proposed paragraph (i) of the “Consolidated Audit Trail Funding Fees” section of its fee schedule describes the Total CAT Costs to be used in calculating the Period 3 CAT Fee, the Period 4 CAT Fee and the Quarterly CAT Fees. Proposed paragraph (i)(1) of the fee schedule would state that “[t]he Period 3 CAT Costs shall be the total CAT costs set forth in the year-end financial statements of the Consolidated Audit Trail, LLC for 2021.” Proposed paragraph (i)(2) of the fee schedule would state that “[t]he Period 4 CAT Costs shall be the total CAT costs set forth in the year-end financial statements of the Consolidated Audit Trail, LLC for 2022.” Proposed paragraph (i)(3) of the fee schedule would state the following with regard to the Quarterly CAT Fees:

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

(2) Proposed CAT Fees

The Exchange proposes to charge its Industry Members fees related to CAT costs. To implement these CAT fees, the Exchange proposes to add a section entitled “Consolidated Audit Trail Funding Fees” to its fee schedule, and to describe the CAT fees in that section.

(A) Historical CAT Assessment (for Pre-Period 1, Period 1 and Period 2)

As set forth in the Proposed CAT Fee Plan Amendment, the Operating Committee determined to charge Industry Members a historical assessment (“Historical CAT Assessment”) to recover certain CAT costs incurred prior to January 1, 2021 (“Historical CAT Assessment Costs”).\textsuperscript{34} Specifically, as detailed in the Proposed CAT Fee Plan Amendment, the Historical CAT Assessment is intended to collect from Industry Members 75% of certain costs incurred through June 22, 2020, the effective date for the Financial Accountability Milestones,\textsuperscript{35} certain costs from Period 1 of the Financial Accountability Milestones (which covered the period from June 22, 2020—July 31, 2020) and certain costs from Period 2 of the Financial Accountability Milestones.

\begin{itemize}
  \item \textsuperscript{31} Options Market Makers and Equity Market Makers will be required to pay the Minimum Industry Member CAT Fee if their quarterly CAT fee calculated with the market maker discounts is less than $125 per quarter.
  \item \textsuperscript{32} For additional discussions regarding the Maximum Industry Member CAT Fee, see Proposed CAT Fee Plan Amendment at 21058–59 [sic].
  \item \textsuperscript{33} See Proposed CAT Fee Plan Amendment at 21063.
  \item \textsuperscript{34} See Proposed CAT Fee Plan Amendment at 21064–65.
  \item \textsuperscript{35} See Section 11.6 of the CAT NMS Plan; and Financial Accountability Release.
\end{itemize}
Accountability Milestones (which covered the period from August 1, 2020—December 31, 2020). The Total CAT Costs, excluding Excluded Costs (as defined below) and certain costs related to the conclusion of the relationship with Thesys CAT, LLC is $193,273,342. The Historical CAT Assessment is designed to recover 75% of these CAT costs. Accordingly, the Historical CAT Assessment Costs would be $144,955,006.

Using the Historical CAT Assessment Costs, as set forth in the Proposed CAT Fee Plan Amendment, the Operating Committee will calculate the Historical CAT Assessment owed by each Industry Member in accordance with the CAT Funding Model. Per the Proposed CAT Fee Plan Amendment, the Operating Committee plans to recover the Historical CAT Assessment Costs over a period of four calendar quarters, commencing upon the SEC’s approval of the Historical CAT Assessment. Each quarter, each Industry Member will pay the greater of the minimum fee of $125 or the Industry Member’s fee calculated based on message traffic (subject to the market making discounts and the maximum fee). The message traffic fee would be calculated by multiplying the percentage of the Industry Member’s message traffic of the total Industry Member message traffic by $36,238,752, which is 1/4th of the Historical CAT Assessment Costs (subject to applicable discounts for Options Market Maker message traffic and Equity Market Maker message traffic, the Maximum Industry Member CAT Fee, the Maximum Industry Member CAT Fee Re-Allocation, and the Minimum Industry Member CAT Fee Re-Allocation). Each Industry Member’s message traffic would be calculated using CAT Data from the prior quarter. Industry Members would be required to commence paying the Historical CAT Assessment in the first quarter after SEC approval of the Historical CAT Assessment, based on CAT Data from the quarter in which the SEC approved the CAT Fees.

