FEDERAL REGISTER

Vol. 89 Wednesday,

No. 171 September 4, 2024

Pages 71795–72278

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, 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, 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.federalregister.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.govinfo.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 1, 1 (March 14, 1936) 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.*

The annual subscription price for the **Federal Register** paper edition is $860 plus postage, or $929, 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 $330, 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.*

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: 89 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*
Phone	**202–741–6000**

The Federal Register Printing Savings Act of 2017 (Pub. L. 115-120) placed restrictions on distribution of official printed copies of the daily **Federal Register** to members of Congress and Federal offices. Under this Act, the Director of the Government Publishing Office may not provide printed copies of the daily **Federal Register** unless a Member or other Federal office requests a specific issue or a subscription to the print edition. For more information on how to subscribe use the following website link: *https://www.gpo.gov/frsubs.*

Contents

Federal Register

Vol. 89, No. 171

Wednesday, September 4, 2024

Administration for Strategic Preparedness and Response
NOTICES
Statement of Organization, Functions, and Delegations of Authority, 71913–71914

Agency for International Development
NOTICES
Hearings, Meetings, Proceedings, etc.:
Malaria Vaccine Development Program Scientific Advisory Committee, 71878

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
State Self-Assessment Review and Report, 71905–71906
Tribal Maternal, Infant, and Early Childhood Home Visiting Program: Guidance for Submitting an Annual Report to the Secretary, 71906

Coast Guard
RULES
Safety Zone:
Paddleboat Race, Chesapeake Bay, Annapolis, MD., 71824–71826
Special Local Regulation:
Elizabeth River, Norfolk Harbor, Norfolk, VA, 71821–71823
Marine Events within the Eleventh Coast Guard District-Swim for Special Operations Forces, 71823
Sarasota Powerboat Grand Prix; Gulf of Mexico, 71824
PROPOSED RULES
Great Lakes Pilotage Rates-2025 Annual Review; Correction, 71877
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 71914–71918

Commerce Department
See Foreign-Trade Zones Board
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
See National Telecommunications and Information Administration

Commodity Futures Trading Commission
RULES
Provisions to Incorporate Changes in the Administrative Structure, Remove Superfluous Verbiage, and Correct Inaccurate Text, 71803–71821

Corporation for National and Community Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Applicant Operational and Financial Survey, 71893

Defense Department
PROPOSED RULES
Transactions Other Than Contracts, Grants, or Cooperative Agreements for Prototype Projects, 71865–71872

Drug Enforcement Administration
NOTICES
Decision and Order:
Samirkumar Shah, MD, 71931–71934
Importer, Manufacturer or Bulk Manufacturer of Controlled Substances; Application, Registration, etc.:
Amneal Complex Products Research, LLC, 71928–71929
Benuvia Operations, LLC, 71927–71928
Biopharmaceutical Research Co., 71930
Bright Green Corp., 71926
Caligor Coghlan Pharma Services, 71934
Cambrex High Point, Inc., 71934–71935
Cambridge Isotope Laboratories, Inc., 71930–71931
Catalent CTS, LLC, 71927
Chattem Chemicals, 71925–71926
Chattem Chemicals, Inc., 71929–71930
Continuus Pharmaceuticals, 71926–71927
Fisher Clinical Services, Inc., 71931
Indivior Inc., 71928

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Rural, Insular, and Native Achievement Programs Progress Update Protocol, 71898
Free Application for Federal Student Aid Information to be Verified for the 2025–2026 Award Year, 71893–71898

Energy Department
NOTICES
Hearings, Meetings, Proceedings, etc.:
Advanced Scientific Computing Advisory Committee, 71898–71899
Electric Vehicle Working Group, 71899

Environmental Protection Agency
RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Arizona; 2015 Ozone Infrastructure Requirements, 71830–71838
New Jersey; Elements of the 2008 and 2015 Ozone National Ambient Air Quality Standards, 71826–71830
Greenhouse Gas Reporting:
Revisions and Confidentiality Determinations for Petroleum and Natural Gas Systems; Correction, 71838–71848
PROPOSED RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Louisiana; Evangeline Parish Nonattainment Area; Finding of Failure to Attain by the Attainment Date for the 2010 1-Hour Primary Sulfur Dioxide National Ambient Air Quality Standard, 71872–71877
NOTICES
Hearings, Meetings, Proceedings, etc.:
Pre-Prioritization and Consideration of Existing Chemical Substances for Future Prioritization under the Toxic Substances Control Act; Public Engagement Webinars; Technical Correction, 71900–71901

Public Water System Supervision Program Revision:
Vermont, 71900

Equal Employment Opportunity Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 71901–71904
Performance Review Board Members, 71901

Federal Aviation Administration
PROPOSED RULES
Airspace Designations and Reporting Points:
Dubois, WY, 71863–71864
NOTICES
Petition for Exemption; Summary:
Lynden Air Cargo, LLC, 72151–72152

Federal Communications Commission
RULES
Interstate Telecommunications Relay Services Fund Support for Internet Protocol Captioned Telephone Service Compensation, 71848–71860

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 71904

Federal Reserve System
NOTICES
Change in Bank Control:
Acquisitions of Shares of a Bank or Bank Holding Company, 71904

Financial Crimes Enforcement Network
RULES
Anti-Money Laundering/Countering the Financing of Terrorism Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers and Exempt Reporting Advisers, 72156–72278

Food and Drug Administration
NOTICES
Drug Products not Withdrawn from Sale for Reasons of Safety or Effectiveness:
Flagyl (Metronidazole) Tablets, 250 Milligrams and 500 Milligrams, 71907

Foreign-Trade Zones Board
NOTICES
Application for Reorganization and Expansion under Alternative Site Framework:
Foreign-Trade Zone 262, Southaven, MS, 71883

General Services Administration
NOTICES
Hearings, Meetings, Proceedings, etc.:
Federal Secure Cloud Advisory Committee; Correction, 71904–71905

Health and Human Services Department
See Administration for Strategic Preparedness and Response
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health

Health Resources and Services Administration
NOTICES
Hearings, Meetings, Proceedings, etc.:
Advisory Committee on Infant and Maternal Mortality, 71908–71909
Requests for Nominations:
Advisory Commission on Childhood Vaccines, 71907–71908

Homeland Security Department
See Coast Guard
See Transportation Security Administration

Housing and Urban Development Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Relocation Options Study, 71921–71922

Indian Affairs Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Indian Child Welfare Quarterly and Annual Report, 71922–71923

Industry and Security Bureau
RULES
Additional Sanctions against Russia and Belarus under the Export Administration Regulations and Refinements to Existing Controls, 71803

Institute of Museum and Library Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Museum Assessment Program Application Forms and Surveys, 71937–71938

Interior Department
See Indian Affairs Bureau
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
PROPOSED RULES
Guidance Regarding Elections Relating to Foreign Currency Gains and Losses; Correction, 71864–71865

International Trade Administration
NOTICES
Announcement of Approved International Trade Administration Trade Mission, 71883–71886
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Certain Corrosion-Resistant Steel Products from Taiwan, 71878–71881
Common Alloy Aluminum Sheet from the People's Republic of China, 71881–71883

International Trade Commission
NOTICES
Investigations; Determinations, Modifications, and Rulings, etc.:
Mattresses from India, Kosovo, Mexico, and Spain, 71925

Justice Department
See Drug Enforcement Administration

Labor Department
See Workers Compensation Programs Office

National Archives and Records Administration
NOTICES
Records Schedules, 71936–71937

National Foundation on the Arts and the Humanities
See Institute of Museum and Library Services

National Institutes of Health
NOTICES
Hearings, Meetings, Proceedings, etc.:
Eunice Kennedy Shriver National Institute of Child Health and Human Development, 71909
National Cancer Institute, 71911–71912
National Center for Advancing Translational Sciences; Amendment, 71911
National Center for Complementary and Integrative Health, 71910–71911
National Human Genome Research Institute, 71910
National Institute of Diabetes and Digestive and Kidney Diseases, 71910
National Institute of General Medical Sciences, 71909–71910
National Institute on Aging, 71910–71911
Licenses; Exemptions, Applications, Amendments, etc.:
Government-Owned Inventions, 71912–71913

National Oceanic and Atmospheric Administration
RULES
Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; 2024 Red Snapper Private Angling Component Closure in Federal Waters off Texas, 71860–71861
Fisheries of the Exclusive Economic Zone Off Alaska:
Pacific Cod in the Bering Sea and Aleutian Islands Management Area, 71861–71862
NOTICES
Hearings, Meetings, Proceedings, etc.:
Fisheries of the South Atlantic; Southeast Data, Assessment, and Review, 71889
Gulf of Mexico Fishery Management Council, 71886–71887
New England Fishery Management Council, 71887
North Pacific Fishery Management Council, 71887
Pacific Fishery Management Council, 71888–71889

National Science Foundation
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
National Survey of College Graduates, 71938–71939

National Telecommunications and Information Administration
NOTICES
Bolstering Data Center Growth, Resilience, and Security, 71890–71893

Nuclear Regulatory Commission
NOTICES
Licenses; Exemptions, Applications, Amendments, etc.:
Accelerated Decommissioning Partners Crystal River Unit 3, LLC, Crystal River Unit 3 Nuclear Generating Plant; Withdrawal, 71939

Pipeline and Hazardous Materials Safety Administration
NOTICES
Permits; Applications, Issuances, etc.:
Gulf South Pipeline Co., LLC, 72152–72153

Postal Regulatory Commission
NOTICES
Negotiated Service Agreement Filings, 71939–71941

Presidential Documents
ADMINISTRATIVE ORDERS
Colombia; Continuation of U.S. Drug Interdiction Assistance (Presidential Determination 2024–10 of August 9, 2024), 71797
Foreign Assistance Act of 1961; Delegation of Authority Under Section 506(a)(1) (Memorandum of August 23, 2024), 71801
Foreign Assistance Act of 1961; Delegation of Authority Under Section 506(a)(1) (Memorandum of August 9, 2024), 71795
Syria, Detained ISIS Members and Relevant Displaced Populations; Delegation of Authority To Designate Existing Official To Serve Within Executive Branch as Coordinator (Memorandum of August 16, 2024), 71799–71800

Railroad Retirement Board
NOTICES
Meetings; Sunshine Act, 71941

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 71941, 71991
Registration Cancellations:
Certain Investment Advisors Pursuant to the Investment Advisors Act, 71961–71962
Self-Regulatory Organizations; Proposed Rule Changes:
Cboe BZX Exchange, Inc., 71944
Cboe Exchange, Inc., 71982–71988, 72146–72151
Fixed Income Clearing Corp., 72128–72146
Miami International Securities Exchange, LLC, 71953–71956
MIAX Emerald, LLC, 71941–71944, 71958–71961
MIAX PEARL, LLC, 71950–71953
Nasdaq BX, Inc., 72125–72128
Nasdaq GEMX, LLC., 72009–72032
National Securities Clearing Corp., 71991–72009
NYSE American LLC, 71945–71950, 71956–71958, 72055–72078
NYSE Arca, Inc., 71962–71964, 72102–72125
NYSE Chicago, Inc., 72032–72055
NYSE National, Inc., 72079–72102
The Depository Trust Co., 71964–71982
The Nasdaq Stock Market LLC, 71988–71991

Surface Mining Reclamation and Enforcement Office
NOTICES
Environmental Impact Statements; Availability, etc.:
Navajo Transitional Energy Co.'s Federal Mining Plan Modification for Federal Lease MTM 94378, Spring Creek Mining Plan, 71923–71924

Transportation Department
See Federal Aviation Administration
See Pipeline and Hazardous Materials Safety Administration

Transportation Security Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Certified Cargo Screening Standard Security Program, 71920–71921
Imposition and Collection of Passenger Civil Aviation Security Service Fees, 71918–71919
Law Enforcement Officer Flying Armed Training, 71919–71920

Treasury Department
See Financial Crimes Enforcement Network
See Internal Revenue Service

Workers Compensation Programs Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Request for Earnings Information, 71935–71936

Separate Parts In This Issue

Part II
Treasury Department, Financial Crimes Enforcement Network, 72156–72278

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:

Memorandums:

Memorandum of August 9, 2024.....71795

Memorandum of August 16, 2024.....71799

Memorandum of August 23, 2024.....71801

Presidential Determinations:

No. 2024–10 of August 9, 2024.....71797

14 CFR

Proposed Rules:

71.....71863

15 CFR

734.....71803
740.....71803
744.....71803
746.....71803
774.....71803

17 CFR

1.....71803
3.....71803
5.....71803
9.....71803
10.....71803
11.....71803
12.....71803
13.....71803
14.....71803
15.....71803
16.....71803
17.....71803
18.....71803
20.....71803
23.....71803
30.....71803
31.....71803
37.....71803
41.....71803
43.....71803
45.....71803
46.....71803
49.....71803
140.....71803
142.....71803
144.....71803
145.....71803
146.....71803
147.....71803
148.....71803
149.....71803
150.....71803
155.....71803
160.....71803
162.....71803
165.....71803
170.....71803
171.....71803

26 CFR

Proposed Rules:

1.....71864

31 CFR

1010.....72156
1032.....72156

32 CFR

Proposed Rules:

3.....71865

33 CFR

100 (3 documents).....71821, 71823, 71824
165.....71824

40 CFR

52 (2 documents).....71826, 71830
81.....71830
98.....71838

Proposed Rules:

52.....71872

46 CFR

Proposed Rules:

401.....71877

47 CFR

64.....71848

50 CFR

622.....71860
679.....71861

Federal Register
Vol. 89, No. 171
Wednesday, September 4, 2024

Presidential Documents

Title 3—

The President

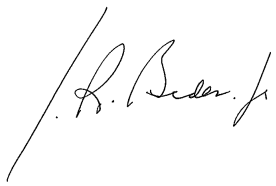
Memorandum of August 9, 2024

Delegation of Authority Under Section 506(a)(1) of the Foreign Assistance Act of 1961

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 621 of the Foreign Assistance Act of 1961 (FAA), I hereby delegate to the Secretary of State the authority under section 506(a)(1) of the FAA to direct the drawdown of up to $125 million in defense articles and services of the Department of Defense, and military education and training, to provide assistance to Ukraine and to make the determinations required under such section to direct such a drawdown.

You are authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, August 9, 2024

[FR Doc. 2024–19953
Filed 9–3–24; 8:45 am]
Billing code 4710–10–P

Presidential Documents

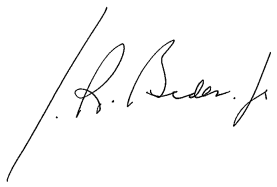
Presidential Determination No. 2024–10 of August 9, 2024

Continuation of U.S. Drug Interdiction Assistance to the Government of Colombia

Memorandum for the Secretary of State [and] the Secretary of Defense

By the authority vested in me as President by the Constitution and the laws of the United States, and pursuant to the authority vested in me by section 1012 of the National Defense Authorization Act for Fiscal Year 1995, as amended (22 U.S.C. 2291–4), I hereby certify, with respect to Colombia, that: (1) interdiction of aircraft reasonably suspected to be primarily engaged in illicit drug trafficking in that country's airspace is necessary, because of the extraordinary threat posed by illicit drug trafficking to the national security of that country; and (2) Colombia has appropriate procedures in place to protect against innocent loss of life in the air and on the ground in connection with such interdiction, which includes effective means to identify and warn an aircraft before the use of force is directed against the aircraft.

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



THE WHITE HOUSE,
Washington, August 9, 2024

[FR Doc. 2024–19954
Filed 9–3–24; 8:45 am]
Billing code 4710–10–P

Presidential Documents

Memorandum of August 16, 2024

Delegation of Authority To Designate an Existing Official To Serve Within the Executive Branch as the Coordinator for Detained ISIS Members and Relevant Displaced Populations in Syria

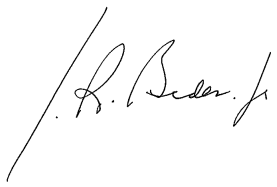
Memorandum for the Secretary of State[,] the Secretary of the Treasury[,] the Secretary of Defense[,] the Attorney General[,] the Director of National Intelligence[,] the Assistant to the President for National Security Affairs[, and] the Administrator of the United States Agency for International Development

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to the Secretary of State, in consultation with the Assistant to the President for National Security Affairs, the Secretary of Defense, the Director of National Intelligence, the Secretary of the Treasury, the Administrator of the United States Agency for International Development, and the Attorney General, the authority to designate an existing official to serve within the executive branch as the Coordinator for Detained ISIS Members and Relevant Displaced Populations in Syria. This official will carry out the responsibilities consistent with section 1224 of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116–92), as amended by section 1262 of the National Defense Authorization Act for Fiscal Year 2024 (Public Law 118–31).

The delegation in this memorandum shall apply to any provision of any future public law that is the same or substantially the same as the provision referenced in this memorandum.

Upon exercise of this authority, the Secretary of State shall provide notice to the President through the Assistant to the President for National Security Affairs.

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



THE WHITE HOUSE,
Washington, August 16, 2024

[FR Doc. 2024–19955
Filed 9–3–24; 8:45 am]
Billing code 4710–10–P

Presidential Documents

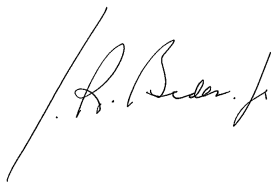
Memorandum of August 23, 2024

Delegation of Authority Under Section 506(a)(1) of the Foreign Assistance Act of 1961

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 621 of the Foreign Assistance Act of 1961 (FAA), I hereby delegate to the Secretary of State the authority under section 506(a)(1) of the FAA to direct the drawdown of up to $125 million in defense articles and services of the Department of Defense, and military education and training, to provide assistance to Ukraine and to make the determinations required under such section to direct such a drawdown.

You are authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, August 23, 2024

[FR Doc. 2024–19958
Filed 9–3–24; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

Federal Register
Vol. 89, No. 171
Wednesday, September 4, 2024

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 734, 740, 744, 746 and 774

[Docket No. 240610–0156]

RIN 0694–AJ67

Implementation of Additional Sanctions Against Russia and Belarus Under the Export Administration Regulations (EAR) and Refinements to Existing Controls

Correction

In rule document 2024–13148 beginning on page 51644 in the issue of Tuesday, June 18, 2024, make the following correction:

Supplement No. 5 to Part 744 [Corrected]

■ On page 51662, in Supplement No. 5 to Part 744, in the first column, in the twentieth line, ''€'' should read ''(e)''.

[FR Doc. C1–2024–13148 Filed 9–3–24; 8:45 am]

BILLING CODE 0099–10–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 3, 5, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 23, 30, 31, 37, 41, 43, 45, 46, 49, 140, 142, 144, 145, 146, 147, 148, 149, 150, 155, 160, 162, 165, 170, and 171

RIN 3038–AF09

Incorporation of Changes in the Commission's Administrative Structure, Remove Superfluous Verbiage, and Correct Inaccurate Text

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The agency's Divisions and Offices have been reorganized at the Chairman's direction, and with prior notification to relevant congressional committees. To ensure the CFR reflects these changes, the Commodity Futures Trading Commission (Commission or CFTC) is voting to make technical changes to various provisions within its regulations in order to align with its change in administrative structure, remove superfluous verbiage, and correct inaccurate text. In addition to the administrative changes required due to the realignment, the Commission is adopting technical changes to ensure consistency in reference to Commission addresses, deleting references to positions that have changed and updating the positions to align with the current Commission structure, correct typographical errors, and other technical changes.

DATES: These amendments are effective on September 4, 2024.

FOR FURTHER INFORMATION CONTACT: Joan Fina, Senior Assistant General Counsel, Telephone: (202) 418–7621, Email: *jfina@cftc.gov,* Office of the General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581, or John Einstman, Deputy General Counsel (General Law), Telephone: (202) 418–5337, Email: *jeinstman@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

An agency reorganization in November 2020 realigned key functions within the agency, including: (1) creating a new Division of Data (DOD); (2) reassigning the Executive Secretariat Branch from the Office of the Executive Director (OED) to the Office of the General Counsel (OGC); and (3) renaming and realigning the Division of Swap Dealer and Intermediary Oversight (DSIO) to the Market Participants Division (MPD) and (4) moving the Office of Customer Education and Outreach (OCEO) to the Office of Public Affairs.

Technology has dramatically altered capital and commodity markets over the past few decades, and technologically induced innovations such as electronic exchanges, high-frequency trading, and exchange-traded funds have made trading faster, cheaper, more integrated, and increasingly complex. As a financial regulator in an ever-increasingly sophisticated market environment, it is becoming more and more crucial that the CFTC continue to focus on data and data reporting and invest in technologies necessary to keep pace with market innovation. Our oversight responsibilities are becoming highly data acquisitive and rely on the effective use of information, including through the use of algorithms and analytics to more effectively manage data to meet our regulatory objectives. The DoD was created to address the Commission's growing data needs and to position the agency to continue to achieve its mission in accord with new technologies.

There has been an unprecedented rise in retail futures, options and digital asset trading. As the agency evolves to address changing markets and market demographics, both the FinTech and customer protection efforts the Office of Customer Education and Outreach (OCEO) were realigned within the Office of Public Affairs.

DSIO is responsible primarily for overseeing derivatives market participants and market intermediaries, including commodity pool operators, commodity trading advisors, futures commission merchants, introducing brokers, retail foreign exchange dealers, swap dealers, and major swap participants, as well as designated self-regulatory organizations. By restyling DSIO as MPD, the Division's name will more succinctly reflect the scope of its responsibility regarding the Commission registrants enumerated above.

The Commission's legal compliance groups that are responsible for records, Freedom of Information Act, Sunshine Act, privacy, and transparency were divided between the Office of the General Counsel and the Executive Secretariat Branch in the Office of the Executive Director. Moving the Executive Secretariat Branch into the Office of the General Counsel ensures consistency through streamlining all legal compliance programs into one division.

In addition to the changes required due to the realignment, the Commission proposes technical changes to ensure consistency in reference to addresses, deletes references to positions that have changed and updates the positions to align with the current Commission structure, correct typographical errors, and other technical changes.

Section 2(a)(12) of the Commodity Exchange Act authorizes the

Commission to promulgate such rules and regulations as it deems necessary to govern the operating procedures and conduct of business of the Commission. The Commission is promulgating this rule to reflect changes in its administrative structure and to make conforming technical changes to its regulations.

II. Related Matters

A. Administrative Procedure Act

The amendments to the Commission's regulations in this rulemaking do not establish any new substantive or legislative rules, but rather relate to the restructuring of responsibilities within the Commission, including amendments changing the names of divisions and offices that are affected by the realignment and re-delegating authority to newly formed divisions. The amendments to the Commission's regulations relate solely to agency management, organization, procedure, and practice and provide technical corrections of a minor and administrative nature, such as technical changes to ensure consistency in reference to Commission addresses, to delete references to positions that have changed and to update the positions to align with the current Commission structure, correct typographical errors, and other similar technical corrections. Therefore, this rulemaking is excepted from the public rulemaking provisions of the Administrative Procedure Act.[1] Additionally, an agency may issue a new rule in some circumstances without publication in the **Federal Register** of a notice of proposed rulemaking with an opportunity for comment if the agency for ''good cause'' finds (and incorporates the finding and a brief statement of the reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.[2] As the revisions to the Commission's regulations in this rulemaking will not cause any party to undertake efforts to comply with the regulations as revised, the Commission has determined to make this rulemaking effective upon publication in the **Federal Register**.[3]

[1] 5 U.S.C. 553(a) and (b). Rulemaking procedures apply, except to the extent that there is involved (1) a military or foreign affairs function of the United States; or (2) a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.

[2] 5 U.S.C 553(b). Further, Section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d) provides, in part, for publication of a rule not less than 30 days before its effective date except as otherwise provided by the agency for good cause found and published with the rule.

[3] Good cause exists as the final rule implements changes that affect internal agency management, organization and procedure that do not require a delayed effective date.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act requires the Commission to consider whether the regulations it adopts will have a significant economic impact on a substantial number of small entities.[4] The Commission is obligated to conduct a regulatory flexibility analysis for any rule for which the agency publishes a general notice of proposed rulemaking pursuant to Section 553(b) of the Administrative Procedure Act or any other law.[5] This rulemaking is excepted from the public rulemaking provisions of the Administrative Procedure Act.[6] Accordingly, the Commission is not required to conduct a regulatory flexibility analysis for this rulemaking.

C. Paperwork Reduction Act

The Commission may not conduct or sponsor, and a respondent is not required to respond to, a collection of information contained in a rulemaking unless the information collection displays a currently valid control number issued by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (Paperwork Reduction Act).[7] This final rule does not contain a ''collection of information'' as defined in the Paperwork Reduction Act [8] and, therefore, is not subject to the requirements of the Paperwork Reduction Act.

D. Cost-Benefit Considerations

Section 15(a) of the Commodity Exchange Act provides that, before promulgating a regulation under this Act or issuing an order, the Commission shall consider the costs and benefits of the action of the Commission.[9] These rules govern internal agency organization, procedure, and practice, and therefore the Commission finds that none of the considerations enumerated in Section 15(a)(2) of the Commodity Exchange Act are applicable to these rules.[10]

[4] *See* 5 U.S.C. 601 *et seq.*

[5] 5 U.S.C. 601(2).

[6] *See supra* notes 1 and 2.

[7] *See* 44 U.S.C. 3501 *et seq.*

[8] ''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.

[9] 7 U.S.C. 19(a).

[10] Section 15(a)(2) of the Commodity Exchange Act, 7 U.S.C. 19(a)(2), specifies that such 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.

E. Congressional Review Act

This final rule is not a rule as defined in the Congressional Review Act.[11]

List of Subjects

17 CFR Part 1

Banks, banking, Brokers, Commodity futures, Consumer protection. Reporting and recordkeeping requirements, Savings associations, Swaps.

17 CFR Part 3

Administrative practice and procedure, Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 5

Commodity futures, Consumer protection, Foreign currencies, Reporting and recordkeeping requirements, Securities, Trade practices.

17 CFR Part 9

Administrative practice and procedure, Reporting and recordkeeping requirements.

17 CFR Part 10

Administrative practice and procedure, Authority delegations (Government agencies), Swaps.

17 CFR Part 11

Administrative practice and procedure, Investigations.

17 CFR Part 12

Administrative practice and procedure, Consumer protection.

17 CFR Part 13

Administrative practice and procedure.

17 CFR Part 14

Administrative practice and procedure, Lawyers.

17 CFR Part 15

Brokers, Reporting and recordkeeping requirements.

17 CFR Part 16

Reporting and recordkeeping requirements.

17 CFR Part 17

Brokers, Reporting and recordkeeping requirements.

17 CFR Part 18

Reporting and recordkeeping requirements.

[11] *See* 5 U.S.C. 801–808.

17 CFR Part 20

Administrative practice and procedure, Reporting and recordkeeping requirements.

17 CFR Part 23

Authority delegations (Government agencies), Banks, banking, Foreign banking, Foreign currencies, Freedom of information, Investments, Reporting and recordkeeping requirements, Securities, Swaps, Trade practices.

17 CFR Part 30

Consumer protection, Fraud.

17 CFR Part 31

Consumer protection, Currency, Fraud, Gold, Reporting and recordkeeping requirements, Silver.

17 CFR Part 37

Commodity futures, Reporting and recordkeeping requirements, Swaps.

17 CFR Part 41

Brokers, Reporting and recordkeeping requirements, Securities.

17 CFR Part 43

Consumer protection, Reporting and recordkeeping requirements, Swaps.

17 CFR Part 45

Swaps.

17 CFR Part 46

Swaps.

17 CFR Part 49

Administrative practice and procedure, Reporting and recordkeeping requirements.

17 CFR Part 140

Authority delegations (Government agencies), Organization and functions (Government agencies).

17 CFR Part 142

Claims, Government employees.

17 CFR Part 144

Administrative practice and procedure, Courts, Government employees.

17 CFR Part 145

Conflicts of interest, Freedom of information.

17 CFR Part 146

Privacy.

17 CFR Part 147

Sunshine Act.

17 CFR Part 148

Claims, Equal access to justice, Lawyers.

17 CFR Part 149

Administrative practice and procedure, Civil rights, Equal employment opportunity, Federal buildings and facilities, Individuals with disabilities.

17 CFR Part 150

Cotton, Grains.

17 CFR Part 155

Brokers, Reporting and recordkeeping requirements.

17 CFR Part 160

Administrative practice and procedure, Brokers, Consumer protection, Privacy, Reporting and recordkeeping requirements.

17 CFR Part 162

Administrative practice and procedure, Brokers, Privacy, Reporting and recordkeeping requirements.

17 CFR Part 165

Administrative practice and procedure, Government employees, Investigations, Whistleblowing.

17 CFR Part 170

Authority delegations (Government agencies), Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 171

Administrative practice and procedure.

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6l, 6m, 6n, 6o, 6p, 6r, 6s, 7, 7a–1, 7a–2, 7b, 7b–3, 8, 9, 10a, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24 (2012).

§§ 1.12, 1.17, 1.20, 1.26, 1.35, 1.52, 1.65, 1.66, 1.70, and Appendix B [Amended]

■ 2. For each section and paragraph indicated in the left column of the following table, remove the text in the middle column from wherever it appears in the section or paragraph, and add in its place the text indicated in the right column:

Section	Remove	Add
1.12(g)(3)	Director of the Division of Swap Dealer and Intermediary Oversight.	Director of the Market Participants Division
1.17(c)(6)(ii)(A)	Director of the Division of Swap Dealer and Intermediary Oversight.	Director of the Market Participants Division
1.17(c)(6)(ii)(C)	Director of the Division and Clearing and Intermediary Oversight.	Director of the Market Participants Division
1.17(c)(6)(ii)(D)	Director of the Division of Swap Dealer and Intermediary Oversight.	Director of the Market Participants Division
1.17(c)(6)(iii)(B)	Director of the Division of Swap Dealer and Intermediary Oversight.	Director of the Market Participants Division
1.20(d)(2)	The written acknowledgement must be in the form as set out in Appendix A to this part.	The written acknowledgement must be in the form as set out in Appendix A to § 1.20.
1.20(d)(3)(i)	director of the Division of Swap Dealer and Intermediary Oversight.	Director of the Market Participants Division
1.20(d)(3)(i)	director's designees	Director's designees
1.20(d)(3)(ii)	director of the Division of Swap Dealer and Intermediary Oversight.	Director of the Market Participants Division
1.20(d)(5)	director of the Division of Swap Dealer and Intermediary Oversight.	Director of the Market Participants Division
1.20(d)(5)	director of the Division of Clearing and Risk	Director of the Division of Clearing and Risk
1.20(d)(5)	directors' designees	Directors' designees
1.20(d)(6)	director of the Division of Swap Dealer and Intermediary Oversight.	Director of the Market Participants Division
1.20(d)(6)	director of the Division of Clearing and Risk	Director of the Division of Clearing and Risk
1.20(d)(6)	directors' designees	Directors' designees

Section	Remove	Add
1.20(g)(4)(ii)	The written acknowledgement must be in the form as set out in appendix B to this part.	The written acknowledgement must be in the form as set out in Appendix B to § 1.20.
1.20(g)(4)(iv)	director of the Division of Swap Dealer and Intermediary Oversight.	Director of the Market Participants Division
1.20(g)(4)(iv)	director of the Division of Clearing and Risk	Director of the Division of Clearing and Risk
1.20(g)(4)(iv)	directors' designees	Directors' designees
1.20, Appendix A	director of the Division of Swap Dealer and Intermediary Oversight.	Director of the Market Participants Division
1.20, Appendix A	director of the Division of Clearing and Risk	Director of the Division of Clearing and Risk
1.20, Appendix A	directors' designees	Directors' designees
1.20, Appendix B	director of the Division of Swap Dealer and Intermediary Oversight.	Director of the Market Participants Division
1.20, Appendix B	director of the Division of Clearing and Risk	Director of the Division of Clearing and Risk
1.20, Appendix B	directors' designees	Directors' designees
1.26, Appendix A	director of the Division of Swap Dealer and Intermediary Oversight.	Director of the Market Participants Division
1.26, Appendix A	director of the Division of Clearing and Risk	Director of the Division of Clearing and Risk
1.26, Appendix A	directors' designees	Directors' designees
1.26, Appendix B	director of the Division of Swap Dealer and Intermediary Oversight.	Director of the Market Participants Division
1.26, Appendix B	director of the Division of Clearing and Risk	Director of the Division of Clearing and Risk
1.26, Appendix B	directors' designees	Directors' designees
1.35(a)(9)(iii)	Director of the Division of Swap Dealer and Intermediary Oversight.	Director of the Market Participants Division
1.35(a)(9)(iii)	Director may designate from time to time	Director may designate
1.52(c)(2)(iii)(B)	Division of Swap Dealer and Intermediary Oversight	Market Participants Division
1.52(c)(2)(iii)(C)	Division of Swap Dealer and Intermediary Oversight	Market Participants Division
1.52(d)(2)(ii)(G)(*2*)	Division of Swap Dealer and Intermediary Oversight	Market Participants Division
1.52(d)(2)(ii)(G)(*3*)	Division of Swap Dealer and Intermediary Oversight	Market Participants Division
1.52(d)(2)(ii)(G)(*3*)	Division of Swap Dealer and Intermediary's	Market Participants Division's
1.52(d)(2)(iii)(D)	Division of Swap Dealer and Intermediary Oversight	Market Participants Division
1.52(f)(2)	Division of Swap Dealer and Intermediary Oversight	Market Participants Division
1.65(d)	Division of Swap Dealer and Intermediary Oversight	Market Participants Division
1.65(e)	Division of Swap Dealer and Intermediary Oversight	Market Participants Division
1.65(e)	may designate from time to time,	may designate,
1.66(b)(5)(ii)	Division of Swap Dealer and Intermediary Oversight	Market Participants Division
1.70(a)(2)	Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.	at the Commission's Washington, DC headquarters
1.70(b)(3)	Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.	at the Commission's Washington, DC headquarters
1.70(d)	Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.	at the Commission's Washington, DC headquarters
Appendix B to Part 1(c)	Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.	at the Commission's Washington, DC headquarters

PART 3—REGISTRATION

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

Authority: 5 U.S.C. 552, 552b; 7 U.S.C. 1a, 2, 6a, 6b, 6b–1, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 6s, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, and 23.

§§ 3.3, 3.22, 3.33, 3.50, 3.55, 3.56, 3.63, 3.70, 3.75, and Appendix A [Amended]

■ 4. For each section and paragraph indicated in the left column of the following table, remove the text in the middle column from wherever it appears in the section or paragraph, and add in its place the text indicated in the right column:

Section	Remove	Add
3.3(h)	Division of Swap Dealer and Intermediary Oversight	Market Participants Division
3.3(h)	Director may designate from time to time	Director may designate
3.22	Division of Swap Dealer and Intermediary Oversight	Market Participants Division
3.33(e)	Division of Swap Dealer and Intermediary Oversight	Market Participants Division
3.33(e)	Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.	at the Commission's Washington, DC headquarters
3.50(c)	Division of Swap Dealer and Intermediary Oversight	Market Participants Division
3.50(c)	at the Commission's Washington, DC office, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.	at the Commission's Washington, DC headquarters
3.50(d)	Division of Swap Dealer and Intermediary Oversight	Market Participants Division
3.55(e)(2)	Division of Swap Dealer and Intermediary Oversight	Market Participants Division

Section	Remove	Add
3.56(e)(2)	Division of Swap Dealer and Intermediary Oversight	Market Participants Division
3.63	Division of Swap Dealer and Intermediary Oversight	Market Participants Division
3.70(a)	Division of Swap Dealer and Intermediary Oversight	Market Participants Division
3.70(a)	Washington, DC office	Washington, DC headquarters
3.70(a)	(Attn: Deputy Director, Registration and Compliance Branch, Division of Swap Dealer and Intermediary Oversight Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581).	(Attn: Deputy Director, Registration and Compliance Branch, Market Participants Division).
3.75(a)	Division of Swap Dealer and Intermediary Oversight	Market Participants Division
3.75(a)	has been delegated to him	has been delegated to them
Appendix A to Part 3, Footnote 2.	from the Contract Markets Section of the Commission's Division of Swap Dealer and Intermediary Oversight.	Commission staff

PART 5—OFF-EXCHANGE FOREIGN CURRENCY TRANSACTIONS

■ 5. The authority citation for part 5 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, and 23.

§§ 5.6, 5.20, and 5.23 [Amended]

■ 6. For each section and paragraph indicated in the left column of the following table, remove the text in the middle column from wherever it appears in the section or paragraph, and add in its place the text indicated in the right column:

Section	Remove	Add
5.6(f)(3)	Division of Swap Dealer and Intermediary Oversight	Market Participants Division
5.6(h)	Division of Swap Dealer and Intermediary Oversight	Market Participants Division
5.6(h)	at the Commission's principal office in Washington, DC	at the Commission's Washington, DC headquarters
5.20(d) (heading)	*Division of Swap Dealer and Intermediary Oversight*	*Market Participants Division*
5.20(d)	Division of Swap Dealer and Intermediary Oversight	Market Participants Division
5.23(f)	Deputy Director, Registration and Compliance Section	Deputy Director, Registration and Compliance Branch
5.23(f)	Division of Swap Dealer and Intermediary Oversight	Market Participants Division
5.23(f)	Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.	at the Commission's Washington, DC headquarters

PART 9—RULES RELATING TO REVIEW OF EXCHANGE DISCIPLINARY, ACCESS DENIAL OR OTHER ADVERSE ACTIONS

■ 7. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6b–1, 6c, 7, 7a–2, 7b–3, 8, 9, 9a, 12, 12a, 12c, 13b, 16a, 18, 19, and 21.

§§ 9.2, 9.4, 9.26, and 9.31 [Amended]

■ 8. For each section and paragraph indicated in the left column of the following table, remove the text in the middle column from wherever it appears in the section or paragraph, and add in its place the text indicated in the right column:

Section	Remove	Add
9.2(h)	Division of Swap Dealer and Intermediary Oversight and Division of Clearing and Risk.	Market Participants Division and/or the Division of Clearing and Risk
9.4(a)	or by mail to: Proceedings Clerk, Office of Proceedings, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.	or by mail to the Proceedings Clerk, Office of Proceedings at the Commission's Washington, DC headquarters
9.26	Division of Market Oversight and/or the Division of Swap Dealer and Intermediary Oversight and Division of Clearing and Risk.	Division of Market Oversight, Market Participants Division, and the Division of Clearing and Risk
9.31(a)	Division of Swap Dealer and Intermediary Oversight	Market Participants Division

PART 10—RULES OF PRACTICE

■ 9. The authority citation in part 10 continues to read as follows:

Authority: Pub. L. 93–463, sec. 101(a)(11), 88 Stat. 1391; 7 U.S.C. 2(a)(12).

§§ 10.2, 10.4, 10.10, 10.12, and 10.106 [Amended]

■ 10. For each section and paragraph indicated in the left column of the following table, remove the text in the middle column from wherever it appears in the section or paragraph, and add in its place the text indicated in the right column:

Section	Remove	Add
10.2(i)	that member of the Commission's staff designated as such in the Commission's Office of Proceedings.	any member of the Commission's staff designated as such by the Director of the Office of Proceedings

Section	Remove	Add
10.4	Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.	the Commission's Washington, DC headquarters
10.10(a)(1)(iii)	Deputy General Counsel for Opinions and Review	Deputy General Counsel for Litigation, Enforcement, and Adjudication
10.10(a)(1)(iii)	Office of General Counsel	Office of the General Counsel
10.12(d)(1)	to Proceedings Clerk, Office of Proceedings, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.	to the Proceedings Clerk, Office of Proceedings at the Commission's Washington, DC headquarters
10.106(b)(3)	Nothwithstanding	Notwithstanding

PART 11—RULES RELATED TO INVESTIGATIONS

■ 11. The authority citation for part 11 continues to read as follows:

Authority: 7 U.S.C. 4a(j), 9, 12, 12a(5) and 15.

§§ 11.2 and 11.7 and Appendix A [Amended]

■ 12. For each section and paragraph indicated in the left column of the following table, remove the text in the middle column from wherever it appears in the section or paragraph, and add in its place the text indicated in the right column:

11.2(b)	Program Coordinator	Principal Deputy Director
11.2(b)	Regional Counsel	Deputy Regional Counsel
11.7(a)	Program Coordinator	Principal Deputy Director
11.7(a)	Regional Counsel of the Division of Enforcement, or a Regional Director of the Commission.	Deputy Regional Counsel of the Division of Enforcement
Appendix A	Program Coordinator	Principal Deputy Director
Appendix A	Regional Counsel of the Division, or a Regional Director of the Commission.	Deputy Regional Counsel of the Division of Enforcement
Appendix A	Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.	at the Commission's Washington, DC headquarters

PART 12—RULES RELATING TO REPARATIONS

■ 13. The authority citation for part 12 continues to read as follows:

Authority: 7 U.S.C. 2(a)(12), 12a(5), and 18.

§§ 12.2, 12.11, 12.13, 12.18, and 12.407 [Amended]

■ 14. For each section and paragraph indicated in the left column of the following table, remove the text in the middle column from wherever it appears in the section or paragraph, and add in its place the text indicated in the right column:

Section	Remove	Add
12.3	Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.	the Commission's Washington, DC headquarters.
12.11(f)	Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.	at the Commission's Washington, DC headquarters
12.407(c)(1)	Statisfaction	Satisfaction

■ 15. Section 12.2 is amended by revising the definition of ''Proceedings Clerk.'' The addition and revision read as follows:

§ 12.2 Definitions.

* * * * *

Proceedings Clerk means any member of the Commission's staff designated as such by the Director of the Office of Proceedings;

* * * * *

■ 16. In § 12.13, paragraph (b)(3) is revised to read as follows:

§ 12.13 Complaint; election of procedure.

* * * * *

(b) * * *

(3) *Time and place of filing of complaint.* A complaint shall be filed by delivering a copy thereof, in proper form to the Office of Proceedings at the Commission's Washington, DC headquarters. The complaint may be filed in person, during normal business hours, or by certified mail, or registered mail with return receipt requested. The complaint shall not be served on any person or party named therein. Upon the filing of the complaint and the appropriate filing fee, the Proceedings Clerk shall assign a docket number to the matter and shall maintain the official docket.

* * * * *

■ 17. In § 12.18, paragraph (e) is revised to read as follows:

§ 12.18 Answer; election of procedure.

* * * * *

(e) *Time and place of filing an answer.* An answer shall be filed by delivering a copy thereof, in proper form to the Office of Proceedings at the Commission's Washington, DC headquarters. The answer may be filed in person, during normal business hours, or by certified mail, or registered mail with return receipt requested.

PART 13—PROCEDURES FOR PETITIONS OF RULEMAKING

■ 18. The authority citation for part 13 continues to read as follows:

Authority: 7 U.S.C. 2(a)(12).

§ 13.1 [Amended]

■ 19. In § 13.1, remove ''Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581'' and add ''at the Commission's Washington, DC headquarters'' in its place.

PART 14—RULES RELATING TO SUSPENSION OR DISBARMENT FROM APPEARANCE AND PRACTICE

■ 20. The authority citation for part 14 continues to read as follows:

Authority: Pub. L. 93–463, sec. 101(a)(11), 88 Stat. 1391, 7 U.S.C. 4a(j).

§ 14.9 [Amended]

■ 21. In § 14.9, remove ''at Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581'' and add ''at the Commission's Washington, DC headquarters'' in its place.

PART 15—REPORTS—GENERAL PROVISIONS

■ 22. The authority citation for part 15 continues to read as follows:

Authority: 7 U.S.C. 2, 5, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 7, 7a, 9, 12a, 19, and 21, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

§§ 15.05 and 15.06 [Amended]

■ 23. For each section and paragraph indicated in the left column of the following table, remove the text in the middle column from wherever it appears in the section or paragraph, and add in its place the text indicated in the right column:

Section	Remove	Add
15.05(d)	at Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.	at the Commission's Washington, DC headquarters
15.05(g)	at Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.	at the Commission's Washington, DC headquarters
15.05(i)(2)	at Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.	at the Commission's Washington, DC headquarters
15.06(a)	Director of the Division of Market Oversight, to be exercised by such Director or by such other employee or employees of such Director as designated from time to time by the Director.	Director of the Division of Data, to be exercised by such Director or by such other employee or employees of such Director as designated, and in consultation with the Director of the Division of Market Oversight

PART 16—REPORTS BY CONTRACT MARKETS AND SWAP EXECUTION FACILITIES

■ 24. The authority citation for part 16 continues to read as follows:

Authority: 7 U.S.C. 2, 6a, 6c, 6g, 6i, 7, and 7b–3.

§ 16.07 [Amended]

■ 25. For each paragraph indicated in the left column of the following table, remove the text in the middle column from wherever it appears in the section or paragraph, and add in its place the text indicated in the right column:

Section	Remove	Add
16.07 (section heading)	Office of Data and Technology	Division of Data
16.07(a)	Office of Data and Technology	Division of Data
16.07(a)	designate from time to time	designate
16.07(a)	designated from time to time	designated
16.07(a)	paragraph (d) of this section to the Director of the Division of Market Oversight,	paragraph (d) of this section to the Director of the Division of Data,
16.07(b)	to, with the concurrence of the Director of the Division of Market Oversight or the Director's delegate, determine.	to determine
16.07(c)	to, with the concurrence of the Director of the Division of Market Oversight or the Director's delegate, approve.	to approve

PART 17—REPORTS BY REPORTING MARKETS, FUTURES COMMISSION MERCHANTS, CLEARING MEMBERS, AND FOREIGN BROKERS

■ 26. The authority citation for part 17 continues to read as follows:

Authority: 7 U.S.C. 2, 6a, 6c, 6d, 6f, 6g, 6i, 6t, 7, 7a, and 12a.

§ 17.03 [Amended]

■ 27. For each paragraph indicated in the left column of the following table, remove the text in the middle column from wherever it appears in the section or paragraph, and add in its place the text indicated in the right column:

Section	Remove	Add
17.03 (section heading)	Office of Data and Technology	Division of Data
17.03 introductory text	Office of Data and Technology	Division of Data
17.03 introductory text	designated from time to time	designated
17.03(a)	Office of Data and Technology	Division of Data
17.03(b)	Office of Data and Technology	Division of Data
17.03(c)	Office of Data and Technology	Division of Data
17.03(d)	Office of Data and Technology	Division of Data
17.03(e)	Office of Data and Technology	Division of Data

Section	Remove	Add
17.03(e)	designate from time to time,	designate,
17.03(f)	Office of Data and Technology	Division of Data
17.03(f)	designate from time to time,	designate,
17.03(g)	Division of Market Oversight	Division of Data
17.03(h)	Division of Market Oversight	Division of Data
17.03(i)	Director of the Office of Data and Technology	Director of the Division of Data

PART 18—REPORTS BY TRADERS

■ 28. The authority citation for part 18 continues to read as follows:

Authority: 7 U.S.C. 2, 4, 5, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 6t, 12a, and 19.

§ 18.03 [Amended]

■ 29. For each paragraph indicated in the left column of the following table, remove the text in the middle column from wherever it appears in the section or paragraph, and add in its place the text indicated in the right column:

Section	Remove	Add
18.03(a)	designate from time to time.	designate.
18.03(b)	designate from time to time.	designate.
18.03(b)	Office of Data and Technology	Division of Data
18.03(c)	Office of Data and Technology	Division of Data

PART 20—LARGE TRADER REPORTING FOR PHYSICAL COMMODITY SWAPS

■ 30. The authority citation for part 20 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6c, 6f, 6g, 6t, 12a, 19.

§ 20.8 [Amended]

■ 31. For each paragraph indicated in the left column of the following table, remove the text in the middle column from wherever it appears in the section or paragraph, and add in its place the text indicated in the right column:

Section	Remove	Add
20.8(a)	designate from time to time,	designate,
20.8(b)	Director of the Division of Market Oversight	Director of the Division of Data, in consultation with the Director of the Division of Market Oversight
20.8(b)	designate from time to time,	designate,
20.8(c)	designate from time to time,	designate,
20.8(c)	Office of Data and Technology	Division of Data
20.8(d)	Office of Data and Technology, with the concurrence of the Director of the Division of Market Oversight, or such other employee or employees as the Directors each may designate from time to time.	Division of Data, or such other employee or employees as the Director may designate
20.8(e)	Office of Data and Technology	Division of Data

PART 23—SWAP DEALERS AND MAJOR SWAP PARTICIPANTS

■ 32. The authority citation for part 23 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6b, 6b–1, 6c, 6p, 6r, 6s, 6t, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21.

Section 23.160 also issued under 7 U.S.C. 2(i); Sec. 721(b), Pub. L. 111–203, 124 Stat. 1641 (2010).

§§ 23.23, 23.102, 23.160 and 23.206 [Amended]

■ 33. For each section and paragraph indicated in the left column of the following table, remove the text in the middle column from wherever it appears in the section or paragraph, and add in its place the text indicated in the right column:

Section	Remove	Add
23.23(g)(8)	Division of Swap Dealer and Intermediary Oversight	Market Participants Division
23.23(g)(8)	designate from time to time,	designate,
23.102(e)(3)	Division of Swap Dealer and Intermediary Oversight	Market Participants Division
23.160(c)(7)	Division of Swap Dealer and Intermediary Oversight	Market Participants Division
23.160(c)(7)	designate from time to time,	designate,
23.206 (section heading)	Division of Swap Dealer and Intermediary Oversight	Market Participants Division
23.206(a)	Division of Swap Dealer and Intermediary Oversight	Market Participants Division
23.206(a)	designate from time to time,	designate,
23.206(b)	Division of Swap Dealer and Intermediary Oversight	Market Participants Division

PART 30—FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS

■ 34. The authority citation for part 30 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6c, and 12a, unless otherwise noted.

§§ 30.7 and 30.13 and Appendix E and F [Amended]

■ 35. For each section and paragraph indicated in the left column of the following table, remove the text in the middle column from wherever it appears in the section or paragraph, and add in its place the text indicated in the right column:

Section	Remove	Add
30.7(d)(3)(i)	director of the Division of Swap Dealer and Intermediary Oversight.	Director of the Market Participants Division
30.7(d)(3)(i)	director's designees	Director's designees
30.7(d)(3)(ii)	director of the Division of Swap Dealer and Intermediary Oversight.	Director of the Market Participants Division
30.7(d)(3)(ii)	director's designees	Director's designees
30.7(d)(5)	director of the Division of Swap Dealer and Intermediary Oversight.	Director of the Market Participants Division
30.7(d)(5)	director of the Division of Clearing and Risk	Director of the Division of Clearing and Risk
30.7(d)(5)	directors' designees	Directors' designees
30.7(d)(6)	director of the Division of Swap Dealer and Intermediary Oversight.	Director of the Market Participants Division
30.7(d)(6)	director of the Division of Clearing and Risk	Director of the Division of Clearing and Risk
30.7(d)(6)	directors' designees	Directors' designees
30.13(f)(1)	Office of General Counsel	Office of the General Counsel
30.13(n)	Office of General Counsel	Office of the General Counsel
30.13(o)	Director of Market Oversight or his designee,	Director of the Division of Market Oversight or their designee,
30.13(o)	the General Counsel or his designee	the General Counsel or their designee
Appendix E	director of the Division of Swap Dealer and Intermediary Oversight.	Director of the Market Participants Division
Appendix E	director of the Division of Clearing and Risk	Director of the Division of Clearing and Risk
Appendix E	directors' designees	Directors' designees
Appendix F	director of the Division of Swap Dealer and Intermediary Oversight.	Director of the Market Participants Division
Appendix F	director of the Division of Clearing and Risk	Director of the Division of Clearing and Risk
Appendix F	directors' designees	Directors' designees

PART 31—LEVERAGE TRANSACTIONS

■ 36. The authority citation for part 31 continues to read as follows:

Authority: 7 U.S.C. 12a and 23, unless otherwise noted.

■ 37. In § 31.13, revise paragraph (n) and the undesignated text following paragraph (n)(1) to read as follows:

§ 31.13 Financial reports of leverage transaction merchants.

* * * * *

(n) * * *

(1) Until such time as the Commission orders, otherwise, the Commission hereby delegates to the Director of the Market Participants Division or their designee the authority to perform all functions reserved to the Commission in this section.

(2) The Director of the Market Participants Division may submit to the Commission for its consideration any matter which has been delegated to them pursuant to paragraph (n)(1) of this section.

§§ 31.14, 31.28 and Appendix A [Amended]

■ 38. For each section and paragraph indicated in the left column of the following table, remove the text in the middle column from wherever it appears in the section or paragraph, and add in its place the text indicated in the right column:

Section	Remove	Add
31.14(a)	Division of Swap Dealer and Intermediary Oversight	Market Participants Division
31.28(j)	give telegraphic notice of that event to the principal office of the Commission in Washington, DC.	give electronic notice of that event to *MPDAlerts@cftc.gov*
Appendix A	attention of the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.	Commission at its Washington, DC headquarters, Attn: Financial Management Branch

PART 37—SWAP EXECUTION FACILITIES

■ 39. The authority citation for part 37 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6c, 7, 7a–2, 7b–3, and 12a, as amended by Titles VII and VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376.

§ 37.3 [Amended]

■ 40. In § 37.3(h), remove ''General Counsel's delegate'' and add ''General Counsel's designee'' in its place.

PART 41—SECURITY FUTURES PROJECTS

■ 41. The authority citation for part 41 continues to read as follows:

Authority: Sections 206, 251 and 252, Pub. L. 106–554, 114 Stat. 2763, 7 U.S.C. 1a, 2, 6f, 6j, 7a–2, 12a; 15 U.S.C. 78g(c)(2).

■ 42. Amend § 41.3 by revising paragraph (d) to read as follows:

§ 41.3 Application for an exemptive order pursuant to section 4f(a)(4)(B) of the Act.

* * * * *

(d) An application for an order must be submitted to the Director of the Market Participants Division, at the Commission's Washington, DC headquarters if in paper form, or to *MPDletters@cftc.gov* if submitted via electronic mail.

* * * * *

PART 43—REAL-TIME PUBLIC REPORTING

■ 43. The authority citation for part 43 continues to read as follows:

Authority: 7 U.S.C. 2(a), 12a(5) and 24a, as amended by Pub. L. 111–203, 124 Stat. 1376 (2010).

■ 44. In § 43.3, revise paragraph (e)(1)(ii) to read as follows:

§ 43.3 Method and timing for real-time public reporting.

* * * * *

(e) * * *

(1) * * *

(ii) *Notification of failure to timely correct.* If the swap execution facility, designated contract market, or reporting counterparty will, for any reason, fail to timely correct an error, the swap execution facility, designated contract market, or reporting counterparty shall notify the Director of the Division of Data, or such other employee or employees of the Commission as the Director may designate. The notification shall be in the form and manner, and according to the instructions, specified by the Director of the Division of Data in concurrence with the Director of the Division of Market Oversight, or such other employee or employees of the Commission as the respective Director may designate. Unless otherwise instructed by the Director of the Division of Data, or such other employee or employees of the Commission as the Director may designate from time to time, the notification shall include an initial assessment of the scope of the error or errors that were discovered, and shall include any initial remediation plan for correcting the error or errors, if an initial remediation plan exists. This notification shall be made within 12 hours of the swap execution facility's, designated contract market's, or reporting counterparty's determination that it will fail to timely correct the error.

* * * * *

§ 43.7 [Amended]

■ 45. For each paragraph indicated in the left column of the following table, remove the text in the middle column from wherever it appears in the section or paragraph, and add in its place the text indicated in the right column:

Section	Remove	Add
43.7(a)	the Director of the Division of Market Oversight	the Director of the Division of Data
43.7(a)	designate from time to time	designate
43.7(b)	The Director of the Division of Market Oversight may	The Director of the Division of Data may

PART 45—SWAP DATA RECORDKEEPING AND REPORTING REQUIREMENTS

■ 46. The authority citation for part 45 continues to read as follows:

Authority: 7 U.S.C. 6r, 7, 7a–1, 7b–3, 12a, and 24a, as amended by Title VII of the Wall Street Reform and Consumer Protection Act of 2010, Pub. L. 111–203, 124 Stat. 1376 (2010), unless otherwise noted.