To implement the Historical CAT Assessment, the Exchange proposes to add proposed paragraph (b) to the “Consolidated Audit Trail Funding Fees” section of its fee schedule. Proposed paragraph (b) would state that “each Industry Member shall pay an Historical CAT Assessment in the amount of the greater of the following each quarter for four quarters commencing upon approval of the Historical CAT Assessment by the SEC: (1) Minimum Industry Member CAT Fee (plus any applicable Maximum Industry Member CAT Fee Re-Allocation); or (2) the amount calculated by multiplying the percentage of the Industry Member’s message traffic of the total Industry Member message traffic based on the prior quarter’s message traffic by $36,238,752 (subject to applicable discounts for Options Market Maker message traffic and Equity Market Maker message traffic, the Maximum Industry Member CAT Fee, the Maximum Industry Member CAT Fee Re-Allocation and the Minimum Industry Member CAT Fee Re-Allocation).”

In accordance with Section 11.6(b) of the CAT NMS Plan and as provided in the Proposed CAT Fee Plan Amendment, the proposed Historical CAT Assessment seeks to recover costs that are related to Post-Amendment Expenses incurred during Period 1. Period 2 began on August 1, 2020, and concluded on December 31, 2020, the date of the Full Implementation of Core Equity Reporting. As indicated by the Participants’ Quarterly Progress Report, Full Implementation of Core Equity Reporting was completed on schedule by December 31, 2020. As discussed above, the Historical CAT Assessment Costs to be recovered via the Historical CAT Assessment would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from August 1, 2020 through December 31, 2020. Accordingly, proposed paragraph (b) of the “Consolidated Audit Trail Funding Fees” section of its fee schedule would state that Industry Members will be required to pay the Historical CAT Assessment “subject to the requirements of Section 11.6 of the CAT NMS Plan.”

The following chart summarizes the imposition of the Historical CAT Assessment:

<table>
<thead>
<tr>
<th>Quarterly CAT fee</th>
<th>Quarterly Industry Member allocation</th>
<th>CAT data used for message traffic calculation</th>
<th>Payment due</th>
</tr>
</thead>
<tbody>
<tr>
<td>Quarterly CAT Fee #1</td>
<td>$36,238,752 ........................................</td>
<td>Quarter of SEC approval of Historical CAT Assessment.</td>
<td>1st quarter after SEC approval of Industry Member CAT Fees as set forth in the CAT Fee Plan Amendment.</td>
</tr>
<tr>
<td>Quarterly CAT Fee #2</td>
<td>36,238,752 ........................................</td>
<td>1st quarter after SEC approval of Historical CAT Assessment.</td>
<td>2nd quarter after SEC approval of Industry Member CAT Fees as set forth in the CAT Fee Plan Amendment.</td>
</tr>
<tr>
<td>Quarterly CAT Fee #3</td>
<td>36,238,752 ........................................</td>
<td>2nd quarter after SEC approval of Historical CAT Assessment.</td>
<td>3rd quarter after SEC approval of Industry Member CAT Fees as set forth in the CAT Fee Plan Amendment.</td>
</tr>
<tr>
<td>Quarterly CAT Fee #4</td>
<td>36,238,752 ........................................</td>
<td>3rd quarter after SEC approval of Historical CAT Assessment.</td>
<td>4th quarter after SEC approval of Industry Member CAT Fees as set forth in the CAT Fee Plan Amendment.</td>
</tr>
</tbody>
</table>