■ 47. In § 43.14, revise paragraph (a)(1)(ii) to read as follows:

§§ 45.14 Correcting errors in swap data and verification of swap data accuracy.

(a) * * *

(1) * * *

(ii) *Notification of failure to timely correct.* If the swap execution facility, designated contract market, or reporting counterparty will, for any reason, fail to timely correct an error, the swap execution facility, designated contract market, or reporting counterparty shall notify the Director of the Division of Data, or such other employee or employees of the Commission as the Director may designate. The notification shall be in the form and manner, and according to the instructions, specified by the Director of the Division of Data in concurrence with the Director of the Division of Market Oversight, or such other employee or employees of the Commission as the respective Director may designate. Unless otherwise instructed by the Director of the Division of, the notification shall include an initial assessment of the scope of the error or errors that were discovered, and shall include any initial remediation plan for correcting the error or errors, if an initial remediation plan exists. This notification shall be made within 12 hours of the swap execution facility's, designated contract market's, or reporting counterparty's determination that it will fail to timely correct the error.

* * * * *

■ 48. In § 43.15, revise paragraphs (a) introductory text, (a)(4), (b) introductory text, and (b)(4) to read as follows:

§ 45.15 Delegation of authority.

(a) *Delegation of authority to the Director of the Division of Data.* The Commission hereby delegates to its Director of the Division of Data, until the Commission orders otherwise, the authority set forth in paragraph (a) of this section, to be exercised by the Director of the Division of Data or by such other employee or employees of the Commission as may be designated by the Director of the Division of Data. The Director of the Division of Data may submit to the Commission for its consideration any matter which has been delegated in this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph. The authority delegated to the Director of the Division of Data by this paragraph (a) shall include:

* * * * *

(4) The Director of the Division of Data shall publish in the **Federal Register** and on the website of the Commission the format, data schema, electronic data transmission methods and procedures, and dates and times for reporting acceptable to the Commission with respect to swap data reporting pursuant to § 45.11.

(b) *Delegation of authority to the Director of the Division of Data.* The Commission hereby delegates to the Director of the Division of Data, until the Commission orders otherwise, the authority set forth in § 45.13(a)(1), to be exercised by the Director of the Division of Data or by such other employee or employees of the Commission as may be designated by the Director of the Division of Data. The Director of the Division of Data may submit to the Commission for its consideration any matter which has been delegated pursuant to this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph. The authority delegated

to the Director of the Division of Data by this paragraph (b) shall include:

* * * * *

(4) The Director of the Division of Data shall publish from time to time in the **Federal Register** and on the website of the Commission the technical specifications for swap data reporting pursuant to § 45.13(a)(1).

PART 46—SWAP DATA RECORDKEEPING AND REPORTING REQUIREMENTS: PRE-ENACTMENT AND TRANSITION SWAPS

■ 49. The authority citation for part 46 continues to read as follows:

Authority: Title VII, sections 723 and 729, Pub. L. 111–203, 124 Stat. 1738.

■ 50. Amend § 46.8 by:

■ a. Revising paragraph (c) introductory text; and

■ b. In paragraph (d), removing the term ''Chief Information Officer'' and adding, in its place, the term, ''Director of the Division of Data''.

The revision reads as follows:

§ 46.8 Data reporting for swaps in a swap asset class not accepted by any swap data repository.

* * * * *

(c) Delegation of authority to the Director of the Division of Data: The Commission hereby delegates to its Director of the Division of Data, until the Commission orders otherwise, the authority set forth in this paragraph (c), to be exercised by the Director of the Division of Data or by such other employee or employees of the Commission as may be designated by the Director of the Division of Data. The Director of the Division of Data may submit to the Commission for its consideration any matter which has been delegated in this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph. The authority delegated to the Director of the Division of Data by paragraph (c) of this section shall include:

* * * * *

PART 49—SWAP DATA REPOSITORIES

■ 51. The authority citation for part 49 continues to read as follows:

Authority: 7 U.S.C. 1a, 2(a), 6r, 12a, and 24a, as amended by Title VII of the Wall Street Reform and Consumer Protection Act of 2010, Pub. L. 111–203, 124 Stat. 1376 (Jul. 21, 2010), unless otherwise noted.

■ 52. § 49.31 is revised to read as follows:

§ 49.31 Delegation of authority to the Directors of the Division of Market Oversight and Division of Data relating to certain part 49 matters.

(a) The Commission hereby delegates, until such time as the Commission orders otherwise, the following functions to the Director of the Division of Market Oversight and to such members of the Commission staff acting under their direction as they may designate:

(1) All functions reserved to the Commission in § 49.5.

(2) All functions reserved to the Commission in § 49.12.

(3) All functions reserved to the Commission in § 49.13.

(4) All functions reserved to the Commission in § 49.16.

(5) All functions reserved to the Commission in § 49.17.

(6) All functions reserved to the Commission in § 49.18.

(7) All functions reserved to the Commission in § 49.22.

(8) All functions reserved to the Commission in § 49.23.

(9) All functions reserved to the Commission in § 49.24

(10) All functions reserved to the Commission in § 49.25.

(11) All functions reserved to the Commission in § 49.29.

(12) All functions reserved to the Commission in § 49.30.

(b) The Commission hereby delegates, until such time as the Commission orders otherwise, the following functions to the Director of the Division of Data and to such members of the Commission staff acting under their direction as they may designate:

(1) All functions reserved to the Commission in § 49.9.

(2) All functions reserved to the Commission in § 49.10.

(c) The Director of the Division of Market Oversight, and, separately, the Director of the Division of Data may submit to the Commission for its consideration any matter that has been delegated under this section.

(d) Nothing in this section may prohibit the Commission, at its election, from exercising the authority delegated in this section.

PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

■ 53. The authority citation for part 140 continues to read as follows:

Authority: 7 U.S.C. 2(a)(12), 12a, 13(c), 13(d), 13(e), and 16(b).

§§ 140.2, 140.11, 140.13, 140.24, 140.72, 140.73, 140.75, 140.76, 140.91, 140.92, 140.93, 140.94, 140.95, 140.96, and 140.99 [Amended]

■ 54. For each section and paragraph indicated in the left column of the following table, remove the text in the middle column from wherever it appears in the section or paragraph, and add in its place the text indicated in the right column:

Section	Remove	Add
140.2 section heading	regional coordinator	Regional Administrator
140.2(a)	140 Broadway, New York, New York, 10005	290 Broadway, 6th Floor, New York, NY 10007
140.2(b)	525 West Monroe Street, Suite 1100, Chicago, Illinois 60661.	77 W. Jackson Blvd., Suite 800, Chicago, IL 60604
140.2(c)	Two Emanuel Cleaver II Blvd., Suite 300, Kansas City, Missouri 64112.	2600 Grand Blvd, Suite 210, Kansas City, MO 64108
140.2	Regional Coordinator	Regional Administrator
140.11(a)	principal offices of the commission	Commission headquarters
140.11(a)	the Chairman, the Vice-Chairman, and	the Chairman and
140.11(b)(1)	the Commission's offices in Washington, DC	the Commission's Washington, DC headquarters
140.11(b)(1)	General Counsel or his deputy	General Counsel or their deputy
140.11(c)	Senior Commissioner or at his direction	Senior Commissioner or at their direction
140.13	until such time as his appointment as Chairman.	until such time as their appointment as Chairman
140.24(a)(4)	Executive Director or his delegee	Executive Director or their designee

Section	Remove	Add
140.24(a)(6)	Executive Director or his delegee	Executive Director or their designee in consultation with the General Counsel or their designee
140.72(a)	Division of Swap Dealer and Intermediary Oversight.	Market Participants Division
140.72(a)	the Director of the Division of Market Oversight, the Director of the Division of Enforcement,	the Director of the Division of Market Oversight, the Director of the Division of Data, the Director of the Division of Enforcement,
140.72(a)	may designate from time to time	may designate
140.72(b)	Regional Coordinator	Regional Administrator
140.73(a)	Division of Swap Dealer and Intermediary Oversight.	Market Participants Division
140.73(a)	may designate from time to time	may designate
140.73(a)	the Director of the Division of Enforcement, the Director of the Division of Market Oversight,	the Director of the Division of Enforcement, the Director of the Division of Data, the Director of the Division of Market Oversight,
140.73(b)	his or her	their
140.73(b)	Director of Market Oversight or in his or her absence each Deputy Director of the Division or for the Director of the Market Surveillance Section to release.	Director of Market Oversight or in their absence each Deputy Director of the Division to release
140.75 (section heading)	Director of the Division of Clearing and Risk and Division of Swap Dealer and Intermediary Oversight.	Director of the Division of Clearing and Risk and to the Director of the Market Participants Division
140.75	Director of the Division of Clearing and Risk and Division of Swap Dealer and Intermediary Oversight.	Director of the Division of Clearing and Risk and to the Director of the Market Participants Division
140.75	acting under his or her direction as the Director may designate from time to time.	acting under their direction as either Director may designate
140.75	Director of Trading and Markets or any Commission employee designated by the Director.	Director of the Division of Clearing and Risk, the Director of the Market Participants Division, or any Commission employee designated by either Director
140.75	Director of the Division of Clearing and Risk and Division of Swap Dealer and Intermediary Oversight.	Director of the Division of Clearing and Risk or the Director of the Market Participants Division
140.76(a)	Director of the Division of Clearing and Risk and Division of Swap Dealer and Intermediary Oversight, the General Counsel or any.	Director of the Division of Clearing and Risk, the Director of the Market Participants Division, the General Counsel, or any Commission employee under their direction as they may designate
140.76(b)	Director of the Division of Clearing and Risk and Division of Swap Dealer and Intermediary Oversight.	Director of the Division of Clearing and Risk, the Director of the Market Participants Division
140.91 (section heading)	Division of Swap Dealer and Intermediary Oversight.	Market Participants Division
140.91(a)	Director of the Division of Clearing and Risk and Division of Swap Dealer and Intermediary Oversight and to such members of the Commission's staff acting under his direction as he may designate from time to time:	Director of the Division of Clearing and Risk and to the Director of the Market Participants Division and to such members of the Commission's staff acting under their direction as they may designate:
140.91(a)(13)	Any action taken pursuant to the delegation of authority under this paragraph (a)(12) shall be made with the concurrence of the General Counsel or, in his or her absence, a Deputy General Counsel.	Any action taken pursuant to the delegation of authority under this paragraph (a)(13) shall be made with the concurrence of the General Counsel or, in their absence, a Deputy General Counsel.
140.91(b)	The Director of the Division of Clearing and Risk and the Director of the Division Swap Dealer and Intermediary Oversight may submit any matter which has been delegated to him or her.	The Director of the Division of Clearing and Risk and the Director of the Market Participants Division may submit any matter which has been delegated to them
140.92(a)	Director of the Division of Clearing and Risk and Division of Swap Dealer and Intermediary Oversight and to such members of the Commission's staff acting under his direction as he may designate.	Director of the Division of Clearing and Risk and to the Director of the Market Participants Division and to such members of the Commission's staff acting under their direction as they may designate
140.92(b)	The Director of the Division of Clearing and Risk and Division Swap Dealer and Intermediary Oversight may submit any matter which has been delegated to him.	The Director of the Division of Clearing and Risk and the Director of the Market Participants Division may submit any matter which has been delegated to them
140.92(c)	Director of the Division of Clearing and Risk and Division of Swap Dealer and Intermediary Oversight.	Director of the Division of Clearing and Risk and to the Director of the Market Participants Division

Section	Remove	Add
140.93 section heading	Division of Swap Dealer and Intermediary Oversight.	Market Participants Division
140.93(a)	Director of the Division of Clearing and Risk and Division of Swap Dealer and Intermediary Oversight and to such members of the Commission's staff acting under his direction as he may designate from time to time.	Director of the Division of Clearing and Risk and to the Director of the Market Participants Division and to such members of the Commission's staff acting under their direction as they may designate
140.93(b)	The Director of the Division of Clearing and Risk and Division Swap Dealer and Intermediary Oversight may submit any matter which has been delegated to him.	The Director of the Division of Clearing and Risk and the Director of the Market Participants Division may submit any matter which has been delegated to them
140.93(c)	Director of the Division of Clearing and Risk and Division of Swap Dealer and Intermediary Oversight.	Director of the Division of Clearing and Risk and the Director of the Market Participants Division
140.94 (section heading)	Director of the Division of Swap Dealer and Intermediary Oversight and the Director of the Division of Clearing and Risk.	Director of the Market Participants Division and to the Director of the Division of Clearing and Risk
140.94(a)	Director of the Division of Swap Dealer and Intermediary Oversight and to such members of the Commission's staff acting under his or her direction as he or she may designate from time to time.	Director of the Market Participants Division and to such members of the Commission's staff acting under their direction as they may designate
140.94(b)	Division of Swap Dealer and Intermediary Oversight.	Market Participants Division
140.94(c)	under his or her direction as he or she may designate from time to time:.	under their direction as they may designate:
140.94(d)	delegated to him or her	delegated to them
140.94(e)	Division of Swap Dealer and Intermediary Oversight.	Market Participants Division
140.95(a)	Director of the Division of Clearing and Risk and Division of Swap Dealer and Intermediary Oversight and to such members of the Commission's staff acting under his direction as he may designate.	Director of the Division of Clearing and Risk and to the Director of the Market Participants Division and to such members of the Commission's staff acting under their direction as they may designate
140.95(b)	Director of the Division of Clearing and Risk and Division of Swap Dealer and Intermediary Oversight may submit any matter which has been delegated to him.	Director of the Division of Clearing and Risk and the Director of the Market Participants Division may submit any matter which has been delegated to them
140.95(c)	Director of the Division of Clearing and Risk and Division of Swap Dealer and Intermediary Oversight.	Director of the Division of Clearing and Risk and to the Director of the Market Participants Division
140.96(a)	Director of the Division of Market Oversight or the Director's designee,	Director of the Division of Market Oversight or the Director's designee, or the Director of the Division of Data or the Director's designee,
140.96(b)	the Director of Swap Dealer and Intermediary Oversight or the Director's designee, and to the Director of the Division of Clearing and Risk or the Director's designee or the Director's designee, with the concurrence of the General Counsel or the General Counsel's designee, the authority to determine to publish, and to publish, in the FEDERAL REGISTER, requests for public comment on proposed exchange and self-regulatory organization rule amendments.	the Director of the Market Participants Division or the Director's designee, and to the Director of the Division of Clearing and Risk or the Director's designee, with the concurrence of the General Counsel or the General Counsel's designee, the authority to determine to publish, and to publish, in the FEDERAL REGISTER, requests for public comment on proposed rule amendments by a derivatives clearing organization, designated contract market, swap data repository, swap execution facility, or registered futures association.
140.96(c)	Director of the Division of Swap Dealer and Intermediary Oversight or the Director of the Division of Clearing and Risk.	Director of the Market Participants Division or the Director of the Division of Clearing and Risk or the Director of the Division of Data
140.96(d)	Director of the Division of Market Oversight and to the Director of the Division of Swap Dealer and Intermediary Oversight or the Director of the Division of Clearing and Risk.	Director of the Division of Market Oversight or to the Director of the Market Participants Division or to the Director of the Division of Clearing and Risk or to the Director of the Division of Data
140.99(a)(5)	Division of Swap Dealer and Intermediary Oversight, the Division of Clearing and Risk or the Division of Market Oversight.	Market Participants Division, the Division of Clearing and Risk, the Division of Market Oversight, the Division of Data, or the Office of the General Counsel, or any successor divisions or organizational units, as the context requires

Section	Remove	Add
140.99(d)(2)(ii)	Director of the Division of Swap Dealer and Intermediary Oversight.	Director of the Market Participants Division
140.99(d)(2)(ii)	Director, Division of Clearing and Risk, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.	Director of the Division of Clearing and Risk at the Commission's Washington, DC headquarters.
140.99(d)(2)(iii)	Director, Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.	Director of the Market Participants Division at the Commission's Washington, DC headquarters.
140.99(d)(2)(iv)	or *dsioletters@cftc.gov* (for a request filed with the Division of Swap Dealer and Intermediary Oversight), as appropriate, and a properly signed paper copy of the request must be provided to the Division of Market Oversight, the Division of Clearing and Risk, or the Division of Swap Dealer and Intermediary Oversight, as appropriate, within ten days for purposes of verification of the electronic submission.	or *dodletters@cftc.gov* (for a request filed with the Division of Data), or *mpdletters@cftc.gov* (for a request filed with the Market Participants Division), as appropriate, and a properly signed paper copy of the request must be provided to the Division of Market Oversight, the Division of Data, the Division of Clearing and Risk, or the Market Participants Division, as appropriate, pursuant to paragraphs (d)(2)(i) through (iii) of this section, as applicable, within ten days for purposes of verification of the electronic submission.

■ 55. Section 140.99 is further amended by revising paragraph (d)(2)(i) to read as follows:

§ 140.99 Requests for exemptive, no-action and interpretative letters

* * * * *

(d) * * *

(2)(i)(A) A request for a letter relating to the provisions of the Act or the Commission's rules, regulations, or orders issued thereunder governing designated contract markets, registered swap execution facilities, registered swap data repositories, registered foreign boards of trade, the nature of particular transactions and whether they are exempt or excluded from being required to be traded on one of the foregoing entities, made available for trading determinations, position limits, hedging exemptions, the trading of block trades, or position aggregation treatment shall be filed with the Director, Division of Market Oversight, Commodity Futures Trading Commission, at the Commission's Washington, DC headquarters.

(B) A request for a letter regarding the form and manner of data reporting, data standards for reporting, or the content of any trade report or form to be submitted to the Commission, under Parts 15–20, 43, 45, 46, or 49, shall be filed with the Director, Division of Data at the Commission's Washington, DC headquarters.

* * * * *

PART 142—INDEMNIFICATION OF CFTC EMPLOYEES

■ 56. The authority citation for part 142 continues to read as follows:

Authority: 7 U.S.C. 4a(j).

§ 142.2 [Amended]

■ 57. In § 142.2(d), remove ''Office of General Counsel'' and add ''Office of the General Counsel'' in its place.

PART 144—PROCEDURES REGARDING THE DISCLOSURE OF INFORMATION AND THE TESTIMONY OF PRESENT OR FORMER OFFICERS AND EMPLOYEES IN RESPONSE TO SUBPOENAS OR OTHER DEMANDS OF A COURT

■ 58. The authority citation for part 144 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 4a(j) and 12a(5); 31 U.S.C. 9701, unless otherwise noted.

§§ 144.1 and 144.5 [Amended]

■ 59. For each section and paragraph indicated in the left column of the following table, remove the text in the middle column from wherever it appears in the section or paragraph, and add in its place the text indicated in the right column:

Section	Remove	Add
144.1(b)	Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.	at the Commission's Washington, DC headquarters.
144.1(e)	National Futures Association, 200 West Madison Street, Suite 1600, Chicago, Illinois 60606.	National Futures Association, 300 S Riverside Plaza, Suite 1800, Chicago, IL 60606
144.5(a)	Commission's office in Washington, DC	Commission's Washington, DC headquarters

PART 145—COMMISSION RECORDS AND INFORMATION

■ 60. The authority citation for part 145 continues to read as follows:

Authority: Pub. L. 99–570, 100 Stat. 3207; Pub. L. 89–554, 80 Stat. 383; Pub. L. 90–23, 81 Stat. 54; Pub. L. 98–502, 88 Stat. 1561–1564 (5 U.S.C. 552); Sec. 101(a), Pub. L. 93–463, 88 Stat. 1389 (5 U.S.C. 4a(j)); Pub. L. 114–185, 130 Stat. 538; unless otherwise noted.

Section 145.5 is also issued under 5 U.S.C. 552, 5 U.S.C. 552b, and secs. 2(a)(11), 4b, 4f, 4g, 5a, 8a, and 17 of the Commodity Exchange Act, 7 U.S.C. 2, 4a(j), 6b, 6f, 6g, 7a, 12a, and 21, as amended, 92 Stat. 865 *et seq.;* secs. 2(a)(1), 4c(a)–(d), 4d, 4f, 4g, 4k, 4m, 4n, 8a, 15 and 17, Commodity Exchange Act (7 U.S.C. 2, 4, 6c(a)–(d), 6f, 6g, 6k, 6m, 6n, 12a, 19 and 21; 5 U.S.C. 552 and 552b); secs. 2(a)(11) and 8 of the Commodity Exchange Act, 7 U.S.C. 4(j) and 12 (1983); secs. 8a(5) and 19 of the Commodity Exchange Act, as

amended, 7 U.S.C. 12a(5) and 23 (1982); 5 U.S.C. 552 and 552b.

Section 145.6 is also issued under 7 U.S.C. 2, 4, 6, and 12; secs. 2(a)(1), 4c, 4d, 4e, 4f, 4k, 4m, 4n, 4p, 8, 8a and 19 of the Commodity Exchange Act (7 U.S.C. 2 and 4, 6c, 6d, 6e, 6f, 6k, 6m, 6n, 6p, 12, 12a and 23 (1982)); 5 U.S.C. 552 and 552b.

Section 145.8 is also issued under 7 U.S.C. 4a(j) and 16a as amended by Pub. L. 97–444, 96 Stat. 2294 (1983), and 5 U.S.C. 552, 552a and 552b.

■ 61. In § 145.0, revise paragraph (a) to read as follows:

§ 145.0 Definitions.

* * * * *

(a) *FOIA Compliance Staff*—refers to the Freedom of Information Act compliance staff assigned to respond to requests for information under the Freedom of Information Act.

* * * * *

§§ 145.2, 145.6, 145.7, 145.8, and 145.9 and Appendix A [Amended]

■ 62. For each section and paragraph indicated in the left column of the following table, remove the text in the middle column from wherever it appears in the section or paragraph, and add in its place the text indicated in the right column:

Section	Remove	Add
145.2	principal office of the Commission in Washington, DC ..	Commission's Washington, DC headquarters
145.6(b)(1)	National Futures Association, 200 West Madison Street, Suite 1600, Chicago, Illinois 60606.	National Futures Association, 300 S Riverside Plaza, Suite 1800, Chicago, IL 60606
145.7(b)	Office of General Counsel	Office of the General Counsel
145.7(c)	Office of General Counsel	Office of the General Counsel
145.7(f)	Office of General Counsel	Office of the General Counsel
145.7(g)	Office of General Counsel	Office of the General Counsel
145.7(h)(1)	Compliance Staff	FOIA compliance staff
145.7(h)(2)	Compliance Staff	FOIA compliance staff
145.7(h)(3)	Office of General Counsel	Office of the General Counsel
145.7(h)(3)	Compliance Staff	FOIA compliance staff
145.7(i)(2)	Office of General Counsel	Office of the General Counsel
145.7(i)(2)	Compliance Staff	FOIA compliance staff
145.7(i)(5)	Office of General Counsel	Office of the General Counsel
145.7(i)(6)	Compliance Staff	FOIA compliance staff
145.7(i)(6)(iii)	Compliance Staff	FOIA compliance staff
145.7(i)(7)	Office of General Counsel	Office of the General Counsel
145.7(j)	Office of General Counsel	Office of the General Counsel
145.7(j)	Compliance Staff	FOIA compliance staff
145.8	Compliance Staff	FOIA compliance staff
145.9(d)(2)	Assistant Secretary of the Commission for FOI, Privacy and Sunshine Acts Compliance.	Office of the General Counsel at the Commission's Washington, DC headquarters, Attn: FOIA compliance staff
145.9(d)(3)	Assistant Secretary of the Commission for FOI, Privacy and Sunshine Acts Compliance.	FOIA compliance staff
145.9(d)(7)	Assistant Secretary	FOIA compliance staff
145.9(d)(9)	Assistant Secretary of the Commission for FOI, Privacy and Sunshine Acts Compliance or his or her designee.	FOIA compliance staff
145.9(d)(9)	Assistant Secretary or his or her designee	FOIA compliance staff
145.9(e)(1)	Assistant Secretary or his or her designee	FOIA compliance staff
145.9(e)(1)	Assistant Secretary of the Commission for FOI, Privacy and Sunshine Acts Compliance.	FOIA compliance staff
145.9(f)(1)	Assistant Secretary of the Commission for FOI, Privacy and Sunshine Acts compliance or his or her designee.	FOIA compliance staff
145.9(f)(2)	Assistant Secretary or his or her designee	FOIA compliance staff
145.9(f)(3)	Assistant Secretary or his or her designee	FOIA compliance staff
145.9(g)(3)	Office of General Counsel	Office of the General Counsel
145.9(g)(3)	Assistant Secretary of the Commission for FOI, Privacy and Sunshine Acts compliance.	FOIA compliance staff
145.9(g)(5)	Office of General Counsel	Office of the General Counsel
145.9(g)(7)	Office of General Counsel	Office of the General Counsel
145.9(g)(8)	Assistant Secretary of the Commission for FOI, Privacy and Sunshine Acts Compliance.	FOIA compliance staff
145.9(g)(10)	The General Counsel or his or here designee	The General Counsel or their designee
145.9(h)	Assistant Secretary of the Commission for FOI, Privacy and Sunshine Acts Compliance.	FOIA compliance staff
Appendix A introductory text	Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.	the Commission's Washington, DC headquarters
Appendix A (a) (heading)	*Office of External Affairs*	*Office of Public Affairs*
Appendix A, (d) (heading)	*Executive Director, Administrative Services Section*	*Chief Administrative Officer, Division of Administration*
Appendix A, (g) (heading)	*Division of Swap Dealer and Intermediary Oversight*	*Market Participants Division*
Appendix A, (g)	National Futures Association, 200 West Madison Street, Suite 1600, Chicago, Illinois 60606.	National Futures Association, 300 S Riverside Plaza, Suite 1800, Chicago, IL 60606

■ 63. Section 145.6 is further amended by revising paragraph (a) to read as follows:

§ 145.6 Commission offices to contact for assistance; registration records available.

(a) All requests for non-public records shall be made in writing and shall be addressed or otherwise directed to the Office of the General Counsel at the Commission's Washington, DC headquarters, Attn: FOIA Request, or electronically via *foiasubmissions@cftc.gov*. Requests for public records directed to a regional office of the Commission pursuant to § 145.2 should be sent to the Eastern Regional Office, Central Regional Office, or Southwestern Regional Office, as applicable.

* * * * *

PART 146—RECORDS MAINTAINED ON INDIVIDUALS

■ 64. The authority citation for part 146 continues to read as follows:

Authority: 88 Stat. 1896 (5 U.S.C. 552a), as amended; 88 Stat. 1389 (7 U.S.C. 4a(j)).

■ 65. In § 146.2, revise paragraph (c) to read as follows:

§ 146.2 Definitions.

* * * * *

(c) The term *FOIA compliance staff* refers to the Freedom of Information Act compliance staff assigned to respond to requests for information under the Freedom of Information Act;

* * * * *

§§ 146.3, 146.4, 146.5, 146.6, 146.8, 146.9, and 146.11 and Appendix A [Amended]

■ 66. For each section and paragraph indicated in the left column of the following table, remove the text in the middle column from wherever it appears in the section or paragraph, and add in its place the text indicated in the right column:

Section	Remove	Add
146.3(a)	pertaining to him	pertaining to them
146.3(a)	FOI, Privacy and Sunshine Acts compliance staff, Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.	FOIA compliance staff in the Office of the General Counsel at the Commission's Washington, DC headquarters and clearly marked ''Privacy Act request.''
146.4(b)	Executive Director	General Counsel
146.4(b)	his identity	their identity
146.4(b)	he is familiar with and understands	they are familiar with and understand
146.4(b)	FOI, Privacy and Sunshine Acts compliance staff, Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.	FOIA compliance staff in the Office of the General Counsel at the Commission's Washington, DC headquarters and clearly marked ''Privacy Act request.''
146.5(e)	FOI, Privacy and Sunshine Acts compliance staff, Office of the Secretariat.	FOIA compliance staff
146.5(f)	FOI, Privacy and Sunshine Acts compliance staff, Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.	FOIA compliance staff in the Office of the General Counsel at the Commission's Washington, DC headquarters and clearly marked ''Privacy Act request.''
146.6(d)	FOI, Privacy and Sunshine Acts compliance staff, Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581,	FOIA compliance staff in the Office of the General Counsel at the Commission's Washington, DC headquarters,
146.8(a)	pertaining to him	pertaining to them
146.8(a)	under his name	under their name
146.8(a)	if he believes	if they believe
146.8(a)	the FOI, Privacy and Sunshine Acts compliance staff, Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.	the FOIA compliance staff at the Commission's Washington, DC headquarters.
146.8(d)	FOI, Privacy and Sunshine Acts compliance staff, Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.	Chief Privacy Officer at the Commission's Washington, DC headquarters.
146.8(e)	Executive Director	General Counsel
146.8(f)	Executive Director	General Counsel
146.8(g)	Executive Director	General Counsel
146.8(h)	Executive Director	General Counsel
146.9(c)	FOI, Privacy and Sunshine Acts compliance staff, Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.	General Counsel, Office of the General Counsel at the Commission's Washington, DC headquarters.
146.9(d)	FOI, Privacy and Sunshine Acts compliance staff, Office of the Secretariat.	General Counsel
146.9(e)(3)	FOI, Privacy and Sunshine Acts compliance staff, Office of the Secretariat.	Chief Privacy Officer
146.11(b)	FOI, Privacy and Sunshine Acts compliance staff, Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.	Chief Privacy Officer at the Commission's Washington, DC headquarters.
Appendix A, (5)b.	FOI, Privacy and Sunshine Acts compliance staff, Office of Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.	FOIA compliance staff at the Commission's Washington, DC headquarters.

PART 147—OPEN COMMISSION MEETINGS

■ 67. The authority citation for part 147 continues to read as follows:

Authority: Sec. 3(a), Pub. L. 94–409, 90 Stat. 1241 (5 U.S.C. 552b); sec. 101(a)(11), Pub. L. 93–463, 88 Stat. 1391 (7 U.S.C. 4a(j) (Supp. V, 1975)), unless otherwise noted.

■ 68. In § 147.2, revise paragraph (g) to read as follows:

§ 147.2 Definitions.

* * * * *

(g) The term *FOIA Compliance staff* refers to the Freedom of Information Act Compliance Staff assigned to respond to requests for information under the Freedom of Information Act.

§§ 147.4, 147.5, 147.6, 147.8, and 147.9 [Amended]

■ 69. For each section and paragraph indicated in the left column of the following table, remove the text in the middle column from wherever it appears in the section or paragraph, and add in its place the text indicated in the right column:

Section	Remove	Add
147.4(d)(1)	, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.	at the Commission's Washington, DC headquarters
147.5(h)	offices of the FOI, Privacy and Sunshine Acts compliance staff, Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.	Office of the Secretariat at the Commission's Washington, DC headquarters.
147.5(i)	offices of the FOI, Privacy and Sunshine Acts compliance staff, Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.	Office of the Secretariat at the Commission's Washington, DC headquarters.
147.6(c)	offices of the FOI, Privacy and Sunshine Acts compliance staff, Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.	Office of the Secretariat at the Commission's Washington, DC headquarters.
147.8(a)	offices of the FOI, Privacy and Sunshine Acts compliance staff, Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.	Office of the Secretariat at the Commission's Washington, DC headquarters.
147.8(b)(1)	Assistant Secretary of the Commission for FOI, Privacy and Sunshine Acts compliance after due consultation with the Office of the Commission's General Counsel and the Director of any affected staff division.	Office of the General Counsel in consultation with the Director of any affected staff division
147.9(b)	FOI, Privacy and Sunshine Acts compliance staff, Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.	Office of the Secretariat at the Commission's Washington, DC headquarters.

PART 148—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN COVERED ADJUDICATORY PROCEEDINGS BEFORE THE COMMISSION

■ 70. The authority citation for part 148 continues to read as follows:

Authority: Equal Access to Justice Act, 5 U.S.C. 504(c)(1) and secs. 2(a)(11) and 8a(5) of the Commodity Exchange Act, 7 U.S.C. 4a(j) and 12a(5), unless otherwise noted.

§ 148.30 [Amended]

■ 71. In § 148.30, remove ''Executive Director of the Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581,'' and add ''Executive Director at the Commission's Washington, DC headquarters,'' in its place.

PART 149—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE COMMODITY FUTURES TRADING COMMISSION

■ 72. The authority citation for part 149 continues to read as follows:

Authority: 29 U.S.C 794, unless otherwise noted.

§ 149.170 [Amended]

■ 73. In § 149.170(c), remove ''Equal Employment Opportunity Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581'' and add ''Equal Employment Opportunity Officer at the Commission's Washington, DC headquarters'' in its place.

PART 150—LIMITS ON POSITIONS

■ 74. The authority citation for part 150 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6c, 6f, 6g, 6t, 12a, and 19, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

§ 150.4 [Amended]

■ 75. For each paragraph indicated in the left column of the following table, remove the text in the middle column from wherever it appears in the section or paragraph, and add in its place the text indicated in the right column:

Section	Remove	Add
150.4(e)(1)	may designate from time to time	may designate
150.4(e)(2)	may designate from time to time	may designate
150.4(e)(2)	Office of Data and Technology	Division of Data
150.4(e)(3)	Office of Data and Technology	Division of Data

PART 155—TRADING STANDARDS

■ 76. The authority citation for part 155 continues to read as follows:

Authority: 7 U.S.C. 6b, 6c, 6g, 6j and 12a, unless otherwise noted.

§§ 155.3 and 155.4 [Amended]

■ 77. For each paragraph indicated in the left column of the following table, remove the text in the middle column from wherever it appears in the section or paragraph, and add in its place the text indicated in the right column:

Section	Remove	Add
155.2(i)(2)	insured	ensured
155.2(i)(2)	insure	ensure
155.3(a)(1)	Insure	Ensure
155.4(a)(1)	Insure	Ensure

PART 160—PRIVACY OF CONSUMER FINANCIAL INFORMATION UNDER TITLE V OF THE GRAMM-LEACH-BLILEY ACT

■ 78. The authority citation for part 160 continues to read as follows:

Authority: 7 U.S.C. 7b–2 and 12a(5); 15 U.S.C 6801, *et seq.,* and sec. 1093, Pub. L. 111–203, 124 Stat. 1376.

§ 160.30 [Amended]

■ 79. In § 160.30(a), remove ''Insure'' and add ''Ensure'' in its place.

PART 162—PROTECTION OF CONSUMER INFORMATION UNDER THE FAIR CREDIT REPORTING ACT

■ 80. The authority citation for part 162 continues to read as follows:

Authority: Sec. 1088, Pub. L. 111–203; 124 Stat. 1376 (2010).

§ 162.21 [Amended]

■ 81. In § 162.21(a)(1), remove ''Insure'' and add ''Ensure'' in its place.

PART 165—

■ 82. The authority citation for part 165 continues to read as follows:

Authority: 7 U.S.C. 2, 5, 9, 12a(5), 13a, 13a–1, 13b, and 26.

§§ 165.3, 165.7, 165.12, 165.15, and Appendix B [Amended]

■ 83. For each section and paragraph indicated in the left column of the following table, remove the text in the middle column from wherever it appears in the section or paragraph, and add in its place the text indicated in the right column:

Section	Remove	Add
165.3(a)(2)	Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.	Whistleblower Office at the Commission's Washington, DC headquarters.
165.7(b)(1)	to the Commission by mail or fax to Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581,	by mail or fax to the Whistleblower Office at the Commission's Washington, DC headquarters,
165.12(c)	*Office of Customer Education and Outreach*	*Office of Public Affairs.*
165.15(a)(2)	Office of General Counsel	Office of the General Counsel
Appendix B under Submission Procedures heading.	Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.	at the Commission's Washington, DC headquarters
Appendix B, under Submission Procedures heading.	Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.	at the Commission's Washington, DC headquarters

PART 170—REGISTERED FUTURES ASSOCIATIONS

■ 84. The authority citation for part 170 continues to read as follows:

Authority: 7 U.S.C. 6d, 6m, 6p, 6s, 12a, and 21.

§§ 170.11 and 170.12 [Amended]

■ 85. For each paragraph indicated in the left column of the following table, remove the text in the middle column from wherever it appears in the section or paragraph, and add in its place the text indicated in the right column:

Section	Remove	Add
170.11(a)(5)	Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.	the Commission's DC headquarters
170.12 (section heading)	Division of Swap Dealer and Intermediary Oversight	Market Participants Division
170.12	Division of Swap Dealer and Intermediary Oversight	Market Participants Division

PART 171—RULES RELATING TO REVIEW OF NATIONAL FUTURES ASSOCIATION DECISIONS IN DISCIPLINARY, MEMBERSHIP DENIAL, REGISTRATION AND MEMBER RESPONSIBILITY ACTIONS

■ 86. The authority citation for part 171 continues to read as follows:

Authority: 7 U.S.C. 4a, 12a and 21, unless otherwise noted.

§§ 171.2, 171.3, 171.8, 171.28, and 171.31 [Amended]

■ 87. For each section and paragraph indicated in the left column of the following table, remove the text in the middle column from wherever it appears in the section or paragraph, and add in its place the text indicated in the right column:

Section	Remove	Add
171.2(c)	Commission's Opinions Section	Office of the General Counsel's Litigation, Enforcement, and Adjudication Section
171.3	principal office	headquarters
171.8(a)	Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.	at the Commission's Washington, DC headquarters
171.8(b)	Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.	at the Commission's Washington, DC headquarters
171.28	the Division of Swap Dealer and Intermediary Oversight and the Division of Clearing and Risk or the Division of Market Oversight.	the Market Participants Division, the Division of Clearing and Risk, the Division of Market Oversight, or the Division of Data
171.31(a)	the Division of Swap Dealer and Intermediary Oversight, and the Division of Clearing and Risk or the Division of Market Oversight.	the Market Participants Division, the Division of Clearing and Risk, the Division of Market Oversight, or the Division of Data

Issued in Washington, DC, on August 13, 2024, by the Commission.

Robert Sidman

Deputy Secretary of the Commission.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix to Incorporation of Changes in the Commission's Administrative Structure, Remove Superfluous Verbiage, and Correct Inaccurate Text—Voting Summary

Appendix 1—Voting Summary

On this matter, Chairman Behnam and Commissioners Johnson, and Goldsmith Romero, Mersinger, and Pham voted in the affirmative. No Commissioner voted in the negative.

[FR Doc. 2024–18445 Filed 9–3–24; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2024–0751]

RIN 1625–AA08

Special Local Regulation; Elizabeth River, Norfolk Harbor, Norfolk, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary regulation for waters of the Elizabeth River, in Norfolk, Virginia to protect personnel, vessels, and the marine environment from potential hazards created by a boat parade that is scheduled for the afternoon of September 14, 2024. Parade participants operating within the regulated area must comply with all instructions given by the on-scene Patrol Commander (PATCOM). Vessels or persons entering the regulated area during the enforcement period are subject to the direction and control of the on-scene PATCOM as designated and specifically authorized by the Captain of the Port, Sector Virginia.

DATES: This rule is effective on September 14, 2024, from noon to 4 p.m.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2024–0751 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email LCDR Justin Strassfield, Sector Virginia Waterways Management Division, U.S. Coast Guard; telephone 757–668–5581, email *Justin.Z.Strassfield@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
PATCOM Patrol Commander
§ Section
SLR Special Local Regulation
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule under authority in 5 U.S.C. 553(b)(B). This statutory provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' The Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) because it would be impracticable to publish an NPRM, consider comments, and publish a final rule before this rule needs to be in place to serve its purpose. This rule is necessary to accommodate the number of vessels expected to participate in the boat parade.

The marine event sponsor of a boat parade is expecting to draw a high concentration of vessels to the Hampton Roads Harbor area along the proposed parade route. Traditionally, the Hampton Roads Harbor area serves as a major thoroughfare for commercial traffic, naval operations, ferry routes, and several other recreational uses through the connecting waters of the James River, Elizabeth River, and Lower Chesapeake Bay. The Coast Guard is establishing a Special Local Regulation (SLR) to monitor the parade before, during, and after the event to minimize impacts on this congested waterway. We must promulgate this rule by September 14, 2024, to ensure the safety of

individuals, property, and the marine environment.

Also, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because prompt action is needed to respond to the potentially significant increase in vessel traffic not local to the area and to the risks associated with large congregations of vessels navigating unfamiliar waters.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. Captains of the Port are authorized by 33 CFR 100.35 to issue SLRs. The Captain of the Port (COTP), Sector Virginia has determined that potential hazards associated with the proposed parade starting September 14, 2024, will be a safety concern for anyone within the vicinity of the parade route. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the SLR during the enforcement period of this rule.

IV. Discussion of the Rule

This rule establishes an SLR from noon until 4 p.m. on September 14, 2024. The SLR will cover all navigable waters within the Elizabeth River from shoreline to shoreline beginning in the vicinity of the Craney Island Flats proceeding south through the Norfolk Harbor Reaches and ending at the Waterside District in Norfolk, Virginia, to promote safety along the ''Mid-Atlantic Trump Boat Parade'' route. The southern boundaries of the SLR are bound by the following fixed structures; all waters north of the I–264 Norfolk/Portsmouth (Downtown Tunnel), east of the West Norfolk Bridge and west of the Berkley Bridge. This SLR will also temporarily establish the southern area of Anchorage N (Hospital Point) as a First Amendment area, where people may lawfully assemble and convey their message in a safe manner to their intended audience, to be used at the discretion of the Coast Guard Patrol Commander (PATCOM) as a spectator area.

The duration of the SLR has been tailored to protect personnel, vessels, and the marine environment in these navigable waters when the parade is scheduled to occur, while minimizing the burden on routine vessel traffic. Vessels or persons entering the SLR during the enforcement period are subject to the direction and control of the on-scene PATCOM, as designated and specifically authorized by the Captain of the Port, Virginia.

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 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. This rule has not been designated a ''significant regulatory action,'' under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on two considerations. The special local regulation will be enforced for only four hours on one day. Also, persons and vessels may still enter, transit through, anchor in, or remain within the regulated area or anchor in the spectator area, during the enforcement period if authorized by the COTP Virginia or a designated representative, who will be onsite to direct the movement of vessels such that unsafe conditions are avoided but will otherwise not interfere with commercial vessels or normal traffic in the area.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, does not apply to rules not subject to notice and comment. As the Coast Guard has, for good cause, waived notice and comment requirement that would otherwise apply to this rulemaking, the Regulatory Flexibility Act's provisions do not apply here.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

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.

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 Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide 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 This rule involves an SLR lasting only 6 hours that will monitor entry to the SLR for the duration of the enforcement period to cover before, during and after the parade has concluded. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email 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. All non-participant vessels or persons engaged

in protest activity will be directed to the southern part of Anchorage N (Hospital Point) if they wish to remain in the regulated area.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05–1.

■ 2. Add § 100.T599–0751 to read as follows:

§ 100.T599–0751 Special Local Regulation; Elizabeth River, Norfolk Harbor, Norfolk, VA.

(a) *Regulated area.* The regulations in this section apply to the following areas (coordinates are based on Datum NAD 1983).:

(1) All navigable waters of Hampton Roads Harbor, from surface to bottom, encompassed by a line connecting the following northern boundary points beginning from a position on the north coast of the Craney Island Disposal Area at 36°55.49′ N, 076°22.40′ W; leading north to position 36°56.64′ N, 076°22.40′ W; then east to the coast of Norfolk at 36°56.64′ N, 076°19.73′ W following all waters of the Elizabeth River from shoreline to shoreline; Craney Island Flats, Craney Island Reach, Lamberts Bend to Town Point Reach from surface to bottom, encompassed by the following southern boundary points; all waters west of the Berkely Bridge, north of the I–264 Norfolk/Portsmouth (Downtown Tunnel) and east of the West Norfolk Bridge. Any waters that are covered by a Department of Defense Restricted Area or Danger Zone are excluded from this regulated area.

(2) Special Spectator Area. All navigable waters from surface to bottom within the southern area of Anchorage N (Hospital Point), as specified in 33 CFR 110.168, and bound by a northern boundary line drawn easterly from Hospital Point.

(b) *Definitions.* As used in this section—

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local law enforcement officer designated by or assisting the Captain of the Port Sector Virginia (COTP) in the enforcement of the regulations in this section.

Participant means all persons and vessels directly engaged in the parade present within the established SLR during the enforcement period of the parade.

(c) *Regulations.* (1) All non-participants are prohibited from entering, transiting through, anchoring in, or getting underway within the regulated area described in paragraph (a)(1) of this section unless authorized by the Captain of the Port, Sector Virginia or their designated representative.

(2) To seek permission to enter, contact the COTP by calling the Sector Virginia Command Center at 757–638–6635 or contact the COTP's designated representative on Marine band Radio, VHF–FM channel 16 (156.8 MHz). Those in the regulated area must comply with all lawful orders or directions given to them by the COTP or the designated representative.

(3) All non-participants, including those engaged in protest activity, may be directed by a designated representative to enforcement area described in paragraph (a)(2) of this section, where they must remain during the effective period unless otherwise authorized or directed.

(4) The COTP will provide notice of the regulated area via broadcast notice to mariners and by on-scene designated representatives.

(d) *Enforcement period.* This section will be enforced from noon to 4 p.m. on Saturday, September 14, 2024.

Dated: August 27, 2024.

P.M. Britton,

Captain, U.S. Coast Guard, Captain of the Port, Sector Virginia.

[FR Doc. 2024–19796 Filed 9–3–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2024–0794]

Special Local Regulation; Marine Events Within the Eleventh Coast Guard District–Swim for Special Operations Forces

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the special local regulation on the waters of San Diego Bay, CA, during the Swim for Special Operations Forces on September 14, 2024. This special local regulation is necessary to provide for the safety of the participants, crew, sponsor vessels of the event, and general users of the waterway. During the enforcement period, persons and vessels are prohibited from entering, transiting through, or anchoring within this regulated area unless authorized by the Captain of the Port, or his designated representative.

DATES: The regulations in 33 CFR 100.1101 for the location described in Item 16 in table 1 to § 100.1101, will be enforced from 7:30 a.m. until noon on September 14, 2024.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Lieutenant Shelley Turner, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone (619) 278–7656, email *MarineEventsSD@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulations in 33 CFR 100.1101 for the location identified in Item No. 16 in table 1 to § 100.1101, from 7:30 a.m. until Noon on September 14, 2024, for the Swim for Special Operations Forces in San Diego Bay, CA. This action is being taken to provide for the safety of life on the navigable waterways during the event. Our regulation for recurring marine events in the San Diego Captain of the Port Zone, § 100.1101, Item No. 16 in table 1 to § 100.1101, specifies the location of the regulated area for the Swim for Special Operations Forces, which encompasses portions of San Diego Bay. Under the provisions of § 100.1101, persons and vessels are prohibited from entering, transiting through, or anchoring 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.

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 and marine information broadcasts.

J.W. Spitler,

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

[FR Doc. 2024–19834 Filed 9–3–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2024–0763]

Special Local Regulation; Sarasota Powerboat Grand Prix; Gulf of Mexico

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a special local regulation for the Sarasota Powerboat Grand Prix race from September 13 through 15, 2024, to provide for the safety of life on navigable waters during this event. Our regulation for marine events within the Captain of the Port St. Petersburg identifies the regulated area for this event in Gulf of Mexico, in the vicinity of Lido Beach, FL. During the enforcement period, no person or vessel may enter, transit through, anchor in, or remain within the designated area unless authorized by the Captain of the Port St. Petersburg or a designated representative.

DATES: The regulations in 33 CFR 100.703 will be enforced from 8 a.m. through 6 p.m., from September 13–15, 2024, for the regulated area listed in Item 4 of Table 1 to § 100.703.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Marine Science Technician First Class Mara Brown, Sector St. Petersburg Prevention Department, Coast Guard; telephone 813–228–2191, email: *Mara.J.Brown@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulations in 33 CFR 100.703 for the Sarasota Powerboat Grand Prix/Powerboat P–1 USA race regulated area identified in Table 1 to § 100.703, Item No. 4 from 8 a.m. through 6 p.m., from September 13–15, 2024. This action is being taken to provide for the safety of life on navigable waterways during this event. Our regulation for recurring marine events, Sector St. Petersburg, § 100.703, Table 1 to § 100.703, Item No. 4, specifies the location of the regulated area for the Sarasota Powerboat Grand Prix/Powerboat P–1 USA which encompasses portions of the Gulf of Mexico near Lido Beach, FL. Under the provisions of § 100.703(c), if you are the operator of a vessel in the regulated area you must comply with directions from the Patrol Commander or any designated representative.

In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide notification of this enforcement period via the Local Notice to Mariners and marine information broadcasts.

Dated: August 26, 2024.

Michael P. Kahle,

Captain, U.S. Coast Guard, Captain of the Port St. Petersburg.

[FR Doc. 2024–19833 Filed 9–3–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0643]

RIN 1625–AA00

Safety Zone; Paddleboat Race, Chesapeake Bay, Annapolis, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of the Chesapeake Bay adjacent to the William P. Lane Bridge, Annapolis MD. This action is necessary to provide for the safety of life on the navigable waters during a paddleboat race on September 15, 2024. This action will prohibit persons and vessels from entering the safety zone unless authorized by the Captain of the Port, Maryland-National Capital Region or a designated representative.

DATES: This rule is effective from 8 a.m. to 1 p.m. on September 15, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2024–0643 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email LCDR Kate M. Newkirk, Sector Maryland-National Capital Region Waterways Management Division, U.S. Coast Guard; telephone 410–576–2674, email *kate.m.newkirk@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule under authority in 5 U.S.C. 553(b)(B). This statutory provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' The Coast Guard finds that good cause exists under 5 U.S.C. 553(b)(B) for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it would be impracticable to solicit and consider comments in time to publish a final rule to take effect in time for the event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because immediate action is needed to respond to the potential safety hazards associated with a large congregation of paddle racers.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port, Maryland-National Capital Region (COTP) has determined that the presence of nonparticipant vessels within the safety zone shortly before, during, and shortly after the paddleboat race is occurring will be a safety concern for participants and nonparticipants alike. The purpose of this rule is to ensure the safety of participant and nonparticipant vessels and the navigable waters in the safety zone before, during, and after the scheduled event.

IV. Discussion of the Rule

This rule establishes a safety zone from 8 a.m. until 1 p.m. on September 15, 2024. The safety zone will cover all navigable waters of the Chesapeake Bay, adjacent to the shoreline at Sandy Point State Park and between and adjacent to the spans of the William P. Lane Jr. Memorial Bridges, from shoreline to shoreline, bounded to the north by a line drawn from the western shoreline at latitude 39°01′05.23″ N, longitude 076°23′47.93″ W; thence eastward to latitude 39°01′02.08″ N, longitude 076°22′40.24″ W; thence southeastward to eastern shoreline at latitude 38°59′13.70″ N, longitude 076°19′58.40″ W; and bounded to the south by a line drawn parallel and 500 yards south of the south bridge span that originates

from the western shoreline at latitude 39°00′17.08″ N, longitude 076°24′28.36″ W; thence southward to latitude 38°59′38.36″ N, longitude 076°23′59.67″ W; thence eastward to latitude 38°59′26.93″ N, longitude 076°23′25.53″ W; thence eastward to the eastern shoreline at latitude 38°58′40.32″ N, longitude 076°20′10.45″ W, located between Sandy Point and Kent Island, MD.

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 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. This rule has not been designated a ''significant regulatory action,'' under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, duration, and time-of-day of the safety zone. Vessel traffic will be able to safely transit around this safety zone, which would impact a small, designated area during the event. The Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine band radio channel 16 to provide information about the safety zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–12, as amended, does not apply to rules not subject to notice and comment. As the Coast Guard has, for good cause, waived notice and comment requirement that would otherwise apply to this rulemaking, the Regulatory Flexibility Act's provisions do not apply here.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

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.

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 Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide 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 a safety zone lasting only 7 hours that will prohibit entry into the paddle racecourse. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email 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 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1, Revision No. 01.3.

■ 2. Add § 165.T05–0643 to read as follows:

§ 165.T05–0643 Safety Zone, Chesapeake Bay, Annapolis MD.

(a) *Location:* The safety zone will cover all navigable waters of the Chesapeake Bay, adjacent to the shoreline at Sandy Point State Park and between and adjacent to the spans of the William P. Lane Jr. Memorial Bridges, from shoreline to shoreline, bounded to the north by a line drawn from the western shoreline at latitude 39°01′05.23″ N, longitude 076°23′47.93″ W; thence eastward to latitude 39°01′02.08″ N, longitude 076°22′40.24″ W; thence southeastward to eastern shoreline at latitude 38°59′13.70″ N, longitude 076°19′58.40″ W; and bounded to the south by a line drawn parallel and 500 yards south of the south bridge span that originates from the western shoreline at latitude 39°00′17.08″ N, longitude 076°24′28.36″ W; thence southward to latitude 38°59′38.36″ N, longitude 076°23′59.67″ W; thence eastward to latitude 38°59′26.93″ N, longitude 076°23′25.53″ W; thence eastward to the eastern shoreline at latitude 38°58′40.32″ N, longitude 076°20′10.45″ W, located between Sandy Point and Kent Island, MD.

(b) *Definitions.* The following definitions apply to this section:

(1) *Captain of the Port, Maryland-National Capital Region (COTP)* means the Commander, Coast Guard Sector Maryland-National Capital Region or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port,

Maryland-National Capital Region to act on his or her behalf.

(2) *Event Patrol Commander or Event PATCOM* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Maryland-National Capital Region Coast Guard Sector Captain of the Port (COTP) to enforce these regulations.

(3) *Official patrol* means any vessel assigned or approved by the COTP with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign, or any State or local law enforcement vessel approved by the COTP in accordance with current local agreements.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) Vessels may not enter, remain in, or transit through the safety zone during enforcement unless authorized to do so by the COTP or the Event PATCOM.

(3) Persons or vessels requiring entry into or passage through the safety zone must first request authorization from the Captain of the Port, Sector Maryland-National Capital Region to seek permission to transit the area. The Captain of the Port, Maryland-National Capital Region can be contacted at telephone number (410) 576–2693. The Coast Guard vessels enforcing this section can be contacted on VHF Marine Band Radio, VHF channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port, Maryland-National Capital Region and proceed at the minimum speed necessary to maintain a safe course while within the zone.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(e) *Enforcement period.* This rule is effective and subject to enforcement from 8 a.m. to 1 p.m. on September 15, 2024.

(f) *Postponement or cancellation.* The COTP or Event PATCOM may order the postponement or cancellation of this event at any time if, in their sole discretion, it is determined that the event cannot be conducted in a safe manner.

Patrick C. Burkett,

Captain, U.S. Coast Guard, Captain of the Port Sector Maryland/NCR.

[FR Doc. 2024–19797 Filed 9–3–24; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2022–0647, FRL–12038–02–R2]

Approval and Promulgation of State Implementation Plans; New Jersey; Elements of the 2008 and 2015 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the demonstration portions of the comprehensive State Implementation Plan (SIP) revision submitted by New Jersey that certify that the State has satisfied the requirements for an emission statement program, certify that the State has satisfied the requirements for an ozone nonattainment new source review program, certify that the State has satisfied the requirements for a nonattainment emission inventory, and certify that the State has satisfied the requirements for clean fuels for fleets. The EPA is approving New Jersey's reasonable further progress plans and associated motor vehicle emission budgets for both the Moderate and Serious classifications of the 2008 ozone NAAQS. These actions are being taken in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on October 4, 2024.