(B) Period 3 CAT Fee

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

Using the Period 3 CAT Costs, as set forth in the Proposed CAT Fee Plan Amendment, the Operating Committee will calculate the Period 3 CAT Fee owed by each Industry Member in accordance with the CAT Funding Model. Per the Proposed CAT Fee Plan Amendment, the Operating Committee plans to recover Period 3 CAT Costs over a period of four calendar quarters, commencing in 2022. Each quarter, each Industry Member will pay the greater of the minimum fee of $125 or the Industry Member’s fee calculated based on message traffic. The message traffic fee would be calculated by multiplying the percentage of the Industry Member’s message traffic of the total Industry Member message by 75% of the Period 3 CAT Costs. (subject to applicable discounts for Options Market Maker message traffic and Equity Market Maker message traffic, the Maximum Industry Member CAT Fee, the Maximum Industry Member CAT Fee Re-Allocation and the Minimum Industry Member CAT Fee Re-Allocation). Each Industry Member’s message traffic would be calculated using CAT Data from the prior quarter. Industry Members would be required to commence paying the Period 3 CAT Fee in the second quarter of 2022, based on CAT Data from the first quarter of 2022.

The Exchange understands that the Operating Committee will announce via a CAT alert after the end of 2021 the Total CAT Costs for 2021 to be used in calculating the quarterly Period 3 CAT Fees. Such Total CAT Costs will be set forth in the year-end financial statements of the Consolidated Audit Trail, LLC. Such financial statements are required to be prepared in accordance with Section 9.2 of the CAT NMS Plan, including requirements related to compliance with GAAP, auditing by an independent public accounting firm and making the statements publicly available.

To implement the Period 3 CAT Fee, the Exchange proposes to add proposed paragraph (c) to the "Consolidated Audit Trail Funding Fees" section of its fee schedule. Proposed paragraph (c) would state that "each Industry Member shall pay a Period 3 CAT Fee in the amount of the greater of the following each quarter for four quarters commencing in the second quarter of 2022: (1) Minimum Industry Member CAT Fee (plus any applicable Maximum Industry Member CAT Fee Re-Allocation); or (2) the amount calculated by multiplying the percentage of the Industry Member’s message traffic of the total Industry Member message traffic based on the prior quarter’s message traffic by 1/4 of 75% of the Period 3 Total CAT Costs (subject to applicable discounts for Options Market Maker message traffic and Equity Market Maker message traffic, the Maximum Industry Member CAT Fee, the Maximum Industry Member CAT Fee Re-Allocation and the Minimum Industry Member CAT Fee Re-Allocation)."

The following chart summarizes the imposition of the Period 3 CAT Fee:

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

(C) Period 4 CAT Fee

As set forth in the Proposed CAT Fee Plan Amendment, the Operating Committee also determined to charge Industry Members a quarterly fee to recover a percentage of the Total CAT Costs incurred from January 1, 2022 through December 30, 2022, referred to as the Period 4 CAT Fee. The Total CAT Costs incurred from January 1, 2022 through December 30, 2022 ("Period 4 CAT Costs") will be calculated at the completion of 2022. Specifically, the Period 4 CAT Costs will be the total actual costs incurred for the CAT for 2022 as set forth in the 2022 financial statements for the Company. Using the Period 4 CAT Costs, as set forth in the Proposed CAT Fee Plan Amendment, the Operating Committee will calculate the Period 4 CAT Fee...