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA–R02–OAR–2022–0647 at *https://www.regulations.gov.* 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.,* Controlled Unclassified Information (CUI) (formally referred to as 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 electronically through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Fausto Taveras, Environmental Protection Agency, 290 Broadway, New York, New York 10007–1866, at (212) 637–3378, or by email at *Taveras.Fausto@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Table of Contents:

I. What is the background for this action?
II. What comments were received in responses to the EPA's proposed action?
III. What action is the EPA taking?
IV. Environmental Justice Considerations
V. Statutory and Executive Order Reviews

I. What is the background for this action?

On July 10, 2024, the EPA proposed to approve State Implementation Plan (SIP) revisions submitted by the State of New Jersey on November 23, 2021, for purposes of addressing planning elements for the 2008 and 2015 ozone 8-hour National Ambient Air Quality Standard (NAAQS) for the New Jersey portion of the New York-Northern New Jersey-Long Island (NY–NJ–CT) nonattainment area (also referred to as the New York Metro Area or NYMA) and the New Jersey portion of the Philadelphia-Wilmington-Atlantic City (PA–NJ–MD–DE) nonattainment area (also referred to as the Philadelphia area) (the Proposal). *See* 89 FR 56683. In the Proposal, the EPA proposed to approve New Jersey's reasonable further progress plan and motor vehicle emission budgets for New Jersey's portion of the NYMA for the 2008 ozone Serious classification, New Jersey's certification that the State has satisfied the requirements for an ozone nonattainment new source review (NNSR) program for the 2015 ozone NAAQS in both nonattainment areas and statewide pursuant to requirements for States located in the Ozone Transport Region (OTR), New Jersey's certification that the statewide NNSR also satisfies the requirements for the State's Serious classification in the NYMA area for the 2008 Ozone NAAQS, New Jersey's certification that the State has satisfied the requirements for a nonattainment emission inventory for the 2015 ozone NAAQS in both nonattainment areas, New Jersey's certification that the State has satisfied the requirements of an emission statement program for the 2008 ozone Serious classification for the NYMA nonattainment area, and New Jersey's certification that the State has satisfied the requirements for clean fuels for fleet for the NYMA.

In the Proposal, the EPA also proposed to approve portions of a comprehensive SIP revisions submitted by the State on New Jersey on January 2, 2018. And the EPA proposed to approve New Jersey's reasonable further

progress plan and motor vehicle emission budgets for the 2008 ozone Moderate classification of the State's portion of the NYMA. Planning elements addressed in this final action from New Jersey's comprehensive January 2, 2018, and November 23, 2021, SIP submissions along with the respective ozone NAAQS classification and nonattainment areas are outlined in Table 1.

The specific details of New Jersey's SIP submittals and the rationale for the EPA's approval action are explained in the EPA's proposed rulemaking and are not restated in this final action. For this detailed information, the reader is referred to the Proposal.

TABLE 1—SIP ELEMENTS THAT THE EPA IS APPROVING THAT ARE ADDRESSED IN NEW JERSEY'S COMPREHENSIVE SIP REVISION SUBMITTED ON JANUARY 2, 2018, AND NOVEMBER 23, 2021

Ozone NAAQS & classification	SIP element	Nonattainment areas	SIP submission date
2008 Ozone NAAQS—Moderate Classification.	Reasonable Further Progress plan and Motor Vehicle Emission Budgets.	New Jersey's portion of the New York-Northern New Jersey-Long Island (NY–NJ–CT).	January 2, 2018
2008 Ozone NAAQS—Serious Classification.	Reasonable Further Progress plan and Motor Vehicle Emission Budgets.	New Jersey's portion of the New York-Northern New Jersey-Long Island (NY–NJ–CT).	November 23, 2021
2008 Ozone NAAQS—Serious Classifications.	New Source Review Program (NNSR) certification.	New Jersey's portion of the New York-Northern New Jersey-Long Island (NY–NJ–CT).	November 23, 2021
2008 Ozone NAAQS—Serious Classification.	Certification of the State's Emission Statement Program.	New Jersey's portion of the New York-Northern New Jersey-Long Island (NY–NJ–CT).	November 23, 2021
2008 Ozone NAAQS—Serious Classification.	Clean Fuels for Fleets	New Jersey's portion of the New York-Northern New Jersey-Long Island (NY–NJ–CT).	November 23, 2021
2015 Ozone NAAQS—Marginal & Moderate Classifications.	New Source Review Program (NNSR).	New Jersey's portion of the Philadelphia-Wilmington-Atlantic City (PA–NJ–MD–DE) & New Jersey's portion of the New York-Northern New Jersey-Long Island (NY–NJ–CT).	November 23, 2021
2015 Ozone NAAQS—OTR	New Source Review Program (NNSR).	Statewide	November 23, 2021
2015 Ozone NAAQS—Marginal & Moderate Classifications.	Nonattainment emission inventory under CAA section 182(a)(1).	New Jersey's portion of the Philadelphia-Wilmington-Atlantic City (PA–NJ–MD–DE) & New Jersey's portion of the New York-Northern New Jersey-Long Island (NY–NJ–CT).	November 23, 2021

II. What comments were received in response to the EPA's proposed action?

In response to the Proposal, the EPA received no comments during the 30-day public comment period. As a result, no changes have been made to this final rule.

III. What action is the EPA taking?

In this rule, the EPA is approving portions of a comprehensive SIP revision submitted by the State of New Jersey on November 23, 2021, certifying that the State has satisfied the requirements for an ozone NNSR program for the Serious classification of the 2008 Ozone NAAQS, both Marginal and Moderate classifications and OTR requirements for the 2015 Ozone NAAQS, certifying that the State has satisfied the requirements for a nonattainment emission inventory for the 2015 Ozone NAAQS, certifying that the State has satisfied the requirements of an emission statement program for the 2008 Ozone Serious classification for the NYMA, and certifying that the State has satisfied the requirements for clean fuels for fleets for the 2008 Ozone NAAQS Serious classification for its portion of the NYMA. The EPA is also approving New Jersey's reasonable further progress plans for both the Moderate and Serious classifications of the 2008 Ozone NAAQS in the NYMA.

In this rulemaking, the EPA is finalizing approval of New Jersey's 2017 motor vehicle emissions budgets established for the New Jersey portion of the NY–NJ–CT nonattainment area in the State's comprehensive January 2, 2018, SIP submittal. The EPA is approving these budgets because the EPA has completed its review of the State's overall 2008 Moderate RFP plan which demonstrates the required VOC/NOx emission reduction from the 2011 baseline year under CAA section 172(c)(2), 182(b)(1), and 40 CFR 51.1110. Table 2 lists New Jersey's 2017 motor vehicle emission budgets for the New Jersey portion of the NY–NJ–CT nonattainment area being approved into New Jersey's SIP. Additional details of New Jersey's 2017 motor vehicle emission budgets and the rationale for the EPA's approval are outlined in the EPA's proposed rulemaking. *See* 89 FR 56683.

TABLE 2—MOTOR VEHICLE EMISSION BUDGETS IN NEW JERSEY'S 2008 OZONE MODERATE RFP PLANS

Description	NO_X (tons/summer day)	VOC (tons/summer day)
2017 8-Hour Ozone Motor Vehicle Emission Budgets: NJ portion of NY–NJ–CT area	103.22	48.69

In this rulemaking, the EPA is also finalizing approval of New Jersey's 2020 motor vehicle emission budgets established for the New Jersey portion of the NY–NJ–CT nonattainment area in the State's comprehensive November 23, 2021, SIP submittal. The EPA is approving these budgets because the EPA has completed its review of the State's overall 2008 Serious RFP plan which demonstrates the required VOC/NO_X emission reduction from the 2011

baseline year under CAA section 182(b)(2)(B) and 40 CFR 51.1110. Table 3 lists New Jersey's 2020 motor vehicle emission budgets for the New Jersey portion of the NY–NJ–CT nonattainment area being approved into New Jersey's SIP. Additional details of New Jersey's 2020 motor vehicle emission budgets and the rationale for the EPA's approval are outlined in the EPA's proposed rulemaking. *See* 89 FR 56683.

TABLE 3—MOTOR VEHICLE EMISSION BUDGETS IN NEW JERSEY'S 2008 OZONE SERIOUS RFP PLANS

Description	NO_X (tons/summer day)	VOC (tons/summer day)
2020 8-Hour Ozone Motor Vehicle Emission Budgets: NJ portion of NY–NJ–CT area	76.77	42.46

IV. Environmental Justice Considerations

New Jersey provided a supplement to the SIP submission being proposed for approval with this rulemaking on June 6, 2024. The supplemental submission briefed the EPA on Environmental Justice (EJ) considerations within New Jersey by detailing the State's programs and initiatives addressing the needs of communities with EJ concerns that have been ongoing since 1998. For more information on New Jersey's EJ initiatives, the EPA refers the reader to the proposal published on July 10, 2024. *See* 89 FR 56683.

Although New Jersey considered EJ as part of its submittal, the EPA has determined that conducting its own comprehensive EJ analysis is not necessary in the context of this SIP submission for addressing planning elements for the 2008 and 2015 ozone 8-hour NAAQS, as the CAA and its applicable implementing regulations neither prohibit nor require such an evaluation of EJ in relation to the relevant requirements. Additionally, there is no evidence suggesting that this action contradicts the goals of E.O. 12898 or that it will disproportionately harm any specific group or have severe health or environmental impacts. Instead, the EPA expects that this action, which assesses whether New Jersey's SIP adequately addresses planning elements for the 2008 and 2015 ozone 8-hour NAAQS, will generally have a neutral impact on all populations, including communities of color and low-income groups, and will not worsen existing air quality standards.

The EPA concludes, for informational purposes only, that this final rule will not disproportionately harm communities with environmental justice concerns. New Jersey did evaluate EJ considerations voluntarily in its SIP submission, but the EPA's assessment of these considerations is provided for context, not as the basis for the action. The EPA is taking action under the CAA independently of the State's EJ assessment.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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 CAA. 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 final 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 14094 (88 FR 21879, April 11, 2023);
- 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 subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- 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.

In addition, this final rulemaking action, pertaining to New Jersey's submissions, 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).

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. EPA defines environmental justice EJ as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

The NJDEP evaluated environmental justice as part of its SIP submittal even though the CAA and applicable implementing regulations neither prohibit nor require an evaluation. The EPA's evaluation of the NJDEP's environmental justice considerations is described above in the section titled, ''Environmental Justice Considerations.'' The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. The EPA is taking action under the CAA on bases independent of New Jersey's evaluation of environmental justice. In addition, there

is no information in the record upon which this decision is based that is inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and the Comptroller General of the United States. 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 November 4, 2024. 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Lisa Garcia,

Regional Administrator, Region 2.

For the reasons set forth in the preamble, 40 CFR part 52 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.*

■ 2. Amend § 52.1570, in the table in paragraph (e), by adding entries for ''2008 8-hour Ozone Reasonable Further Progress Plan (RFP) for milestone year 2017; 2017 motor vehicle emission budgets used for planning purposes.'', ''2008 8-hour Ozone Reasonable Further Progress Plan (RFP) for milestone year 2020; 2020 motor vehicle emission budgets used for planning purposes.'', ''2008 8-hour Ozone Serious Nonattainment New Source Review Requirements Certification'', ''2008 8-hour Ozone Serious Emission Statement Program Certification'', ''2008 8-hour Ozone Clean Fuel for Fleets'', ''2015 8-hour Ozone Marginal Nonattainment New Source Review Requirements Certification'', ''2015 8-hour Ozone Moderate Nonattainment New Source Review Requirements Certification'', ''2015 8-hour Ozone Nonattainment New Source Review Requirements OTR Certification'', ''2015 8-hour Ozone Marginal nonattainment emission inventory'', and ''2015 8-hour Ozone Moderate nonattainment emission inventory'' to the end of the table to read as follows:

§ 52.1570 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED NEW JERSEY NONREGULATORY AND QUASI-REGULATORY PROVISIONS

SIP element	Applicable geographic or nonattainment area	New Jersey submittal date	EPA approval date	Explanation
* *	* *	*	* *	
2008 8-hour Ozone Reasonable Further Progress Plan (RFP) for milestone year 2017; 2017 motor vehicle emission budgets used for planning purposes.	New Jersey portion of the New York-Northern New Jersey-Long Island NY–NJ–CT 8-hour ozone nonattainment area.	01/02/2018	9/4/2024, [insert **Federal Register** citation].	• Full approval.
2008 8-hour Ozone Reasonable Further Progress Plan (RFP) for milestone year 2020; 2020 motor vehicle emission budgets used for planning purposes.	New Jersey portion of the New York-Northern New Jersey-Long Island NY–NJ–CT 8-hour ozone nonattainment area.	11/23/2021	9/4/2024, [insert **Federal Register** citation].	• Full approval.
2008 8-hour Ozone Serious Nonattainment New Source Review Requirements Certification.	New Jersey portion of the New York-Northern New Jersey-Long Island NY–NJ–CT 8-hour ozone nonattainment area.	11/23/2021	9/4/2024, [insert **Federal Register** citation].	• Full approval.
2008 8-hour Ozone Serious Emission Statement Program Certification.	New Jersey portion of the New York-Northern New Jersey-Long Island NY–NJ–CT 8-hour ozone nonattainment area.	11/23/2021	9/4/2024, [insert **Federal Register** citation].	• Full approval.
2008 8-hour Ozone Clean Fuel for Fleets.	New Jersey portion of the New York-Northern New Jersey-Long Island NY–NJ–CT 8-hour ozone nonattainment area.	11/23/2021	9/4/2024, [insert **Federal Register** citation].	• Full approval.
2015 8-hour Ozone Marginal Nonattainment New Source Review Requirements Certification.	New Jersey portion of the Philadelphia-Wilmington-Atlantic City, PA–NJ–MD–DE, 8-hour ozone nonattainment area.	11/23/2021	9/4/2024, [insert **Federal Register** citation].	• Full approval.
2015 8-hour Ozone Moderate Nonattainment New Source Review Requirements Certification.	New Jersey portion of the New York-Northern New Jersey-Long Island NY–NJ–CT 8-hour ozone nonattainment area.	11/23/2021	9/4/2024, [insert **Federal Register** citation].	• Full approval. • Certifies New Jersey's commitment to implement NNSR requirements statewide within the Ozone Transport Region (OTR) for the 2015 Ozone NAAQS.

EPA-APPROVED NEW JERSEY NONREGULATORY AND QUASI-REGULATORY PROVISIONS—Continued

SIP element	Applicable geographic or nonattainment area	New Jersey submittal date	EPA approval date	Explanation
2015 8-hour Ozone Nonattainment New Source Review Requirements OTR Certification.	State-wide	11/23/2021	9/4/2024, [insert **Federal Register** citation].	• Full approval. • Certifies New Jersey's commitment to implement NNSR requirements statewide within the Ozone Transport Region (OTR) for the 2015 Ozone NAAQS.
2015 8-hour Ozone Marginal nonattainment emission inventory.	New Jersey portion of the Philadelphia-Wilmington-Atlantic City, PA–NJ–MD–DE, 8-hour ozone nonattainment area.	11/23/2021	9/4/2024, [insert **Federal Register** citation].	• Full approval.
2015 8-hour Ozone Moderate nonattainment emission inventory.	New Jersey portion of the New York-Northern New Jersey-Long Island NY–NJ–CT 8-hour ozone nonattainment area.	11/23/2021	9/4/2024, [insert **Federal Register** citation].	• Full approval.

■ 3. Amend § 52.1582 by adding paragraph (s) to read as follows:

§ 52.1582 Control strategy and regulations: Ozone.

* * * * *

(s)(1) The Reasonable Further Progress Plans for milestone years 2017 and 2020 pursuant to the 2008 8-hour Ozone NAAQS, included in New York's January 2, 2018, and November 23, 2021, State Implementation Plan submittals for the New Jersey portion of the New York-Northern New Jersey-Long Island NY–NJ–CT 8-hour ozone nonattainment area are approved.

(2) The November 23, 2021, New Jersey plan submittal providing a certification that the State has satisfied the requirements for an ozone nonattainment new source review program as sufficient for purposes of the state-wide 2008 8-hour ozone NAAQS Serious classification, including the New Jersey portion of the NY–NJ–CT nonattainment area, is approved.

(3) New Jersey's certification that the State has satisfied the requirements for Emission Statement Program under the Clean Air Act for the 2008 8-hour Ozone NAAQS Serious classification, included in the State's November 23, 2021, SIP submittal for the New Jersey portion of the New York-Northern New Jersey-Long Island nonattainment area is approved.

(4) New Jersey's certification that the State has satisfied the requirements for Clean Fuel for Fleets under the Clean Air Act for the 2008 8-hour Ozone NAAQS, included in the State's November 23, 2021, SIP submittal for the New Jersey portion of the New York-Northern New Jersey-Long Island nonattainment area is approved.

(5) The November 23, 2021, New Jersey plan submittal providing a certification that the State has satisfied the requirements for an ozone nonattainment new source review program as sufficient for purposes of the 2015 8-hour ozone NAAQS Marginal classification for the New Jersey portion of the Philadelphia-Wilmington-Atlantic City, PA–NJ–MD–DE, 8-hour ozone nonattainment area, is approved.

(6) The November 23, 2021, New Jersey plan submittal providing a certification that the State has satisfied the requirements for an ozone nonattainment new source review program as sufficient for purposes of the state-wide 2015 8-hour ozone NAAQS Moderate classification, including the New Jersey portion of the NY–NJ–CT nonattainment area, is approved.

[FR Doc. 2024–19581 Filed 9–3–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R09–OAR–2022–0326; FRL–9693–02–R9]

Partial Approval and Partial Disapproval of Air Quality State Implementation Plans; Arizona; 2015 Ozone Infrastructure Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving in part and disapproving in part State implementation plan (SIP) revisions submitted by the State of Arizona pursuant to the Clean Air Act (CAA) for the implementation, maintenance, and enforcement of the 2015 ozone national ambient air quality standards (NAAQS or ''standard''). In addition to our partial approval and partial disapproval of Arizona's SIP revision, the EPA is approving rules in the Arizona Revised Statutes and Pima County Code related to public availability of emissions reports into the Arizona SIP and reclassifying regions in Arizona with respect to emergency episode plans for ozone. Additionally, this final action includes an error correction to amend regulatory text related to the nonattainment designation of the Phoenix-Mesa, Arizona area for the 2015 ozone NAAQS.

DATES: This rule is effective October 4, 2024.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2022–0326. 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. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Ben Leers, Planning and Analysis Branch (AIR–2), Air and Radiation Division, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 947–4279, or by email at *leers.ben@epa.gov.*

SUPPLEMENTARY INFORMATION:
Throughout this document, ''we,'' ''us,'' and ''our'' refer to the EPA.

Table of Contents

I. Background
A. Statutory Requirements
B. State Submittals
C. EPA's Proposal
II. Public Comments and EPA Responses
III. Final Action
A. Partial Approvals and Partial Disapprovals
B. Incorporation of Rules Into Arizona's State Implementation Plan
C. Reclassification of Regions for Ozone Episode Plans
D. Error Correction to 40 CFR 81.303
IV. Incorporation by Reference
V. Statutory and Executive Order Reviews

I. Background

A. Statutory Requirements

Section 110(a)(1) of the CAA requires each State to submit to the EPA, within three years after the promulgation of a primary or secondary NAAQS or any revision thereof, a SIP revision that provides for the implementation, maintenance, and enforcement of such NAAQS.

Section 110(a)(2) of the CAA contains the infrastructure SIP requirements that generally relate to the information, authorities, compliance assurances, procedural requirements, and control measures that constitute the ''infrastructure'' of a State's air quality management program. These infrastructure SIP requirements (or ''elements'') required by section 110(a)(2) are as follows:

- Section 110(a)(2)(A): Emission limits and other control measures.
- Section 110(a)(2)(B): Ambient air quality monitoring/data system.
- Section 110(a)(2)(C): Program for enforcement of control measures and regulation of new and modified stationary sources.
- Section 110(a)(2)(D)(i): Interstate pollution transport.
- Section 110(a)(2)(D)(ii): Interstate and international pollution abatement.
- Section 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local and regional government agencies.
- Section 110(a)(2)(F): Stationary source monitoring and reporting.
- Section 110(a)(2)(G): Emergency episodes.
- Section 110(a)(2)(H): SIP revisions.
- Section 110(a)(2)(J): Consultation with government officials, public notification, prevention of significant deterioration (PSD), and visibility protection.
- Section 110(a)(2)(K): Air quality modeling and submittal of modeling data.
- Section 110(a)(2)(L): Permitting fees.
- Section 110(a)(2)(M): Consultation/participation by affected local entities.

Two elements identified in section 110(a)(2) are not governed by the three-year submittal deadline of section 110(a)(1) and are therefore not addressed in this action. These two elements are: (i) section 110(a)(2)(C), to the extent that it refers to permit programs required under part D (nonattainment new source review (NSR)), and (ii) section 110(a)(2)(I), pertaining to the nonattainment planning requirements of part D. As a result, this action does not address requirements for the nonattainment NSR portion of section 110(a)(2)(C) or the whole of section 110(a)(2)(I).

This action also does not address the interstate transport requirements under section 110(a)(2)(D)(i)(I), referred to as ''prongs 1 and 2'' of section 110(a)(2)(D)(i), or the requirements of section 110(a)(2)(D)(i)(II) pertaining to interference with visibility protection in other States, referred to as ''prong 4'' of section 110(a)(2)(D)(i). The EPA has proposed action on Arizona's SIP with respect to prongs 1, 2 and 4 of section 110(a)(2)(D)(i) for the 2015 ozone NAAQS in separate rulemakings.[1]

B. State Submittals

The Arizona Department of Environmental Quality (ADEQ) submitted two SIP revisions to address the infrastructure SIP requirements in CAA sections 110(a)(1) and 110(a)(2) for the 2015 ozone NAAQS. On September 24, 2018, ADEQ submitted the ''Arizona State Implementation Plan Revision under Clean Air Act Sections 110(a)(1) and 110(a)(2) for the 2015 Ozone National Ambient Air Quality Standards.'' [2] On February 10, 2022, ADEQ submitted the ''State Implementation Plan Revision: Clean Air Act Section 110(a)(2) for the 2012 Fine Particulate & 2015 Ozone NAAQS'' (''2022 I–SIP supplement'').[3] These submittals collectively address Arizona's obligation to satisfy infrastructure SIP requirements for the 2015 ozone NAAQS.[4] We refer to them collectively herein as ''Arizona's ozone I–SIP submittals.''

C. EPA's Proposal

1. Approvals and Partial Approvals

We evaluated Arizona's ozone I–SIP submittals and the existing provisions of the Arizona SIP for compliance with the infrastructure SIP requirements of CAA section 110(a)(2) and the applicable regulations in 40 CFR part 51 (''Requirements for Preparation, Adoption, and Submittal of State Implementation Plans''). Based on the evaluation presented in the proposed rulemaking and in the accompanying technical support document (TSD), on December 5, 2022, we proposed to partially approve Arizona's ozone I–SIP submittals with respect to the 2015 ozone NAAQS for the requirements of the following sections of the CAA.[5] Partial approvals are indicated by the parenthetical ''(in part).''

- Section 110(a)(2)(A)—Emission limits and other control measures.
- Section 110(a)(2)(B)—Ambient air quality monitoring/data system.
- Section 110(a)(2)(C)—Program for enforcement of control measures and regulation of new stationary sources (in part).
- Section 110(a)(2)(D)(i)(II)—Interference with maintenance, or ''prong 3'' (in part).
- Section 110(a)(2)(D)(ii)—Interstate pollution abatement, CAA section 126 (in part).
- Section 110(a)(2)(D)(ii)—International pollution abatement, CAA section 115.
- Section 110(a)(2)(E)—Adequate resources and authority, conflict of interest, and oversight of local governments and regional agencies.
- Section 110(a)(2)(F)—Stationary source monitoring and reporting.
- Section 110(a)(2)(G)—Emergency episodes.
- Section 110(a)(2)(H)—Consultation with government officials.

[1] The EPA proposed to approve Arizona's SIP with respect to prongs 1 and 2 of section 110(a)(2)(D)(i) on June 24, 2022 (87 FR 37776). However, based on updated photochemical modeling, the EPA issued a supplemental proposal on February 16, 2024, proposing to approve Arizona's SIP with respect to prong 1 and to disapprove Arizona's SIP with respect to prong 2 (89 FR 12666). The EPA proposed to disapprove Arizona's SIP with respect to prong 4 of section 110(a)(2)(D)(i) on May 31, 2024 (89 FR 47398).

[2] Letter dated September 24, 2018, from Timothy S. Franquist, Director, Air Quality Division, ADEQ, to Michael Stoker, Regional Administrator, EPA Region IX, Subject: ''Submittal of the Arizona State Implementation Plan Revision under Clean Air Act Sections 110(a)(1) and 110(a)(2) for the 2015 Ozone NAAQS.''

[3] Letter dated February 10, 2022, from Daniel Czecholinski, Director, Air Quality Division, ADEQ, to Martha Guzman, Regional Administrator, EPA Region IX, Subject: ''Submittal of the Arizona State Implementation Plan Revision under Clean Air Act Sections 110(a)(2) for the 2012 Fine Particulate and the 2015 Ozone NAAQS.''

[4] The 2022 I–SIP supplement also addresses certain infrastructure SIP requirements for the 2012 fine particulate matter ($PM_{2.5}$) NAAQS. We are not taking action on the portions of the 2022 I–SIP supplement addressing the 2012 $PM_{2.5}$ NAAQS in this rulemaking.

[5] 87 FR 74349 (December 5, 2022). The TSD supporting our proposed rulemaking is available at *https://www.regulations.gov* under Docket ID EPA–R09–OAR–2022–0326.

• Section 110(a)(2)(J)—Consultation with government officials, public notification, PSD, and visibility protection (in part).
• Section 110(a)(2)(K)—Air quality modeling and submission of modeling data.
• Section 110(a)(2)(L)—Permitting fees.
• Section 110(a)(2)(M)—Consultation/participation by affected local entities.

2. Partial Disapprovals

Based on the evaluation presented in the proposed rulemaking and accompanying TSD,[6] the EPA proposed to partially disapprove Arizona's ozone I–SIP submittals with respect to the 2015 ozone NAAQS for the following CAA requirements:
• Section 110(a)(2)(C)—Program for enforcement of control measures and regulation of new stationary sources (in part).
• Section 110(a)(2)(D)(i)(II)—Interference with maintenance, or ''prong 3'' (in part).
• Section 110(a)(2)(D)(ii)—Interstate pollution abatement, CAA section 126 (in part).[7]
• Section 110(a)(2)(J)—PSD and visibility protection (in part).

The EPA proposed to partially disapprove Arizona's ozone I–SIP submittals with respect to the 2015 ozone NAAQS for these CAA requirements due to deficiencies with PSD permitting of greenhouse gases in all permitting jurisdictions in Arizona and with PSD permitting of all NSR-regulated pollutants in Pima County.

3. Incorporation of Rules Into Arizona's State Implementation Plan

The 2022 I–SIP supplement includes the submittal of the following two rules for incorporation into the Arizona SIP to meet the requirements of CAA section 110(a)(2)(F) for the 2015 ozone NAAQS: Arizona Revised Statute (ARS) 49–432(C) and Pima County Code (PCC) 17.24.010. We reviewed ARS 49–432(C) and PCC 17.24.010 and found that they sufficiently provide for the public availability of stationary source emissions reports consistent with the requirements of CAA section 110(a)(2)(F). We therefore proposed to approve ARS 49–432(C) and PCC 17.24.010 into the Arizona SIP.

4. Reclassification of Regions for Ozone Episode Plans

Priority thresholds for classification of air quality control regions (AQCRs) are established at 40 CFR 51.150, and the classifications of AQCRs in Arizona are listed at 40 CFR 52.121. Under 40 CFR 51.151 and 51.152, regions classified Priority I, IA, or II are required to have SIP-approved emergency episode contingency plans, while those classified Priority III are not required to have plans. Under 40 CFR 51.153, based upon the most recent three years of complete air quality data at the time of proposal (*i.e.,* 2019–2021), the EPA proposed to reclassify the Central Arizona Intrastate AQCR from Priority III to Priority I for ozone, to retain the classification of the Maricopa Intrastate AQCR as Priority I for ozone, and to reclassify the Pima Intrastate AQCR from Priority I to Priority III for ozone.[8]

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period that ended on January 4, 2023. During this period, the EPA received one anonymous comment. The full text of the comment is available in the docket for this rulemaking. The EPA reviewed the comment and determined that it is not germane to our proposed action. Therefore, we do not provide a specific response to the comment in this document.