38 See Proposed CAT Fee Plan Amendment at 21065–66.
39 The Period 3 CAT Costs will be the total actual costs incurred for the CAT for 2021 as set forth in the 2021 financial statements for the Company.
40 See Proposed CAT Fee Plan Amendment at 21066–67.
owed by each Industry Member in accordance with the CAT Funding Model. Per the Proposed CAT Fee Plan Amendment, the Operating Committee plans to recover Period 4 CAT Costs over a period of four calendar quarters, commencing in 2023. Each quarter, each Industry Member will pay the greater of the minimum fee of $125 or the Industry Member’s fee calculated based on message traffic. The message traffic fee would be calculated by multiplying the percentage of the Industry Member’s message traffic of the total Industry Member message traffic by 1/4th of 75% of the Period 4 CAT Costs (subject to applicable discounts for Options Market Maker message traffic and Equity Market Maker message traffic, the Maximum Industry Member CAT Fee, the Maximum Industry Member CAT Fee Re-Allocation and the Minimum Industry Member CAT Fee Re-Allocation). Each Industry Member’s message traffic would be calculated using CAT Data from the prior quarter. Industry Members will be required to commence paying the Period 4 CAT Fee in the second quarter of 2023, based on data from the first quarter of 2023. To implement the Period 4 CAT Fee, the Exchange proposes to add proposed paragraph (d) to the “Consolidated Audit Trail Funding Fees” section of its fee schedule. Proposed paragraph (d) would state that “each Industry Member shall pay a Period 4 CAT Fee in the amount of the greater of the following each quarter for four quarters commencing in the second quarter of 2023: (1) Minimum Industry Member CAT Fee (plus any applicable Maximum Industry Member CAT Fee Re-Allocation); or (2) the amount calculated by multiplying the percentage of the Industry Member’s message traffic of the total Industry Member message traffic based on the prior quarter’s message traffic by 1/4th of 75% of the Period 4 CAT Costs (subject to applicable discounts for Options Market Maker message traffic and Equity Market Maker message traffic, the Maximum Industry Member CAT Fee, the Maximum Industry Member CAT Fee Re-Allocation and the Minimum Industry Member CAT Fee Re-Allocation).”

The Exchange understands that the Operating Committee will announce via a CAT alert after the end of 2022 the Total CAT Costs for 2022 to be used in calculating the quarterly Period 4 CAT Fees. Such Total CAT Costs will be set forth in the year-end financial statements of the Consolidated Audit Trail, LLC. As noted above, such financial statements are required to be prepared in accordance with the requirements set forth in Section 9.2 of the CAT NMS Plan.

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

(D) Quarterly CAT Fee—Beginning 2023

As provided in the Proposed CAT Fee Plan Amendment, to recover the costs of the CAT going forward beginning in 2023, the Operating Committee determined to charge Industry Members an ongoing quarterly CAT fee calculated based on the allocation of Total CAT Costs pursuant to the CAT Funding Model (“Quarterly CAT Fee”). The Operating Committee will use the costs set forth in the annual operating budget as the Total CAT Costs in the calculation of the Quarterly CAT Fee. Specifically, the Total CAT Costs budgeted for the upcoming year for the Company required pursuant to Section 11.1(a) of the CAT NMS Plan. Using these estimated Total CAT Costs, the Operating Committee will calculate the Quarterly CAT Fee owed by each Industry Member in accordance with the CAT Funding Model. As provided in the Proposed CAT Fee Plan Amendment, the Operating Committee proposes to seek to recover the budgeted Total CAT Costs over the course of the year. Each quarter, each Industry Member will pay the greater of the minimum fee of $125 or the Industry Member’s fee calculated based on message traffic. The message traffic fee would be calculated by multiplying the

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41 The Period 4 CAT Costs will be the total actual costs incurred for the CAT for 2022 as set forth in the 2022 financial statements for the Company.

42 See Proposed CAT Fee Plan Amendment at 21067–68.

43 To the extent that any two or more of the four categories of Industry Member CAT fees (i.e., the Historical CAT Assessment, Period 3 CAT Fee, Period 4 CAT Fee and the Quarterly CAT Fee) are due during the same quarter, any Industry Member obligated to pay one or more categories of fees is required to pay each category of fee for that quarter. For example, if an Industry Member would be subject to the Minimum Industry Member CAT Fee for the Period 4 CAT Fee and the Minimum Industry Member CAT Fee for the Quarterly CAT Fee during the same quarter, the Industry Member would be required to pay two minimum $125 fees that quarter for a total of $250. As another example, suppose that an Industry Member owed a CAT fee (other than the minimum fee of $125) for both the Historical CAT Assessment and the Period 3 CAT Fee, the Industry Member would be required to pay both fees that quarter. See Proposed CAT Fee Plan Amendment at 21067.
percentage of the Industry Member’s message traffic of the total Industry Member message traffic by 1/4th of 75% of the budgeted Total CAT Costs for the year (subject to applicable discounts for Options Market Maker message traffic and Equity Market Maker message traffic, the Maximum Industry Member CAT Fee, the Maximum Industry Member CAT Fee Re-Allocation and the Minimum Industry Member CAT Fee Re-Allocation). Each Industry Member’s message traffic would be calculated using data from the prior calendar quarter. The Exchange proposes to commence charging this CAT fee in the second quarter of 2023, based on CAT Data from the first quarter of 2023.