III. Final Action

A. Partial Approvals and Partial Disapprovals

Under CAA section 110(a), we are taking final action to partially approve and partially disapprove Arizona's ozone I–SIP submittals for the 2015 ozone NAAQS. Specifically, we are approving the submittal for the requirements of the following CAA sections, including partial approval for elements where noted:
• Section 110(a)(2)(A)—Emission limits and other control measures.
• Section 110(a)(2)(B)—Ambient air quality monitoring/data system.
• Section 110(a)(2)(C)—Program for enforcement of control measures and regulation of new stationary sources (in part).
• Section 110(a)(2)(D)(i)(II)—Interference with maintenance, or ''prong 3'' (in part).
• Section 110(a)(2)(D)(ii)—Interstate pollution abatement, CAA section 126 (in part).
• Section 110(a)(2)(D)(ii)—International pollution abatement, CAA section 115.
• Section 110(a)(2)(E)—Adequate resources and authority, conflict of interest, and oversight of local governments and regional agencies.
• Section 110(a)(2)(F)—Stationary source monitoring and reporting.
• Section 110(a)(2)(G)—Emergency episodes.
• Section 110(a)(2)(H)—Consultation with government officials.
• Section 110(a)(2)(J)—Consultation with government officials, public notification, PSD, and visibility protection (in part).
• Section 110(a)(2)(K)—Air quality modeling and submission of modeling data.
• Section 110(a)(2)(L)—Permitting fees.
• Section 110(a)(2)(M)—Consultation/participation by affected local entities.

We are taking final action to partially disapprove Arizona's ozone I–SIP submittals with respect to the 2015 ozone NAAQS for the following Clean Air Act requirements:
• Section 110(a)(2)(C)—Program for enforcement of control measures and regulation of new stationary sources (in part).
• Section 110(a)(2)(D)(i)(II)—Interference with maintenance, or ''prong 3'' (in part).
• Section 110(a)(2)(D)(ii)—Interstate pollution abatement, CAA section 126 (in part).
• Section 110(a)(2)(J)—PSD and visibility protection (in part).

Although the Arizona SIP remains deficient with respect to PSD permitting for certain pollutants in certain areas of Arizona as described, these deficiencies are adequately addressed in both areas by existing federal implementation plans. These partial disapprovals of Arizona's SIP do not create any new consequences for Arizona, the relevant county agencies, or the EPA, as Arizona and the county agencies already implement the EPA's federal PSD program at 40 CFR 52.21, pursuant to delegation agreements, for all regulated NSR pollutants. They also do not create any new offset or highway sanction; such sanctions are not triggered by disapprovals of infrastructure SIPs.

B. Incorporation of Rules Into Arizona's State Implementation Plan

For the reasons described in our proposed rulemaking, we found that ARS 49–432(C) and PCC 17.24.010 sufficiently provide for the public availability of stationary source emissions reports consistent with the

[6] 87 FR 74349.

[7] In our proposed rulemaking, we inadvertently omitted ''(in part)'' from the proposed partial disapproval of section 110(a)(2)(D)(ii) and are correcting it in this rulemaking. The analysis in the TSD and the proposed partial approval of section 110(a)(2)(D)(ii) support our intention to partially disapprove section 110(a)(2)(D)(ii).

[8] 87 FR 74349.

requirements of CAA section 110(a)(2)(F). We are therefore taking final action to approve ARS 49–432(C) and PCC 17.24.010 into the Arizona SIP.[9]

C. Reclassification of Regions for Ozone Episode Plans

For the reasons described in our proposed rulemaking, we are taking final action to reclassify the Central Arizona Intrastate AQCR from Priority III to Priority I for ozone. We are also taking final action to reclassify the Pima Intrastate AQCR from Priority I to Priority III for ozone. We are retaining the classification of the Maricopa Intrastate AQCR as Priority I for ozone.

Plans for areas classified as Priority I, IA, or II regions for a specific pollutant are required to include an emergency contingency plan meeting the requirements of 40 CFR 51.151 and 51.152 for that pollutant. The Central Arizona Intrastate AQCR includes Gila and Pinal counties. Emergency episode procedures in Gila County are governed by Arizona Administrative Code R18–2–220. Emergency episode procedures in Pinal County are governed by Pinal County Air Quality Control District Code of Regulations Chapter 2, Article 7. The emergency episode provisions in each of these regulations comply with the requirements of 40 CFR 51.151 and 51.152 pertaining to Priority I areas. Therefore, the reclassification of areas of Arizona from Priority III to Priority I for ozone will not generate new requirements for Arizona, and our reclassification of the Central Arizona Intrastate AQCR for ozone does not affect our approval of the Arizona SIP with respect to CAA section 110(a)(2)(G).

D. Error Correction to 40 CFR 81.303

On October 7, 2022, the EPA issued a final rule titled ''Determinations of Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of Areas Classified as Marginal for the 2015 Ozone National Ambient Air Quality Standards'' that included a final action to reclassify the Phoenix-Mesa nonattainment area in Arizona from ''Marginal'' to ''Moderate'' nonattainment for the 2015 ozone NAAQS.[10] In the portion of 40 CFR 81.303 amended by the EPA's final rule, the EPA erroneously listed ''Mariposa'' County in place of ''Maricopa'' County among the partial counties composing the Phoenix-Mesa nonattainment area. The EPA is taking action to correct this error by replacing ''Mariposa'' with ''Maricopa'' in the Phoenix-Mesa nonattainment area description under the 2015 ozone NAAQS.

In addition, we are taking action to correct a typographical error in the entry for the designated area of Maricopa County. The entry is currently contained in two cells, and we are condensing it into one cell.

The EPA has determined that this action falls under the ''good cause'' exemption in section 553(b)(4)(B) of the Administrative Procedure Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation where public notice and comment procedures are impracticable, unnecessary, or contrary to the public interest. Public notice and comment for this action are unnecessary because the underlying rule for which this correcting amendment has been prepared was already subject to a 30-day comment period, and this action merely corrects errors in the rule text. Further, this action is consistent with the purpose and rationale of the final rule, which is corrected herein. Because this action does not change the EPA's analyses or overall actions, no purpose would be served by additional public notice and comment. Consequently, additional public notice and comment are unnecessary.

IV. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. EPA is finalizing the removal of Pima County Air Pollution Control Regulation Rule 631, *Confidentiality of Trade Secrets, Sales Data, and Proprietary Information,* from the Arizona SIP, which is incorporated by reference in accordance with the requirements of 1 CFR part 51. EPA has made and will continue to make the State Implementation Plan generally available at the EPA Region 9 Office (please contact the person identified in the For Further Information Contact section of this preamble for more information).

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review, Executive Order 13563: Improving Regulation and Regulatory Review, and Executive Order 14094: Modernizing Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by State law.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by State law.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects 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.

F. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because 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 and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

[9] PCC 17.24.010 replaces Rule 631 in the 1979–1993 Rule Codification of the Pima County Code, which was previously approved into the Arizona SIP. Thus, PCC 17.24.010 will replace Rule 631 under 40 CFR 52.120, Identification of Plan.

[10] 87 FR 60897 (October 7, 2022).

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by State law.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

ADEQ did not evaluate environmental justice considerations as part of its SIP submittals; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action as described in our proposed rulemaking, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

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).

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

L. Petitions for Judicial Review

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 November 4, 2024. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental Protection, Air pollution control.

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

Dated: August 5, 2024.

Martha Guzman Aceves,

Regional Administrator, Region IX.

For the reasons stated in the preamble, the EPA amends chapter I, title 40 of the Code of Federal Regulations 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. Amend § 52.120 by:

■ a. Removing in paragraph (c) table 7 under the heading ''Chapter VI: Recordkeeping and Reporting'' the entry for ''Rule 631;''

■ b. In paragraph (e) table 1 under the heading ''Clean Air Act section 110(a)(2) State Implementation Plan Elements (Excluding Part D Elements and Plans),'':

■ i. Adding entries for ''Arizona State Implementation Plan Revision under Clean Air Act Section 110(a)(1) and 110(a)(2) for the 2015 Ozone National Ambient Air Quality Standards (dated September 24, 2018)'' and ''State Implementation Plan Revision: Clean Air Act Section 110(a)(2) for the 2012 Fine Particulate & 2015 Ozone NAAQS (dated February 2022)'' before the entry for ''Ordinance No. 1993–128, Section 1, 17.040.190 ''Composition'' Section 6, 17.24.040 ''Reporting for compliance evaluations'';''

■ ii. Adding an entry for ''Ordinance No. 1993–128, Section 6, 17.24.010 ''Confidentiality of trade secrets, sales data, and proprietary information'','' before the entry for ''Ordinance 2005–43, Chapter 17.12, Permits and Permit Revisions, section 2, 17.12.040 ''Reporting Requirements'';'' and

■ c. Adding in paragraph (e), table 3 under the heading ''Article 2 (State Air Pollution Control),'' an entry for ''49–432(C)'' before the entry for ''49–433.''

The additions 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] [1]

Name of SIP provision	Applicable geographic or nonattainment area or title/subject	State/submittal date	EPA approval date	Explanation
* *	*	*	*	* *
Arizona State Implementation Plan Revision under Clean Air Act Section 110(a)(1) and 110(a)(2) for the 2015 Ozone National Ambient Air Quality Standards (dated September 24, 2018).	State-wide	September 24, 2018	September 4, 2024, [INSERT **FEDERAL REGISTER** CITATION].	Adopted by the Arizona Department of Environmental Quality on September 24, 2018. EPA fully approved all elements of the submittal except those addressing CAA sections 110(a)(2)(C), 110(a)(2)(D), and 110(a)(2)(J).
State Implementation Plan Revision: Clean Air Act Section 110(a)(2) for the 2012 Fine Particulate & 2015 Ozone NAAQS (dated February 2022).	State-wide	February 10, 2022	September 4, 2024, [INSERT **FEDERAL REGISTER** CITATION].	Adopted by the Arizona Department of Environmental Quality on February 10, 2022. EPA approved all elements of the submittal except those addressing requirements for the 2012 $PM_{2.5}$ NAAQS.
* *	*	*	*	* *
Ordinance No. 1993–128, Section 6, 17.24.010 ''Confidentiality of trade secrets, sales data, and proprietary information''.	Pima County	February 10, 2022	September 4, 2024, [INSERT **FEDERAL REGISTER** CITATION].	Adopted by the Board of Supervisors of Pima County, Arizona on September 28, 1993.
* *	*	*	*	* *

[1] 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.

* * * * *

TABLE 3—EPA-APPROVED ARIZONA STATUTES—NON-REGULATORY

State citation	Title/subject	State/submittal date	EPA approval date	Explanation
*	*	* *	*	* *
49–432(C)	Classification and reporting; confidentiality of records.	February 10, 2022	September 4, 2024, [INSERT **FEDERAL REGISTER** CITATION].	Arizona Revised Statutes. Adopted by the Arizona Department of Environmental Quality on February 10, 2022.
*	*	* *	*	* *

* * * * *

■ 3. Amend § 52.121 by revising the entries in the table for ''Pima Intrastate (Pima)'' and ''Central Arizona Intrastate (Gila, Pinal)'' to read as follows:

§ 52.121 Classification of Regions.

The Arizona plan is evaluated on the basis of the following classifications:

AQCR (constituent counties)	Classifications				
	PM	SO_X	NO_2	CO	O_3
* * *	*	*	*	*	*
Pima Intrastate (Pima)	I	III	III	III	III
* * *	*	*	*	*	*
Central Arizona Intrastate (Gila, Pinal)	I	IA	III	III	I
* * *	*	*	*	*	*

■ 4. Amend § 52.123 by reserving paragraph (s) and adding paragraph (t) to read as follows:

§ 52.123 Approval status.

* * * * *

(s) [Reserved].

(t) *2015 8-hour ozone NAAQS:* The SIPs submitted on September 24, 2018, and February 10, 2022, are fully or partially disapproved for CAA elements 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J) for all portions of the Arizona SIP.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 5. The authority citation for part 81 continues to read as follows:

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

Subpart C—Section 107 Attainment Status Designations

■ 6. Amend § 81.303, the table entitled ''Arizona—2015 8-Hour Ozone NAAQS'' by revising the entry for ''Phoenix-Mesa, AZ'' to read as follows:

§ 81.303 Arizona.

* * * * *

ARIZONA—2015 8-HOUR OZONE NAAQS

[Primary and secondary]

Designated area [1]	Designation		Classification	
	Date [2]	Type	Date [2]	Type
Phoenix-Mesa, AZ		Nonattainment	11/7/22	Moderate.
Gila County (part):				
T2N, R12E (except that portion in Maricopa County); T3N, R12E (except that portion in Maricopa County); T4N, R12E (sections 25 through 29 (except those portions in Maricopa County) and 33 through 36 (except those portions in Maricopa County))				
Maricopa County (part):				

ARIZONA—2015 8-HOUR OZONE NAAQS—Continued

[Primary and secondary]

Designated area [1]	Designation		Classification	
	Date [2]	Type	Date [2]	Type
T1N, R1E (except that portion in Indian Country); T1N, R2E; T1N, R3E; T1N, R4E (except that portion in Indian Country); T1N, R5E (except that portion in Indian Country); T1N, R6E; T1N, R7E; T1N, R1W; T1N, R2W; T1N, R3W; T1N, R4W; T1N, R5W; T1N, R6W; T1N, R7W; T1N, R8W; T2N, R1E; T2N, R2E; T2N, R3E; T2N, R4E; T2N, R6E (except that portion in Indian Country); T2N, R7E (except that portion in Indian Country); T2N, R8E; T2N, R9E; T2N, R10E; T2N, R11E; T2N, R12E (except that portion in Gila County); T2N, R13E (except that portion in Gila County); T2N, R1W; T2N, R2W; T2N, R3W; T2N, R4W; T2N, R5W; T2N, R6W; T2N, R7W; T2N, R8W; T3N, R1E; T3N, R2E; T3N, R3E; T3N, R4E; T3N, R5E (except that portion in Indian Country); T3N, R6E (except that portion in Indian Country); T3N, R7E (except that portion in Indian Country); T3N, R8E; T3N, R9E; T3N, R10E (except that portion in Gila County); T3N, R11E (except that portion in Gila County); T3N, R12E (except that portion in Gila County); T3N, R1W; T3N, R2W T3N, R3W; T3N, R4W; T3N, R5W; T3N, R6W; T4N, R1E; T4N, R2E; T4N, R3E; T4N, R4E; T4N, R5E; T4N, R6E (except that portion in Indian Country); T4N, R7E (except that portion in Indian Country); T4N, R8E T4N, R9E; T4N, R10E (except that portion in Gila County); T4N, R11E (except that portion in Gila County); T4N, R12E (except that portion in Gila County); T4N, R1W; T4N, R2W; T4N, R3W; T4N, R4W; T4N, R5W; T4N, R6W; T5N, R1E; T5N, R2E; T5N, R3E; T5N, R4E; T5N, R5E; T5N, R6E; T5N, R7E; T5N, R8E; T5N, R9E (except that portion in Gila County); T5N, R10E (except that portion in Gila County); T5N, R1W; T5N, R2W; T5N, R3W; T5N, R4W; T5N, R5W; T6N, R1E (except that portion in Yavapai County); T6N, R2E; T6N, R3E; T6N, R4E; T6N, R5E; T6N, R6E; T6N, R7E; T6N, R8E; T6N, R9E (except that portion in Gila County); T6N, R10E (except that portion in Gila County); T6N, R1W (except that portion in Yavapai County); T6N, R2W; T6N, R3W; T6N, R4W; T6N, R5W; T7N, R1E (except that portion in Yavapai County); T7N, R2E (except that portion in Yavapai County); T7N, R3E; T7N, R4E; T7N, R5E; T7N, R6E; T7N, R7E; T7N, R8E; T7N, R9E (except that portion in Gila County); T7N, R1W (except that portion in Yavapai County); T7N, R2W (except that portion in Yavapai County); T8N, R2E (except that portion in Yavapai County); T8N, R3E (except that portion in Yavapai County); T8N, R4E (except that portion in Yavapai County); T8N, R5E (except that portion in Yavapai County); T8N, R6E (except that portion in Yavapai County); T8N, R7E (except that portion in Yavapai County); T8N, R8E (except that portion in Yavapai and Gila Counties); T8N, R9E (except that portion in Yavapai and Gila Counties); T1S, R1E (except that portion in Indian Country); T1S, R2E (except that portion in Pinal County and in Indian Country); T1S, R3E; T1S, R4E; T1S, R5E; T1S, R6E; T1S, R7E; T1S, R1W; T1S, R2W; T1S, R3W; T1S, R4W; T1S, R5W; T1S, R6W; T2S, R1E (except that portion in Indian Country); T2S, R5E; T2S, R6E; T2S, R7E; T2S, R1W; T2S, R2W; T2S, R3W; T2S, R4W; T2S, R5W; T3S, R1E; T3S, R1W; T3S, R2W; T3S, R3W; T3S, R4W; T3S, R5W; T4S, R1E; T4S, R1W; T4S, R2W; T4S, R3W; T4S, R4W; T4S, R5W; T5S, R4W (sections 1 through 22 and 27 through 34).				
Pinal County (part):				
T1N, R8E; T1N, R9E; T1N, R10E; T1S, R8E; T1S, R9E; T1S, R10E; T2S, R8E (sections 1 through 10, 15 through 22, and 27 through 34); T2S, R9E (sections 1 through 6); T2S, R10E (sections 1 through 6); T3S, R7E (sections 1 through 6, 11 through 14, 23 through 26, and 35 through 36); T3S, R8E (sections 3 through 10, 15 through 22, and 27 through 34).				
Fort McDowell Yavapai Nation.				
Gila River Indian Community of the Gila River Indian Reservation, Arizona. Includes only non-contiguous areas of Indian country known as "parcels M & N".[3]				
Tohono O'odham Nation of Arizona.				
Salt River Pima-Maricopa Indian Community of the Salt River Reservation.				
* * * * * * *				

[1] Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the State has regulatory authority under the Clean Air Act for such Indian country.

[2] This date is August 3, 2018, unless otherwise noted.
[3] See section 3.0 of the EPA's technical support document for Arizona, titled ''Arizona Final Area Designations for the 2015 Ozone National Ambient Air Quality Standards Technical Support Document (TSD),'' for more information and a map showing the locations of ''parcels M & N'' (available in Docket ID: EPA–HQ–OAR–2017–0548).

[FR Doc. 2024–17711 Filed 9–3–24; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 98

[EPA–HQ–OAR–2023–0234; FRL–10246–03–OAR]

RIN 2060–AV49

Greenhouse Gas Reporting Rule: Revisions and Confidentiality Determinations for Petroleum and Natural Gas Systems; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction and correcting amendments.

SUMMARY: The Environmental Protection Agency (EPA) is correcting a final rule published in the **Federal Register** on May 14, 2024. The final rule amended requirements that apply to the petroleum and natural gas systems source category of the Greenhouse Gas Reporting Rule to ensure that reporting is based on empirical data, accurately reflects total methane emissions and waste emissions from applicable facilities and allows owners and operators of applicable facilities to submit empirical emissions data that appropriately demonstrate the extent to which a charge is owed under the Waste Emissions Charge. This document corrects inadvertent errors introduced in preparing the amendatory regulatory text for the final rule or in preparing the signed final rule for publication. These corrections do not result in any substantive changes to the final rule.

DATES: The **Federal Register** corrections, numbers 1.a through 1.ff and 2.a through 2.q, are effective January 1, 2025. The correcting amendments in instructions 2 and 3, correcting §§ 98.233 and 98.236, respectively, are effective October 4, 2024.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2023–0234. Publicly available docket materials are available either electronically at *www.regulations.gov* or in hard copy at Air and Radiation Docket and Information Center, EPA Docket Center, EPA/DC, EPA WJC West Building, 1301 Constitution Ave. NW, Room 3334, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jennifer Bohman, Climate Change Division, Office of Atmospheric Protection (MC–6207A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 343–9548; email address: *GHGReporting@epa.gov.*

SUPPLEMENTARY INFORMATION: The EPA is correcting inadvertent errors in the regulatory text of the final rule as described in this section. These corrections are necessary to be consistent with the May 14, 2024 final rule (89 FR 42062) (hereafter referred to as the ''final rule''), the redline-strikeout version of the final regulatory text in the docket for the final rule (hereinafter referred to as ''final rule redline-strikeout'') (Docket ID No. EPA–HQ–OAR–2023–0234–0459), and the preamble for the August 1, 2023 proposed rulemaking (88 FR 50282) (hereafter referred to as the ''proposed rule''). Under the Administrative Procedure Act (APA)'s good cause exception, 5 U.S.C. 553(b)(B), it is unnecessary to take public comment on these technical, non-substantive corrections.

The EPA is correcting 40 CFR 98.233(a)(2) to add ''as applicable'' after ''well-pad site, gathering and boosting site, or facility'' to clarify the reporting level. The ''as applicable'' language was used in the preamble to the final rule (89 FR 42107 and 42108, May 14, 2024), where the EPA discussed finalizing requirements for Calculation Method 2 in 40 CFR 98.233(a)(2) to allow reporters to measure the natural gas emissions from each pneumatic device vented directly to the atmosphere at the well-pad site, gathering and boosting site, or facility, as applicable. The ''as applicable'' phrase was also correctly included in the final rule redline-strikeout.

The EPA is correcting 40 CFR 98.233(a)(2)(iii) and (c)(2)(ii) to remove the extraneous instance of ''representative'' from ''measure the emissions under representative conditions representative of normal operations.'' The corrected text reads ''measure the emissions under conditions representative of normal operations.'' This phrase was correct in 40 CFR 98.233(a)(2)(iii) and (c)(2)(ii) in the final rule redline-strikeout. The correct phrase (without the duplicate ''representative'') also appears in the final amended regulation two times, in the versions of 40 CFR 98.233(a)(2)(iii) and (c)(2)(ii) that were effective on July 15, 2024 (89 FR 42224 and 42228, respectively, May 14, 2024).

The EPA is correcting 40 CFR 98.233(a)(2)(v)(A)(*2*) to replace an incorrect cross-reference to ''paragraph (a)(6) of this section'' with the correct cross-reference to ''paragraph (a)(7) of this section.'' The EPA proposed to reference ''paragraph (a)(6)'' in the Proposed Rule, in which 40 CFR 98.233(a)(6) was ''Type of natural gas pneumatic devices'' (88 FR 50384, August 1, 2023). In the final amendments, the ''Type of natural gas pneumatic devices'' paragraph is 40 CFR 98.233(a)(7) (89 FR 42242, May 14, 2024). The cross-reference to ''paragraph (a)(7) of this section'' was correct in the final rule redline-strikeout. In addition, the correct paragraph reference appears in the version of 40 CFR 98.233(a)(2)(v)(A)(2) that became effective on July 15, 2024 (89 FR 42224, May 14, 2024). All other references to this section are correct.

The EPA is correcting the version of 40 CFR 98.233(a)(3)(ii)(A) that became effective on July 15, 2024 (89 FR 42226, May 14, 2024) to replace an incomplete cross-reference to ''§ 98.234(a)(1) through (3)'' with the correct cross-reference to ''§ 98.234(a)(1) through (3), (6), and (7).'' The paragraphs that are cross-referenced in the final rule and the redline-strikeout version of the final regulatory text effective July 15, 2024 in the docket for the final rule (Docket ID No. EPA–HQ–OAR–2023–0234–0460) correspond to the amended version of 40 CFR 98.234 that will be effective on January 1, 2025. However, the amendments to 40 CFR 98.234 that will be effective on January 1, 2025 consolidate current 40 CFR 98.234(a)(6) into 40 CFR 98.234(a)(1) and consolidate current 40 CFR 98.234(a)(7) into 40 CFR 98.234(a)(2). Therefore, the EPA is correcting the cross-referenced paragraphs in the version of 40 CFR 98.233(a)(3)(ii)(A) that became effective on July 15, 2024 so that all of the available methods are correctly referenced.

The EPA is correcting 40 CFR 98.233(c)(1) to replace an incorrectly formatted cross-reference to ''§ 98.234(b) of this subpart'' with the correct cross-reference to ''§ 98.234(b).'' The cross reference as published does not follow the cross-reference requirements specified by the Office of the Federal Register. The cross-reference to

''§ 98.234(b)'' was correct in the final rule redline-strikeout.

The EPA is correcting 40 CFR 98.233(d) to replace an incorrect cross-reference to ''paragraphs (d)(5) through (11) of this section'' with the correct cross-reference to ''paragraphs (d)(5) through (12) of this section.'' The EPA specified in both the preamble to the Proposed Rule (88 FR 50304, August 1, 2023) and the preamble to the final rule (89 FR 42091, May 14, 2024) that the emission calculation methodologies for nitrogen removal units are identical to the existing calculation methodologies in 40 CFR 98.233(d) for acid gas removal units (AGR). 40 CFR 98.233(d)(10) (revised to 40 CFR 98.233(12)) describes how to calculate mass emissions and is part of the existing calculation methods for AGRs. Per 40 CFR 98.236(a), reporters are required to report annual emissions totals, in metric tons of each GHG, for each applicable emission source. The final step in calculating mass emissions for AGRs and NRUs is specified in 40 CFR 98.233(d)(12) (existing 40 CFR 98.233(d)(10)) and is currently required by subpart W reporters with AGRs. The cross-reference to ''paragraphs (d)(5) through (12) of this section'' was correct in the final rule redline-strikeout.

The EPA is correcting 40 CFR 98.233(e)(2) to restore the paragraph label ''Calculation Method 2,'' which was inadvertently omitted from the republished version of 40 CFR 98.233. There were edits to this paragraph in the final rule, but the removal of the paragraph label was not included in the signed final rule and instead this error was introduced in preparing the signed final rule for publication. The paragraph label was correct in the final rule redline-strikeout.

The EPA is correcting 40 CFR 98.233(e) to add ''or to other non-flare combustion units'' after ''routed to a regenerator firebox/fire tubes,'' correcting 40 CFR 98.233(e)(4) to add ''or other non-flare combustion unit'' after ''to a flare'' and to replace the phrase ''vapor recovery system or flare'' with ''vapor recovery system, flare, or other non-flare combustion unit,'' correcting 40 CFR 98.233(e)(4)(iii) to replace ''regenerator firebox/fire tubes'' with ''other non-flare combustion unit'' and to replace the phrase ''vapor recovery system or flare'' with ''vapor recovery system, flare, or other non-flare combustion unit,'' and correcting 40 CFR 98.233(e)(5)(ii)(B) and (iv) to add ''or other non-flare combustion unit'' after ''regenerator firebox/fire tubes.'' These corrections are consistent with the preamble to the final rule (89 FR 42124, May 14, 2024), where we discussed our intent to finalize an amendment consistent with public comment to replace all proposed references to regenerator firebox/fire tubes in 40 CFR 98.236(e)(3) with references to non-flare combustion units, as commenters noted that desiccant dehydrators are not known to have configurations with regenerator firebox/fire tubes. The preamble to the final rule also described conforming changes in 40 CFR 98.233(e)(5) to specify procedures for calculating emissions from non-flare combustion units used with desiccant dehydrators that are the same as the procedures for calculating emissions from regenerator fireboxes/fire tubes that are used with small glycol dehydrators. The EPA is also correcting 40 CFR 98.233(e)(4)(i) to replace the phrase ''vapor recovery system or flare'' with ''vapor recovery system, flare, or regenerator firebox/fire tubes'' and correcting the first sentence 40 CFR 98.233(e)(5) to remove the phrase ''or other non-flare combustion unit.'' These corrections are needed because these provisions apply to glycol dehydrators rather than desiccant dehydrators, and glycol dehydrators do have regenerator fireboxes/fire tubes. The phrase ''or other non-flare combustion unit'' was correctly included in the final rule redline-strikeout in 40 CFR 98.233(e)(5)(ii)(B) and (e)(5)(iv); the final rule redline-strikeout did not include any of the other conforming corrections.

The EPA is correcting 40 CFR 98.233(f)(1)(i)(B) to correct a grammatical error in the phrase ''hours of each well is venting to the atmosphere'' The revised text reads ''hours that each well is vented to the atmosphere.'' This is a correction of a typographical grammar error; there is no change to the meaning of the provision. This typographical error is only partially corrected in the final rule redline-strikeout, in which the phrase reads ''hours of each well is vented to the atmosphere.''