To implement the Quarterly CAT Fee, the Exchange proposes to add proposed paragraph (a) to the “Consolidated Audit Trail Funding Fees” section of its fee schedule. Proposed paragraph (a) would state that “[e]ach Industry Member shall pay a Quarterly CAT Fee in the amount of the greater of the following each quarter commencing in the second quarter of 2023: (1) Minimum Industry Member CAT Fee (plus any applicable Maximum Industry Member CAT Fee Re-Allocation); or (2) the amount calculated by multiplying the percentage of the Industry Member’s message traffic of the total Industry Member message traffic based on the prior quarter’s message traffic by 1/4th of 75% of the budgeted Total CAT Costs for the relevant year (subject to applicable discounts for Options Market Maker message traffic and Equity Market Maker message traffic, the Maximum Industry Member CAT Fee, the Maximum Industry Member CAT Fee Re-Allocation and the Minimum Industry Member CAT Fee Re-Allocation).”

The Exchange understands the Operating Committee will announce at the beginning of the relevant year via a CAT alert the budgeted Total CAT Costs to be used in calculating the Quarterly CAT Fees for that year. The budgeted Total CAT Costs will be the costs set forth in the annual operating budget for the Company required pursuant to Section 11.1(a) of the CAT NMS Plan. As discussed above, CAT costs would include, but not be limited to, Plan Processor costs, insurance costs, third-party support costs and an operational reserve. As required by Section 11.1(c) of the CAT NMS Plan, any surpluses collected will be treated as an operational reserve to offset future fees and will not be distributed to the Participants as profits. In addition, to address potential changes in the budget during the year, the total budgeted costs for the CAT for the relevant year may be adjusted on a quarterly basis as the Operating Committee reasonably deems appropriate for the prudent operation of the Company. To the extent that the Operating Committee adjusts the total budgeted costs for the CAT for the relevant year during its quarterly budget review, the adjusted total budgeted costs for the CAT will be used in calculating the remaining quarterly CAT fees for that year.

The following chart summarizes the imposition of the Quarterly CAT Fee each year commencing in 2023 and continuing each year thereafter:

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

(3) Time and Manner of Payment

The Exchange proposes to add paragraph (e) to the “Consolidated Audit Trail Funding Fees” section of its fee schedule to describe the time and manner of the payment of the Industry Member CAT fees as provided in the Proposed CAT Fee Plan Amendment.

Proposed paragraph (e)(1) would state that “Consolidated Audit Trail, LLC will provide each Industry Member with an invoice setting forth the Industry Member’s Historical CAT Assessment, Period 3 CAT Fee, Period 4 CAT Fee and/or Quarterly CAT Fee (as applicable) (collectively, “CAT Fees”) for each payment period.” Proposed paragraph (e)(2) would state that “Consolidated Audit Trail, LLC will provide each Industry Member with one invoice each payment period for its CAT Fees as determined pursuant to paragraph (a)–(d) above, regardless of whether the Industry Member is a member of multiple self-regulatory organizations.” Proposed paragraph (e)(3) would state that “[e]ach Industry Member will pay its CAT Fees to the Consolidated Audit Trail, LLC via the centralized system for the collection of CAT Fees established by the Consolidated Audit Trail, LLC in the manner prescribed by the Consolidated Audit Trail, LLC.” Finally, proposed paragraph (e)(4) would require that Industry Members pay their CAT Fees within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If an Industry Member fails to pay any such fee when due, such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of (i) the Prime Rate plus 300 basis points, or (ii) the maximum rate permitted by applicable law.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of the Exchange Act. The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act which requires, among other things, that the Exchange’s rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and not designed to permit unfair discrimination between customers, issuers, brokers and dealers. The Exchange also believes that the proposed rule change is consistent with the provisions of Section 6(b)(4) of the

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44 CAT NMS Plan Approval Order at 48792.
45 See Proposed CAT Fee Plan Amendment at 21068.
46 CAT Reporters will be responsible for each quarterly fee in which they are a CAT Reporter. If a CAT Reporter ceases to meet the definition of a CAT Reporter during a quarter, the CAT Reporter will still be responsible for CAT fees attributable to its message traffic (or, the minimum fee in the alternative) during that quarter. See Proposed CAT Fee Plan Amendment at 21068.
Act, 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 further believes that the proposed rule change is consistent with Section 6(b)(8) of the Act which requires that the Exchange’s rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Section 11.1(b) of the CAT NMS Plan states that “[t]he Participants shall file with the Exchange and its Industry Members that the Operating Committee approves.” Per Section 11.1(b) of the CAT NMS Plan, the Exchange has filed this proposed rule change to implement the Industry Member CAT fees included in the CAT Funding Model approved by the Operating Committee. The Exchange believes that this proposal is consistent with the Exchange Act because it is consistent with, and implements, the CAT NMS Plan.

The Exchange also determined that the proposed Industry Member CAT fees provide for the furtherance of the purposes of the Exchange Act. The Operating Committee 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.”

To the extent that this proposal implements the Plan and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Exchange Act.

The Exchange further notes that, as provided in the Proposed CAT Fee Plan Amendment, the Operating Committee determined that the proposed Industry Member CAT fees comply with the requirements of the Exchange Act and the CAT NMS Plan.

The proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change implements provisions of the CAT NMS Plan that are subject to approval by the Commission and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan.

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

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

The Proposed CAT Fee Plan Amendment notes that Operating Committee also determined that the proposed Industry Member CAT fees would promote just and equitable principles of trade, and, in general, protect investors and the public interest, as the fees would be transparent and relate specifically to CAT activity. The Operating Committee also determined that the proposed fees were reasonable because they would provide ease of calculation, ease of billing and other administrative functions. Such factors are crucial to estimating a reliable revenue stream for the Company.

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

Section 6(b)(8) of the Act requires that the Exchange’s rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change implements provisions of the CAT NMS Plan that are subject to approval by the Commission and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. The Exchange also notes that the proposed rule changes will apply equally to all Industry Members, including its GEMX members. In addition, 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, the Exchange notes that, as discussed in the Proposed CAT Fee Plan Amendment, the Operating Committee determined that the proposed fees do not impose an unnecessary or inappropriate burden on competition as they fairly and equitably allocate costs among CAT Reporters. The Operating Committee determined that the cost allocation between Participants and Industry Members recognizes the greater number of Industry Members as compared to the Participants and the greater collective revenue of Industry Members as compared to Participants. In addition, cost allocations among Industry Members based on message traffic fairly and equitably distribute CAT costs. Furthermore, the market maker discounts and the Maximum Industry Member CAT Fee address the potential for burdens on market makers and Industry Members with outsized message traffic potentially resulting from the proposed fee calculations. Moreover, the Operating Committee determined that the Minimum Industry Member CAT Fee would not act as a barrier to entry for smaller Industry Member CAT Reporters.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission’s internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-GEMX–2021–03 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–GEMX–2021–03. 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–GEMX–2021–03 and should be submitted on or before June 1, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.57

J. Matthew DeLesDernier, Assistant Secretary.

[FR Doc. 2021–09784 Filed 5–7–21; 8:45 am]

BILLING CODE 8011–01–P

57 See Proposed CAT Fee Plan Amendment at 210570.


55 See Proposed CAT Fee Plan Amendment at 210570.