The EPA is correcting the version of 40 CFR 98.233(g) that became effective on July 15, 2024 (89 FR 42226, May 14, 2024) to remove an unnecessary term of ''÷ 2'' in equations W–10A and W–10B. The inclusion of this term is redundant in both equations due to the addition of term ''$Z_{p,i}$'' to allow use of multiphase flow meters to measure gas flow rates during the initial flowback stage as an alternative to assuming the flowrate is one half the flow rate at the beginning of separation, as stated in the preamble to the final rule (89 FR 42132, May 14, 2024). The amendments to 40 CFR 98.233(g) that will be effective on January 1, 2025 correctly present equations W–10A and W–10B without the inclusion of a ''÷ 2'' term and with the addition of the same term ''$Z_{p,i}$'' . Therefore, the EPA is correcting equations W–10A and W–10B to remove the ''÷ 2'' that was inadvertently retained in the version of 40 CFR 98.233(g) that became effective on July 15, 2024 so that the equations are correct.

The EPA is correcting 40 CFR 98.233(j)(4)(i)(C) and 98.236(j)(1)(x)(F) to remove the reference to a thief hatch that is ''not properly seated.'' The correction is consistent with the EPA's intent to remove from the proposed provisions the phrase ''not properly seated'' in 40 CFR 98.233(j)(4)(i)(C) through (D) and 40 CFR 98.233(j)(4)(ii) and instead specify that a thief hatch is open if it is fully or partially open such there is a visible gap between the hatch cover and the hatch portal, as stated in the preamble to the final rule (89 FR 42132, May 14, 2024). The phrase ''not properly seated'' was correctly not included in 40 CFR 98.233(j)(4)(i)(C) or 98.236(j)(1)(x)(F) in the final rule redline-strikeout.

The EPA is correcting 40 CFR 98.233(j)(5)(i) and (j)(5)(i)(B) to replace the requirement for a ''visual inspection'' with ''audio, visual, and olfactory inspection.'' The correction is consistent with the EPA's intent to require audio, visual, and olfactory (AVO) inspections in 40 CFR 98.233(j)(5) rather than just visual inspections to determine if a gas-liquid separator liquid dump valve is stuck in an open or partially open position, as stated in the preamble to the final rule (89 FR 42133, May 14, 2024). The phrase ''audio, visual, and olfactory inspection'' was correctly included in 40 CFR 98.233(j)(5)(i) or (j)(5)(i)(B) in the final rule redline-strikeout.

The EPA is correcting 40 CFR 98.233(n)(1)(ii)(A) to replace the cross-reference to ''§ 60.5413b of this chapter'' with a more specific correct cross-reference to ''§ 60.5413b(b) of this chapter.'' This correction is consistent with the EPA's stated intent in the preamble to the final rule (89 FR 42145, May 14, 2024), in which the EPA agreed with a commenter on the Proposed Rule that pointed out the proposed Tier 2 requirements for flares should include a cross- reference to the applicable section in 40 CFR part 60, subpart OOOOb (hereafter referred to as ''NSPS OOOOb'') that specifies performance test requirements for enclosed combustion devices in NSPS OOOOb (*i.e.,* a subset of the total flare population under subpart W). The preamble to the final rule indicated that the oversight was corrected in 40 CFR

98.233(n)(1)(ii)(A) and 40 CFR 98.233(n)(1)(ii)(C) of the final amendments by including cross-references to 40 CFR 60.5413b(b) and (d) that require facilities to either conduct testing of enclosed combustion devices themselves or have testing conducted by the enclosed combustion device manufacturer. The cross-reference to ''§ 60.5413b(b) of this chapter'' was correct in the final rule redline-strikeout.

The EPA is correcting 40 CFR 98.233(n)(1)(ii)(B) to replace an incorrect cross-reference to ''§ 60.5417b(b) of this chapter'' with the correct cross-reference to ''§ 60.5417b of this chapter.'' 40 CFR 60.5417b describes the continuous monitoring requirements while the more specific reference to 40 CFR 60.5417b(b) lists the control devices that are exempt from the requirements. The correction is consistent with the EPA's intent for open flares to require that the NSPS OOOOb requirements in 40 CFR 60.5412b(a)(3) be followed, along with the applicable continuous compliance and continuous monitoring requirements in 40 CFR 60.5415b(f) and 40 CFR 60.5417b, respectively, as stated in the preamble to the final rule (89 FR 42140, May 14, 2024). The cross-reference to ''§ 60.5417b of this chapter'' was correct in the final rule redline-strikeout.

The EPA is correcting 40 CFR 98.233(o)(6)(iii) to restore equation W–23, which was inadvertently omitted from the republished version of 40 CFR 98.233. No changes to this equation were included in the signed final rule and instead this error was introduced in preparing the signed final rule for publication. The final rule redline-strikeout correctly included equation W–23.

The EPA is correcting 40 CFR 98.233(p)(4)(ii) to restore paragraphs (A) and (B), which were inadvertently omitted from the republished version of 40 CFR 98.233. No changes to these paragraphs were included in the signed final rule and instead this error was introduced in preparing the signed final rule for publication. The final rule redline-strikeout correctly included 40 CFR 98.233(p)(4)(ii)(A) and (B).

The EPA is correcting 40 CFR 98.233(q)(1)(v)(B) to add ''or § 60.5401b'' after ''§ 60.5400b'' to include both cross-references. This correction is consistent with the EPA's intent to update the cross references in the subpart W final rule to the NSPS OOOOb to include 40 CFR 60.5401b for natural gas processing in 40 CFR 98.232(d)(7), 98.233(q)(1)(v), 98.233(q)(1)(vii)(F), and 98.236(q)(1)(iv)(D), as stated in the preamble to the final rule (89 FR 42172, May 14, 2024). The cross-reference to 40 CFR 60.5401b was correct in the final rule redline-strikeout.

The EPA is correcting 40 CFR 98.233(q)(1)(vii)(D) to add ''site, as defined in § 98.238,'' after ''single well-pad'' to clarify what is considered a complete leak detection survey. The use of the term ''well-pad site'' is consistent with the rest of the amendments in the final rule. In addition, the EPA stated in the preamble to the final rule (89 FR 42164, May 14, 2024) that for the Onshore Petroleum and Natural Gas Production industry segment, final 40 CFR 98.233(q)(1) specifies that a complete leak detection survey is a complete survey of all equipment on a single well-pad site. The reference to a ''single well-pad site, as defined in § 98.238'' was correct in the final rule redline-strikeout.

The EPA is correcting 40 CFR 98.233(q)(1)(vii)(G), the parameter ''n'' of equation W–31 in 40 CFR 98.233(q)(2)(x)(A), and 40 CFR 98.233(q)(3)(viii)(B) to replace incorrect cross-references to ''paragraph (q)(1)(vii) of this section'' with the correct cross-reference to ''paragraph (q)(1)(viii) of this section.'' 40 CFR 98.233(q)(1)(vii)(G), the parameter ''n'' of equation W–31 in 40 CFR 98.233(q)(2)(x)(A), and 40 CFR 98.233(q)(3)(viii)(B) all refer to provisions for complete leak surveys for natural gas distribution facilities electing to conduct surveys over multiple years. Multi-year surveys for natural gas distribution facilities are further addressed in 40 CFR 98.233(q)(1)(viii) and not in 40 CFR 98.233(q)(1)(vii). The EPA is also correcting 40 CFR 98.233(q)(3)(viii)(B) to replace a cross-reference to non-existent ''paragraph (q)(3)(vii)(A) of this section'' with the correct cross-reference to ''paragraph (q)(3)(viii)(A) of this section.'' Natural gas distribution facilities are directed to use equation W–31 to determine the meter/regulator run population in 40 CFR 98.233(q)(3)(viii)(A). In addition, table 3 of the preamble to the final rule indicates that in 40 CFR 98.233(q)(3)(viii)(B), the EPA intended to correct the internal cross reference from ''paragraph (q)(3)(vii)(A) of this section'' to ''paragraph (q)(3)(viii)(A) of this section'' (89 FR 42191, May 14, 2024). The cross references to ''paragraph (q)(1)(viii) of this section'' and ''paragraph (q)(3)(viii)(A) of this section'' were correct in each of these sections in the final rule redline-strikeout.

The EPA is correcting the cross-references in the parameter ''k'' of equation W–30 in 40 CFR 98.233(q)(2) and correcting 40 CFR 98.233(q)(3)(vii) to replace cross-references to non-existent paragraphs ''§ 98.234(q)(1), (3) and (5),'' ''§ 98.234(q)(2)(i),'' and ''§ 98.234(q)(2)(ii)'' with correct cross-references to ''§ 98.234(a)(1), (3) and (5),'' ''§ 98.234(a)(2)(i),'' and ''§ 98.234(a)(2)(ii),'' respectively. The ''k'' term is the undetected leak factor specific to the leak detection method. The leak detection methods are in 40 CFR 98.234(a); 40 CFR 98.234(q) does not exist. These cross-references were incorrect in the amendatory regulatory text of the Proposed Rule as well as the final rule redline-strikeout; however, both the preamble to the Proposed Rule and the preamble to the final rule clearly state that the adjustment factor k is screening method-specific, which supports the intent to cross-reference the screening methods. For example, the preamble to the final rule states at 89 FR 42163, May 14, 2024 that in order to account for the quantity of emissions that remain undetected by each screening method, we are finalizing as proposed to provide a method specific adjustment factor, k, for the calculation methods used to quantify emissions from equipment leaks using the leaker method in 40 CFR 98.233(q). For all of these same reasons, the EPA is correcting similar language in the regulatory text that was effective July 15, 2024 (for Reporting Year 2024). Specifically, the EPA is correcting 40 CFR 98.233(q)(3)(vii) to replace cross-references to non-existent paragraphs ''§ 98.234(q)(1), (3), and (5)'' ''§ 98.234(q)(2)(i),'' and ''§ 98.234(q)(2)(ii)'' with correct cross-references to ''§ 98.234(a)(1), (3), (5), and (6),'' ''§ 98.234(a)(2),'' and ''§ 98.234(a)(7),'' respectively. The corrected cross-references reference the same screening methods as the corrections to the version of 40 CFR 98.233(q)(3)(vii) that will be effective January 1, 2025, but the specific cross-references are slightly different so that they correctly reference the methods in 40 CFR 98.234(a) that are currently effective rather than the version of 40 CFR 98.234(a) that will not be effective until January 1, 2025.

The EPA is correcting the parameter ''GHG_i'' of equation W–30 in 40 CFR 98.233(q)(2) to clarify that onshore natural gas transmission pipeline facilities should use the same default GHG concentrations as natural gas distribution facilities. The correct mole fractions for the onshore natural gas transmission pipeline industry segment

are specified in the final rule preamble at 89 FR 42091, May 14, 2024, where the EPA indicated that the addition of ''onshore natural gas transmission pipeline'' should be grouped with a methane concentration of 1 and a carbon dioxide concentration value of 0.011 in the variable ''GHGi'' of equation W–32A in 40 CFR 98.233(r). While the preamble to the final rule did not specifically identify this as including changes to 40 CFR 98.233(q)(2), this is a conforming edit with the preamble statement. The revision to the parameter ''GHG_i'' of equation W–30 in 40 CFR 98.233(q)(2) was correct in the final rule redline-strikeout.

The EPA is correcting 40 CFR 98.233(q)(4)(i) to replace the incorrect cross-reference to ''paragraphs (q)(1)(i) through (v) of this section'' with the correct cross-references to ''paragraphs (q)(1)(i) through (vi) of this section'' in order for this cross-reference to include the onshore natural gas transmission pipeline facility components specified in 40 CFR 98.233(q)(1)(vi). The cross-reference to ''paragraphs (q)(1)(i) through (vi) of this section'' was not correct in the final rule redline-strikeout. However, this correction appropriately includes a cross-reference for transmission pipeline facilities to use the provisions to develop a facility-specific emission factor in accordance with 40 CFR 98.233(q)(4). As discussed in the preamble to the final rule (89 FR 42088, May 14, 2024), in consideration of public comments concerning the equipment leak emission sources at transmission pipeline companies and consistent with CAA section 136(h), we finalized that transmission pipeline facilities can develop a facility-specific leaker factor in accordance with 40 CFR 98.233(q)(4) using the leak measurements obtained in accordance with 40 CFR 98.233(q)(3). Our intent for the facility-specific emission factor provisions to apply to transmission pipeline facilities is also made clear in 40 CFR 98.233(q)(2)(xii), which provides that transmission pipeline facilities must use the facility-specific leaker emission factor calculated in accordance with 40 CFR 98.233(q)(4) of this section.

The EPA is correcting the parameters ''$E_{s,MR,i}$'' and ''$Count_{MR}$'' of equation W–32B in 40 CFR 98.233(r) introductory text to replace incorrect cross-references to ''paragraph (q)(3)(vii)(B) of this section'' with the correct cross-references to ''paragraph (q)(3)(viii)(B) of this section.'' These two variables are specific to emissions calculations for meter/regulator runs at above grade transmission-distribution transfer stations (Natural Gas Distribution industry segment). 40 CFR 98.233(q)(3)(viii)(B) is also specific to natural gas distribution, while 40 CFR 98.233(q)(3)(vii) is for the adjustment factor for undetected leaks (which is not specific to natural gas distribution). Further, 40 CFR 98.233(q)(3)(vii)(B) does not exist. The reference to a ''paragraph (q)(3)(viii)(B) of this section'' was correct in both parameters in the final rule redline-strikeout.

The EPA is correcting 40 CFR 98.233(s)(2)(i) to remove ''and report'' after ''calculate'' and before ''emissions'' to remove the reference to reporting emissions under 40 CFR 98.233 (''Calculating GHG emissions.''). This specific wording change was not discussed in the preamble to the final rule but the phrase ''and report'' was correctly not included in the final rule redline-strikeout.

The EPA is correcting 40 CFR 98.233(z)(2)(i)(B) to remove ''CO_2 content of'' after ''maximum'' and before ''higher heating value'' to delete extraneous text that was inadvertently not removed. This correction is consistent with the EPA's intent to finalize in 40 CFR 98.233(z)(2) that subpart C methodologies Tier 2 or higher may be used for fuel meeting the definition of ''natural gas'' in 40 CFR 98.238 if it has a minimum HHV of 950 Btu/scf, a maximum HHV of 1,100 Btu/scf, and a minimum CH_4 content of 70 percent by volume, as stated in preamble to the final rule (89 FR 42179, May 14, 2024). The phrase ''CO_2 content of'' was correctly not included in the final rule redline-strikeout.

The EPA is correcting 40 CFR 98.236(b), 98.236(b)(5)(i)(A), 98.236(c)(4)(vi), (vii), and (viii), and 98.236(e)(3)(vi) to replace instances of ''well-pad'' with the term ''well-pad site'' defined in 40 CFR 98.238 for clarity in the reporting requirements. As the EPA stated in the preamble to the final rule (89 FR 42108, May 14, 2024), while the phrase ''well-pads'' generally refers to sites in the Onshore Petroleum and Natural Gas Production segment that would be considered a complete survey, we know there are cases when some pneumatic devices might not be on a well-pad but are still ''associated with a single well-pad'' (as defined in 40 CFR 98.238). In the preamble to the final rule, we noted that we finalized the use of the term ''well-pad site'' to ensure that the requirements to measure or monitor all pneumatic devices (or equipment leaks) at the site-level for facilities in the Onshore Petroleum and Natural Gas Production segment include such devices. We also clarified in the preamble to the final rule that the reporting requirements for sources that are not reported at the equipment level must be reported at the well-pad site level. The term ''well-pad site'' was correctly included in each of these paragraphs in the final rule redline-strikeout.

The EPA is correcting 40 CFR 98.236(b)(5)(ii)(C) to replace the reference to the non-existent parameter ''$T_{m,z}$'' in equation W–1C to § 98.233 with the correct reference to ''$T_{mal,z}$'' in equation W–1C to § 98.233. While the equation parameter referenced in 40 CFR 98.236(b)(5)(ii)(C) was not correct in the final rule redline-strikeout, the term ''$T_{mal,z}$'' is the correct parameter defined in equation W–1C. The term ''$T_{m,z}$'' does not exist. The EPA is correcting this reporting element in the regulatory text that was effective July 15, 2024 (for Reporting Year 2024) as well as the regulatory text that is effective January 1, 2025.

The EPA is correcting 40 CFR 98.236(e)(1)(xvi)(C) to replace the incorrect cross-reference to ''paragraph (e)(4) of this section'' with the correct cross-reference to ''(e)(4).'' In the signed final rule, the Proposed Rule and the final rule redline-strikeout, the second cross-reference was to ''(e)(4)'' and was included in the phrase ''according to § 98.233(e)(1) and, if applicable, (e)(4).'' The EPA's intention was that ''§ 98.233'' applied to both cross-references as it does in 40 CFR 98.236(e)(1)(xvi)(B) and (e)(3)(viii)(A) and (B), which all use the phrase ''according to§ 98.233(e)(1) and, if applicable, (e)(4)'' in the final rule. During preparation for publication, the reference to ''(e)(4)'' in 40 CFR 98.236(e)(1)(xvi)(C) was erroneously revised to ''paragraph (e)(4) of this section''; 40 CFR 98.236(e)(4) is for reporting, not calculation. The corrected version restores the cross-reference as it appeared in the signed final rule, the Proposed Rule, and the final rule redline-strikeout.

The EPA is correcting 40 CFR 98.236(e)(3)(vii)(B) to replace the phrase ''from the flash tank'' with ''routed.'' This correction is consistent with the discussion in the preamble to the final rule (89 FR 42124, May 14, 2024), in which the EPA noted that flash tanks are not applicable for desiccant dehydrators, the proposed reference to flash tanks in 40 CFR 98.236(e)(3)(vii)(B) was included in error, and the final reporting requirement in 40 CFR 98.236(e)(3)(vii)(B) does not include the proposed reference to flash tanks. The phrase ''routed'' was correctly included in the final rule redline-strikeout.

The EPA is correcting 40 CFR 98.236(e)(3)(viii)(A) to replace the

phrase ''non-flare combustion units'' with ''non-flare combustion unit'' to correct a grammatical error. This correction fixes a typographical error in the number agreement of this paragraph. The final rule redline-strikeout correctly uses the phrase ''non-flare combustion unit.''

The EPA is correcting 40 CFR 98.236(l)(3)(iii) to replace the phrase ''tested well(s)'' with ''tested well'' for consistency with the requirement to report information in 40 CFR 98.236(l)(3) for each well tested. This correction fixes a typographical error in the number agreement of this paragraph. The correction to refer to a singular well is consistent with the requirement to report information in 40 CFR 98.236(l)(3) for each well tested in the final rule. The final rule redline-strikeout correctly uses the phrase ''tested well'' in 40 CFR 98.236(l)(3)(iii).

The EPA is correcting 40 CFR 98.236(l)(4)(iv) to remove the requirement that reporting of the data element may only be delayed if the only wells that are tested in the same basin are wildcat wells and/or delineation wells. This correction is consistent with the EPA's intent to finalize the reporting requirements for well testing to continue providing the option for the 2-year delay in reporting these data elements but to no longer require that all wells in the sub-basin be wildcat and/or delineation wells for reporters to be able to use the 2-year delay, as stated in the preamble to the final rule (89 FR 42106, May 14, 2024). This provision is correct in the final rule redline-strikeout.

The EPA is correcting 40 CFR 98.236(m)(7)(iii) to replace the phrase ''continuous gas composition analyzers'' with ''a continuous gas composition analyzer'' to correct a grammatical error. The preamble to the final rule (89 FR 42137, May 14, 2024) uses the singular ''analyzer'' when noting that the final reporting requirements in 40 CFR 98.236(m)(7) include, as proposed, a requirement to indicate whether a continuous flow monitor was used to measure flow rates and a continuous composition analyzer was used to measure CH_4 and CO_2 concentrations. The phase ''a continuous gas composition analyzer'' is correctly included in the final rule redline-strikeout.

The EPA is correcting 40 CFR 98.236(n)(14) to replace the incorrect cross-reference to ''§ 98.233(n)(3)(i) or (ii)'' with the correct cross-reference to ''§ 98.233(n)(4)(i) or (ii).'' Final 40 CFR 98.236(n)(14) requires reporting of the annual average mole fraction of CH_4 in the feed gas to the flare. Final 40 CFR 98.233(n)(3) specifies methods for calculating flow rate while 40 CFR 98.233(n)(4) specifies methods for calculating composition. In the proposed regulatory text, 40 CFR 98.233(n)(3) specified methods for calculating composition, so the reference to 40 CFR 98.233(n)(3) in proposed 98.236(n)(14) was correct, but that reference was not updated when the paragraphs in 40 CFR 98.233(n) were re-arranged between proposal and promulgation. The cross-reference to ''§ 98.233(n)(4)(i) or (ii)'' is correctly included in the final rule redline-strikeout.

The EPA is correcting 40 CFR 98.236(q)(2)(iv) to replace the incorrect reference to a ''site-specific emission factor'' with the correct reference to a ''facility-specific emission factor.'' In the preamble to the final rule (89 FR 42166, May 14, 2024), we stated that we were finalizing a change from proposal to the terminology of the emission factor from ''site-specific'' to ''facility-specific'' to better characterize the application of the developed emission factor, which is to be at the facility-level based on site-level measurement data for certain industry segments. This change is also consistent with changes from the proposed rule text to the final rule text made to other instances of ''site-specific'' to ''facility-specific'' in 40 CFR 98.233(q)(4). The reference to a ''facility-specific emission factor'' is correctly included in the final rule redline-strikeout.

The EPA is correcting 40 CFR 98.236(z)(2) to replace the less specific reference to ''natural gas meeting the criteria in § 98.233(z)'' with the specific reference to ''natural gas meeting the criteria in § 98.233(z)(1) or (2) or a fuel meeting the criteria in § 98.233(z)(3)'' to better clarify which reporting requirements are applicable. This correction is consistent with the preamble to the final rule (89 FR 42180, May 14, 2024), in which the EPA stated that the final amendments included a new reporting requirement in 40 CFR 98.236(z)(2) specifically for RICE and GT that combust natural gas that meets the criteria of 40 CFR 98.233(z)(1) or (2) or a fuel meeting the specifications of 40 CFR 98.233(z)(3). The reference to a ''natural gas meeting the criteria in § 98.233(z)(1) or (2) or a fuel meeting the criteria in § 98.233(z)(3)'' is correctly included in the final rule redline-strikeout.

Finally, the EPA is correcting 40 CFR 98.236(aa)(3) to add ''under the same e-GGRT identification number in the calendar year'' after ''subpart NN of this part'' to clarify the requirements reporters must meet to no longer be required to report the quantities of natural gas received or NGLs received or leaving the gas processing plant. As the EPA stated in the preamble to the final rule (89 FR 42186, May 14, 2024), the final reporting requirements in 40 CFR 98.236(aa)(3) specify that facilities that indicate that they both fractionate NGLs and report as a supplier under subpart NN under the same e-GGRT identification number and for the same calendar year would no longer be required to report the quantities of natural gas received or NGLs received or leaving the gas processing plant. The phrase ''under the same e-GGRT identification number in the calendar year'' is correctly included in the final rule redline-strikeout.

Section 553(b)(B) of the APA, 5 U.S.C. 553(b)(B), provides that when an agency for good cause finds that public notice and comment procedures are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause for making these technical corrections final without prior proposal. Such notice and opportunity for comment is unnecessary as the technical corrections are for minor typographical and other nonsubstantive errors made in preparing the amendatory regulatory text for the final rule or in preparing the signed final rule for publication, as explained in this preamble.

List of Subjects in 40 CFR Part 98

Environmental protection, Administrative practice and procedure, Air pollution control, Greenhouse gases, Reporting and recordkeeping requirements.

Corrections

Corrections to the Amendments Effective January 1, 2025

In FR Doc. 2024–08988 beginning on page 42062 in the **Federal Register** of Tuesday, May 14, 2024, the following corrections are made:

1. Effective January 1, 2025, in § 98.233:

a. On page 42238, in the third column, paragraph (a)(2) introductory text is corrected to read:

''(2) *Calculation Method 2.* Except as provided in paragraph (a)(1) of this section, you may elect to measure the volumetric flow rate of each natural gas pneumatic device vent that vents directly to the atmosphere at your well-pad site, gathering and boosting site, or facility, as applicable, as specified in paragraphs (a)(2)(i) through (ix) of this

section. You must exclude the counts of devices measured according to paragraph (a)(1) of this section from the counts of devices to be measured or for which emissions are calculated according to the requirements in this paragraph (a)(2).''

b. On page 42239, in the first column, paragraph (a)(2)(iii) introductory text is corrected to read:

''(iii) For all industry segments, determine the volumetric flow rate of each natural gas pneumatic device vent (in standard cubic feet per hour) using one of the methods specified in § 98.234(b) through (d), as appropriate, according to the requirements specified in paragraphs (a)(2)(iii)(A) through (E) of this section. You must measure the emissions under conditions representative of normal operations, which excludes periods immediately after conducting maintenance on the device or manually actuating the device.''

c. On page 42239, in the second column, paragraph (a)(2)(v)(A)(*2*) is corrected to read:

''(*2*) Confirm that the device is correctly characterized as a continuous high bleed pneumatic device according to the provisions in paragraph (a)(7) of this section. If the device type was mischaracterized, recharacterize the device type and use the appropriate methods in paragraph (a)(2)(v)(B) or (C) of this section, as applicable.''

d. On page 42243, in the first column, (c)(1) introductory text is corrected to read:

''(1) *Calculation method 1.* If you have or elect to install a continuous flow meter that is capable of meeting the requirements of § 98.234(b) on a supply line to natural gas driven pneumatic pumps, then for the period of the year when the natural gas supply line is dedicated to any one or more natural gas driven pneumatic pumps, and each of the pumps is vented directly to the atmosphere, you must use the applicable methods specified in paragraph (c)(1)(i) or (ii) of this section to calculate vented CH_4 and CO_2 emissions from those pumps.''

e. On page 42243, in the third column, paragraph (c)(2)(ii) introductory text is corrected to read:

''(ii) Determine the volumetric flow rate of each natural gas driven pneumatic pump (in standard cubic feet per hour) using one of the methods specified in § 98.234(b) through (d), as appropriate, according to the requirements specified in paragraphs (c)(2)(ii)(A) through (D) of this section. You must measure the emissions under conditions representative of normal operations, which excludes periods immediately after conducting maintenance on the pump.''

f. On page 42245, beginning in the first column, paragraph (d) introductory text is corrected to read:

''(d) *Acid gas removal unit (AGR) vents and Nitrogen removal unit (NRU) vents.* For AGR vents (including processes such as amine, membrane, molecular sieve or other absorbents and adsorbents), calculate emissions for CH_4 and CO_2 vented directly to the atmosphere or emitted through a sulfur recovery plant, using any of the calculation methods described in paragraphs (d)(1) through (4) of this section, and also comply with paragraphs (d)(5) through (12) of this section, as applicable. For NRU vents, calculate emissions for CH_4 vented directly to the atmosphere using any of the calculation methods described in paragraphs (d)(1) through (4) of this section, and also comply with paragraphs (d)(5) through (12) of this section, as applicable. If any AGR vents or NRU vents are routed to a flare, you must calculate CH_4, CO_2, and N_2O emissions for the flare stack as specified in paragraph (n) of this section and report emissions from the flare as specified in § 98.236(n). If any AGR vents or NRU vents are routed through an engine (*e.g.,* permeate from a membrane or de-adsorbed gas from a pressure swing adsorber used as fuel supplement) (*i.e.,* routed to combustion), you must calculate CH_4, CO_2, and N_2O emissions as specified in subpart C of this part or as specified in paragraph (z) of this section, as applicable.''

g. On page 42247, beginning in the first column, paragraph (e) introductory text is corrected to read:

''(e) *Dehydrator vents.* For dehydrator vents, calculate annual CH_4 and CO_2 emissions using the applicable calculation methods described in paragraphs (e)(1) through (5) of this section. For glycol dehydrators that have an annual average daily natural gas throughput that is greater than or equal to 0.4 million standard cubic feet per day, use Calculation Method 1 in paragraph (e)(1) of this section. For glycol dehydrators that have an annual average of daily natural gas throughput that is greater than 0 million standard cubic feet per day and less than 0.4 million standard cubic feet per day, use either Calculation Method 1 in paragraph (e)(1) of this section or Calculation Method 2 in paragraph (e)(2) of this section. If you are required to use a software program consistent with the requirements of paragraph (e)(1) of this section for compliance with Federal or state regulations, air permit requirements, or annual emissions inventory reporting for the current reporting year, you must use Calculation Method 1 to calculate annual CH_4 and CO_2 emissions. If emissions from dehydrator vents are routed to a vapor recovery system, you must calculate the emissions according to paragraph (e)(4) of this section. If emissions from dehydrator vents are routed to a regenerator firebox/fire tubes or to other non-flare combustion units, you must calculate CH_4, CO_2, and N_2O annual emissions as specified in paragraph (e)(5) of this section. If any dehydrator vents are routed to a flare, you must calculate CH_4, CO_2, and N_2O emissions for the flare stack as specified in paragraph (n) of this section and report emissions from the flare as specified in § 98.236(n).''

h. On page 42247, beginning in the third column, paragraph (e)(2) is corrected to read:

''(2) *Calculation Method 2.* Calculate annual volumetric emissions from glycol dehydrators using equation W–5 to this section, and then calculate the collective CH_4 and CO_2 mass emissions from the volumetric emissions using the procedures in paragraph (v) of this section:

$$E_{s,i} = EF_i * Count * 1000 \quad \text{(Eq. W-5)}$$

Where:

$E_{s,i}$ = Annual total volumetric GHG emissions (either CO_2 or CH_4) at standard conditions in cubic feet.

EF_i = Population emission factors for glycol dehydrators in thousand standard cubic feet per dehydrator per year. Use 73.4 for CH_4 and 3.21 for CO_2 at 60 °F and 14.7 psia.

Count = Total number of glycol dehydrators that have an annual average daily natural gas throughput that is greater than 0 million standard cubic feet per day and less than 0.4 million standard cubic feet per day for which you elect to use this Calculation Method 2.

1000 = Conversion of EF_i in thousand standard cubic feet to standard cubic feet.''

i. On page 42248, in the first column, paragraphs (e)(4) introductory text and (e)(4)(i) are corrected to read:

''(4) *Emissions vented directly to atmosphere from dehydrators routed to a vapor recovery system, flare, or regenerator firebox/fire tubes.* If the dehydrator(s) has a vapor recovery system, routes emissions to a flare, or routes emissions to a regenerator firebox/fire tubes and you use Calculation Method 1 or Calculation Method 2 in paragraph (e)(1) or (2) of this section, calculate annual emissions vented directly to atmosphere from the dehydrator(s) during periods of time when emissions were not routed to the vapor recovery system, flare, or regenerator firebox/fire tubes as specified in paragraphs (e)(4)(i) and (ii) of this section. If the dehydrator(s) has a vapor recovery system or routes emissions to a flare or other non-flare combustion unit and you use Calculation Method 3 in paragraph (e)(3) of this section, calculate annual emissions vented directly to atmosphere from the dehydrator(s) during periods of time when emissions were not routed to the vapor recovery system, flare, or other non-flare combustion unit as specified in paragraph (e)(4)(iii) of this section.

''(i) When emissions from dehydrator(s) are calculated using Calculation Method 1 or 2, calculate vented emissions as specified in paragraph (e)(1) or (2) of this section, which represents the emissions from the dehydrator prior to the vapor recovery system, flare, or regenerator firebox/fire tubes. Calculate an average hourly vented emissions rate by dividing the vented emissions by the number of hours that the dehydrator was in operation.''

j. On page 42248, beginning in the second column, paragraph (e)(4)(iii) is corrected to read:

''(iii) When emissions from dehydrator(s) are calculated using Calculation Method 3, calculate total annual emissions vented directly to atmosphere from the dehydrator(s) during periods of time when emissions were not routed to the vapor recovery system, flare, or other non-flare combustion unit by determining of the number of depressurization events (including portions of an event) that vented to atmosphere based on engineering estimate and best available data. You must take into account periods with reduced capture efficiency of the vapor recovery system, flare, or other non-flare combustion unit. If emissions are routed to a flare but the flare is unlit, calculate emissions in accordance with the methodology specified in paragraph (n) of this section and report emissions from the flare as specified in § 98.236(n).''

k. On page 42248, in the third column, paragraph (e)(5) introductory text is corrected to read:

''(5) *Combustion emissions from routing to regenerator firebox/fire tubes or other non-flare combustion unit.* If any glycol dehydrator emissions are routed to a regenerator firebox/fire tubes, calculate emissions from these devices attributable to dehydrator flash tank vents or still vents as specified in paragraphs (e)(5)(i) through (iii) of this section. If any desiccant dehydrator emissions are routed to a non-flare combustion unit, calculate combusted emissions as specified in paragraphs (e)(5)(i) through (iii) of this section. If you operate a CEMS to monitor the emissions from the regenerator firebox/fire tubes or other non-flare combustion unit, calculate emissions as specified in paragraph (e)(5)(iv) of this section.''

l. On page 42249, in the first column, paragraph (e)(5)(ii)(B) is corrected to read:

''(B) Measure the composition of the gas from the dehydrator(s) to the regenerator firebox/fire tubes or other non-flare combustion unit using a continuous composition analyzer. If you continuously measure gas composition, then those measured data must be used to calculate dehydrator emissions from the regenerator firebox/fire tubes or other non-flare combustion unit.''

m. On page 42249, in the second column, paragraph (e)(5)(iv) is corrected to read:

''(iv) If you operate and maintain a CEMS that has both a CO_2 concentration monitor and volumetric flow rate monitor for the combustion gases from the regenerator firebox/fire tubes or other non-flare combustion unit, you must calculate only CO_2 emissions for the regenerator firebox/fire tubes or other non-flare combustion unit. You must follow the Tier 4 Calculation Method and all associated calculation, quality assurance, reporting, and recordkeeping requirements for Tier 4 in subpart C of this part (General Stationary Fuel Combustion Sources). If a CEMS is used to calculate emissions from a regenerator firebox/fire tubes or other non-flare combustion unit, the requirements specified in paragraphs (e)(5)(ii) and (iii) of this section are not required.''

n. On page 42250, beginning in the first column, paragraph (f)(1)(i)(B) is corrected to read:

''(B) Apply the average hourly flow rate calculated under paragraph (f)(1)(i)(A) of this section to each well in the same pressure group that have the same tubing diameter group, for the number of hours that each well is vented to the atmosphere.''

o. On page 42258, beginning in the second column, paragraph (j)(4)(i)(C) is corrected to read:

''(C) During periods when a thief hatch is open and emissions from the tank are routed to a vapor recovery system or a flare, assume the capture efficiency of the vapor recovery system or a flare is 0 percent. A thief hatch is open if it is fully or partially open such there is a visible gap between the hatch cover and the hatch portal. To calculate vented emissions during such periods, multiply the average hourly vented emissions rate determined in paragraph (j)(4)(i)(A) of this section by the number of hours that the thief hatch is open. Determine the number of hours that the thief hatch is open as specified in paragraph (j)(7) of this section.''

p. On page 42258, beginning in the second column, paragraph (j)(5)(i) introductory text is corrected to read:

''(i) If a parametric monitor is operating on a controlled atmospheric pressure storage tank or gas-liquid separator, you must use data obtained from the parametric monitor to determine periods when the gas-liquid separator liquid dump valve is stuck in an open or partially open position. An applicable operating parametric monitor must be capable of logging data whenever a gas-liquid separator liquid dump valve is stuck in an open or partially open position, as well as when the gas-liquid separator liquid dump valve is subsequently closed. If an applicable parametric monitor is not operating, including during periods of time when the parametric monitor is malfunctioning, you must perform an audio, visual, and olfactory inspection of each gas-liquid separator liquid dump valve to determine if the valve is stuck in an open or partially open position, in accordance with paragraphs (j)(5)(i)(A) and (B) of this section.''

q. On page 42259, in the first column, paragraph (j)(5)(i)(B) is corrected to read:

''(B) If stuck gas-liquid separator liquid dump valve is identified, the dump valve must be counted as being open since the beginning of the calendar year, or from the previous audio, visual, and olfactory inspection that did not identify the dump valve as being stuck in the open position in the same calendar year. If the dump valve is fixed following audio, visual, and olfactory inspection, the time period for which

the dump valve was stuck open will end upon being repaired. If a stuck dump valve is identified and not repaired, the time period for which the dump valve was stuck open must be counted as having occurred through the rest of the calendar year.''

r. On page 42261, beginning in the first column, paragraphs (n)(1)(ii)(A) and (B) are corrected to read:

''(A) The requirements in § 60.5412b(a)(1) of this chapter, along with the applicable testing requirements in § 60.5413b(b) of this chapter, the applicable continuous compliance requirements in § 60.5415b(f) of this chapter, and the applicable continuous monitoring requirements in § 60.5417b of this chapter. You must also keep the applicable records in § 60.5420b(c)(11) of this chapter.

''(B) The requirements in § 60.5412b(a)(3) of this chapter, the applicable continuous compliance requirements in § 60.5415b(f) of this chapter, and the applicable continuous monitoring requirements in § 60.5417b of this chapter. You must also keep the applicable records in § 60.5420b(c)(11) of this chapter.''

s. On page 42268, beginning in the first column, paragraph (o)(6)(iii) is corrected to read:

''(iii) Using equation W–23 to this section, develop an emission factor for each compressor mode-source combination specified in paragraphs (o)(1)(i)(A) through (C) of this section. These emission factors must be calculated annually and used in equation W–22 to this section to determine volumetric emissions from a centrifugal compressor in the mode-source combinations that were not measured in the reporting year.

$$EF_{s,m} = \frac{\sum_{p=1}^{Count_m} MT_{s,m,p}}{Count_m} \quad \text{(Eq. W-23)}$$

Where:

$EF_{s,m}$ = Reporter emission factor to be used in equation W–22 to this section for compressor mode-source combination m, in standard cubic feet per hour. The reporter emission factor must be based on all compressors measured in compressor mode-source combination m in the current reporting year and the preceding two reporting years.

$MT_{s,m,p}$ = Average volumetric gas emission measurement for compressor mode-source combination m, for compressor p, in standard cubic feet per hour, calculated using all volumetric gas emission measurements ($MT_{s,m}$ in equation W–21 to this section) for compressor mode-source combination m for compressor p in the current reporting year and the preceding two reporting years.

$Count_m$ = Total number of compressors measured in compressor mode-source combination m in the current reporting year and the preceding two reporting years.

m = Compressor mode-source combination specified in paragraph (o)(1)(i)(A), (B), or (C) of this section.''

t. On page 42271, in the third column, paragraph (p)(4)(ii) is corrected to read:

''(ii) Determine the volumetric flow at standard conditions from the common stack using one of the methods specified in paragraphs (p)(4)(ii)(A) through (F) of this section.

(A) A temporary meter such as a vane anemometer according to methods set forth in § 98.234(b).

(B) Calibrated bagging according to methods set forth in § 98.234(c).

(C) A high volume sampler according to methods set forth in § 98.234(d).

(D) [Reserved]

(E) You may choose to use any of the methods set forth in § 98.234(a)(1) through (3) to screen for emissions. If emissions are detected using one of these specified methods, then you must use one of the methods specified in paragraphs (p)(4)(ii)(A) through (D) of this section. If emissions are not detected using the methods in § 98.234(a)(1) through (3), then you may assume that the volumetric emissions are zero. For the purposes of this paragraph, when using any of the methods in § 98.234(a), emissions are detected whenever a leak is detected according to the method. Acoustic leak detection is only applicable for through-valve leakage and is not applicable for screening a manifolded group of compressor sources.

(F) If one of the screening methods specified in § 98.234(a)(1) through (3) identifies a leak in a manifolded group of reciprocating compressor sources, you may use acoustic leak detection, according to § 98.234(a)(5), to identify the source of the leak. You must use one of the methods specified in paragraphs (p)(4)(ii)(A) through (D) of this section to quantify the emissions from the identified source.''

u. On page 42275, in the second column, paragraph (q)(1)(v)(B) is corrected to read:

''(B) For the components listed in § 98.232(d)(7) that are subject to the equipment leak standards for onshore natural gas processing plants in § 60.5400b or § 60.5401b of this chapter, or an applicable approved state plan or applicable Federal plan in part 62 of this chapter, you must use either of the leak detection methods in § 98.234(a)(1)(iii) or (a)(2)(ii).''

v. On page 42275, in the third column, paragraph (q)(1)(vii)(D) is corrected to read:

''(D) For an onshore petroleum and natural gas production facility electing to conduct leak detection surveys according to paragraph (q)(1)(iv) of this section, a survey of all required components at a single well-pad site, as defined in § 98.238, will be considered a complete leak detection survey for purposes of this section.''

w. On page 42276, in the second column, paragraph (q)(1)(vii)(G) is corrected to read:

''(G) For natural gas distribution facilities that choose to conduct equipment leak surveys at all above grade transmission-distribution transfer stations over multiple years as provided in paragraph (q)(1)(viii) of this section, a survey of all required components at the above grade transmission-distribution transfer stations monitored during the calendar year will be considered a complete leak detection survey for purposes of this section.''

x. On page 42276, beginning in the first column, parameters ''k'' and ''GHG_i'' of equation W–30 in paragraph (q)(2) introductory text are corrected to read:

''k = Factor to adjust for undetected leaks by respective leak detection method, where k equals 1.25 for the methods in § 98.234(a)(1), (3) and (5); k equals 1.55 for the method in § 98.234(a)(2)(i); and k equals 1.27 for the method in § 98.234(a)(2)(ii).

GHG_i = For onshore petroleum and natural gas production facilities and onshore petroleum and natural gas gathering and boosting facilities, concentration of GHG_i, CH_4 or CO_2, in produced natural gas as defined in paragraph (u)(2) of this section; for onshore natural gas processing facilities, concentration of GHG_i, CH_4 or CO_2, in the total hydrocarbon of the feed natural gas; for

onshore natural gas transmission compression and underground natural gas storage, GHG_i equals 0.975 for CH_4 and 1.1×10^{-2} for CO_2 or concentration of GHG_i, CH_4 or CO_2, in the total hydrocarbon of the feed natural gas; for LNG storage and LNG import and export equipment, GHG_i equals 1 for CH_4 and 0 for CO_2; and for natural gas distribution and onshore natural gas transmission pipeline, GHG_i equals 1 for CH_4 and 1.1×10^{-2} for CO_2.''

y. On page 42277, in the second column, parameter ''n'' of equation W–31 in paragraph (q)(2)(x)(A) is corrected to read:

''n = Number of years of data, according to paragraph (q)(1)(viii) of this section, whose results are used to calculate emission factor ''$EF_{s,MR,i}$'' according to paragraph (q)(2)(x)(B) of this section.''

z. On page 42278, in the second column, paragraph (q)(3)(vii) is corrected to read:

''(vii) Multiply the total CO_2 and CH_4 mass emissions by survey method and component type determined in paragraph (q)(3)(vi) of this section by the survey specific value for ''k'', the factor adjustment for undetected leaks, where k equals 1.25 for the methods in § 98.234(a)(1), (3) and (5); k equals 1.55 for the method in § 98.234(a)(2)(i); and k equals 1.27 for the method in § 98.234(a)(2)(ii).''

aa. On page 42278, in the third column, paragraph (q)(3)(viii)(B) is corrected to read:

''(B) If you chose to conduct equipment leak surveys at all above grade transmission-distribution transfer stations over multiple years, ''n,'' according to paragraph (q)(1)(viii) of this section, you must use the meter/regulator run population emission factors calculated according to paragraph (q)(3)(viii)(A) of this section and the total count of all meter/regulator runs at above grade transmission-distribution transfer stations to calculate emissions from all above grade transmission-distribution transfer stations using equation W–32B to this section.''

bb. On page 42278, in the third column, paragraph (q)(4)(i) introductory text is corrected to read:

''(i) You must track the leak measurements made separately for each of the applicable components listed in paragraphs (q)(1)(i) through (vi) of this section and by the leak detection method according to the following three bins.''

cc. On page 42279, in the first column, the parameter ''$E_{s,MR,i}$'' of equation W–32B in paragraph (r) introductory text is corrected to read:

''$E_{s,MR,i}$ = Annual volumetric emissions of GHG_i from all meter/regulator runs at above grade metering regulating stations that are not above grade transmission-distribution transfer stations or, when used to calculate emissions according to paragraph (q)(2)(xi) or (q)(3)(viii)(B) of this section, the annual volumetric emissions of GHG_i from all meter/regulator runs at above grade transmission-distribution transfer stations.''

dd. On page 42279, in the second column, the parameter ''$Count_{MR}$'' of equation W–32B in paragraph (r) introductory text is corrected to read:

$Count_{MR}$ = Total number of meter/regulator runs at above grade metering-regulating stations that are not above grade transmission-distribution transfer stations or, when used to calculate emissions according to paragraph (q)(2)(xi) or (q)(3)(viii)(B) of this section, the total number of meter/regulator runs at above grade transmission-distribution transfer stations.

ee. On page 42280, in the third column, paragraph (s)(2)(i) is corrected to read:

''(i) Use the most recent monitoring and calculation methods published by BOEM as referenced in 30 CFR 550.302 through 304 to calculate annual emissions for any reporting year that overlaps with a BOEM emissions inventory year and any other reporting year in which the facility has the data needed to use BOEM's emissions calculation methods.''

ff. On page 42284, in the second column, paragraph (z)(2)(i)(B) is corrected to read:

''(B) The natural gas must have a maximum higher heating value of 1,100 Btu per standard cubic foot.''

2. Effective January 1, 2025, in § 98.236:

a. On page 42295, in the third column, paragraph (b) introductory text is corrected to read:

''(b) *Natural gas pneumatic devices.* You must indicate whether the facility contains the following types of equipment: Continuous high bleed natural gas pneumatic devices, continuous low bleed natural gas pneumatic devices, and intermittent bleed natural gas pneumatic devices. If the facility contains any continuous high bleed natural gas pneumatic devices, continuous low bleed natural gas pneumatic devices, or intermittent bleed natural gas pneumatic devices, then you must report the information specified in paragraphs (b)(1) through (6) of this section, as applicable. You must report the information specified in paragraphs (b)(1) through (6) of this section, as applicable, for each well-pad site (for onshore petroleum and natural gas production), each gathering and boosting site (for onshore petroleum and natural gas gathering and boosting), or facility (for all other applicable industry segments).''

b. On page 42297, in the first column, paragraph (b)(5)(i)(A) is corrected:

''(A) Indicate whether you measured emissions according to § 98.233(a)(3)(i)(A) or used default emission factors according to § 98.233(a)(3)(i)(B) to calculate emissions from your continuous high bleed and continuous low bleed natural gas pneumatic devices vented directly to the atmosphere at this well-pad site, gathering and boosting site, or facility, as applicable.''

c. On page 42297, in the first column, paragraph (b)(5)(ii)(C) is corrected to read:

''(C) Average time the intermittent bleed natural gas pneumatic devices were in service (*i.e.,* supplied with natural gas) and assumed to be malfunctioning in the calendar year (average value of ''$T_{mal,z}$'' in equation W–1C to § 98.233).''

d. On page 42298, in the first column, paragraphs (c)(4)(vi) and (vii) are corrected to read:

''(vi) Annual CO_2 emissions, in metric tons CO_2, cumulative for all natural gas driven pneumatic pumps for which emissions were directly measured and calculated as specified in § 98.233(c)(2)(ii) through (vi). Enter 0 if emissions from none of the natural gas driven pneumatic pumps at this well-pad site or gathering and boosting site were measured during the reporting year.

''(vii) Annual CH_4 emissions, in metric tons CH_4, cumulative for all natural gas driven pneumatic pumps for which emissions were directly measured and calculated as specified in § 98.233(c)(2)(ii) through (vi). Enter 0 if emissions from none of the natural gas driven pneumatic pumps at this well-pad site or gathering and boosting site were measured during the reporting year.''

e. On page 42298, beginning in the first column, paragraph (c)(4)(viii) is corrected to read:

''(viii) Annual CO_2 emissions, in metric tons CO_2, cumulative for all natural gas driven pneumatic pumps for which emissions were calculated according to § 98.233(c)(2)(vii)(B) through (D). Enter 0 if emissions from all natural gas driven pneumatic pumps at this well-pad site or gathering and boosting site were measured during the reporting year.''

f. On page 42300, in the third column, paragraph (e)(1)(xvi)(C) is corrected to read:

''(C) Annual CH_4 emissions, in metric tons CH_4, from the flash tank when not routed to a flare or regenerator firebox/fire tubes, calculated according to § 98.233(e)(1) and, if applicable, (e)(4).''

g. On page 42301, beginning in the third column, paragraph (e)(3)(vi) is corrected to read:

''(vi) For desiccant dehydrators at the facility, well-pad site, or gathering and boosting site identified in paragraph (e)(3)(ii) of this section, whether any dehydrator emissions were routed to a control device that reduces CO_2 and/or CH_4 emissions other than a vapor recovery system or a flare or a non-flare combustion unit. If any dehydrator emissions were routed to a control device that reduces CO_2 and/or CH_4 emissions other than a vapor recovery system or a flare or a non-flare combustion unit, then you must specify the type of control device(s) and the total number of dehydrators at the facility that were routed to each type of control device.''

h. On page 42302, in the first column, paragraph (e)(3)(vii)(B) is corrected to read:

''(B) Total volume of gas routed to non-flare combustion units, in standard cubic feet.''

i. On page 42302, in the first column, paragraph (e)(3)(viii)(A) is corrected to read:

''(A) Annual CO_2 emissions, in metric tons CO_2, for emissions from all desiccant dehydrators reported under paragraph (e)(3)(ii) of this section that are not venting to a flare or non-flare combustion unit, calculated according to § 98.233(e)(3) and, if applicable, (e)(4), and summing for all such dehydrators.''

j. On page 42307, in the first column, paragraph (j)(1)(x)(F) is corrected to read:

''(F) The number of atmospheric pressure storage tanks in paragraph (j)(1)(x)(D) or (E) of this section that had an open thief hatch at some point during the year while the storage tank was also routing emissions to a vapor recovery system and/or a flare.''

k. On page 42309, in the second column, paragraph (l)(3)(iii) is corrected to read:

''(iii) Number of well testing days for the tested well in the calendar year. You may delay reporting of this data element if you indicate in the annual report that the well is a wildcat well or delineation well. If you elect to delay reporting of this data element, you must report by the date specified in paragraph (cc) of this section the number of well testing days for the tested well.''

l. On page 42309, in the third column, paragraph (l)(4)(iv) is corrected to read:

''(iv) Average annual production rate for the tested well, in actual cubic feet per day. You may delay reporting of this data element if you indicate in the annual report that the well is a wildcat well or delineation well. If you elect to delay reporting of this data element, you must report by the date specified in paragraph (cc) of this section the measured average annual production rate for the tested well.''

m. On page 42310, in the second column, paragraph (m)(7)(iii) is corrected to read:

''(iii) Indicate whether associated gas streams vented from the well were measured with a continuous gas composition analyzer.''

n. On page 42311, in the third column, paragraph (n)(14) is corrected to read:

''(14) Annual average mole fraction of CH_4 in the feed gas to the flare if you measure composition of the inlet gas as specified in § 98.233(n)(4)(i) or (ii) (''X_{CH4}'' in equation W–19 to § 98.233), or the annual average CH_4 mole fractions for each stream if you determine composition of each stream routed to the flare as specified in § 98.233(n)(4)(iii).''

o. On page 42315, in the first column, paragraph (q)(2)(iv) is corrected to read:

''(iv) Emission factor or measurement method used (*e.g.,* default emission factor; facility-specific emission factor developed according to § 98.233(q)(4); or direct measurement according to § 98.233(q)(3)).''

p. On page 42317, beginning in the third column, paragraph (z)(2) introductory text is corrected to read:

''(2) Indicate whether the combustion units include: External fuel combustion units with a rated heat capacity greater than 5 million Btu per hour; internal fuel combustion units that are not compressor-drivers, with a rated heat capacity greater than 1 million Btu per hour (or the equivalent of 130 horsepower); or, internal fuel combustion units of any heat capacity that are compressor-drivers. For each type of combustion unit at your facility, you must report the information specified in paragraphs (z)(2)(i) through (iv) and (z)(2)(viii) through (x) of this section, except for internal fuel combustion units that are not compressor-drivers, with a rated heat capacity greater than 1 million Btu per hour (or the equivalent of 130 horsepower) or internal fuel combustion units of any heat capacity that are compressor-drivers that combust natural gas meeting the criteria in § 98.233(z)(1) or (2) or a fuel meeting the criteria in § 98.233(z)(3), which must report the information specified in paragraphs (z)(2)(i) through (x) of this section. Information must be reported for each combustion unit type, fuel type, and method for determining the CH_4 emission factor combination, as applicable.''

q. On page 42318, in the third column, paragraph (aa)(3) introductory text is corrected to read:

''(3) For natural gas processing, if your facility fractionates NGLs and also reported as a supplier to subpart NN of this part under the same e-GGRT identification number in the calendar year, you must report the information specified in paragraphs (aa)(3)(ii) and (aa)(3)(v) through (ix) of this section. Otherwise, report the information specified in paragraphs (aa)(3)(i) through (ix) of this section.''

Correcting Amendments Effective October 4, 2024

For reasons stated in the preamble, 40 CFR part 98 is amended by making the following correcting amendments:

PART 98—MANDATORY GREENHOUSE GAS REPORTING

■ 1. The authority citation for part 98 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

■ 2. Effective October 4, 2024, amend § 98.233 by:

■ a. Revising paragraph (a)(3)(ii)(A);

■ b. Revising equations W–10A and W–10B of paragraph (g); and

■ c. Revising paragraph (q)(3)(vii).

The revisions read as follows:

§ 98.233 Calculating GHG emissions.

* * * * *

(a) * * *

(3) * * *

(ii) * * *

(A) You must use one of the monitoring methods specified in § 98.234(a)(1) through (3), (6), and (7) except that the monitoring dwell time for each device vent must be at least 2 minutes or until a malfunction is identified, whichever is shorter. A device is considered malfunctioning if any leak is observed when the device is not actuating or if a leak is observed for more than 5 seconds, or the extended duration as specified in paragraph (a)(3)(ii)(C) of this section if applicable, during a device actuation. If you cannot tell when a device is actuating, any observed leak from the device indicates a malfunctioning device.

* * * * *

(g) * * *

$$E_{s,n} = \sum_{p=1}^{W} \left[T_{p,s} \times FRM_s \times PR_{s,p} - EnF_{s,p} + \left[T_{p,i} \times FRM_i \times Z_{p,i} \times PR_{s,p} \right] \right] \quad \text{(Eq. W-10A)}$$

$$E_{s,n} = \sum_{p=1}^{W} \left[FV_{s,p} - EnF_{s,p} + \left[T_{p,i} \times FR_{p,i} \times Z_{p,i} \right] \right] \quad \text{(Eq. W-10B)}$$

* * * * *

(q) * * *

(3) * * *

(vii) Multiply the total CO_2 and CH_4 mass emissions by survey method and component type determined in paragraph (q)(3)(vi) of this section by the survey specific value for ''k'', the factor adjustment for undetected leaks, where k equals 1.25 for the methods in § 98.234(a)(1), (3), (5), and (6); k equals 1.55 for the method in § 98.234(a)(2); and k equals 1.27 for the method in § 98.234(a)(7).

* * * * *

■ 3. Effective October 4, 2024, amend § 98.236 by revising paragraph (b)(5)(ii)(C) to read as follows

§ 98.236 Data reporting requirements.

* * * * *

(b) * * *

(5) * * *

(ii) * * *

(C) Average time the intermittent bleed natural gas pneumatic devices were in service (*i.e.,* supplied with natural gas) and assumed to be malfunctioning in the calendar year (average value of ''$T_{mal,z}$'' in equation W–1C to § 98.233).

* * * * *

Joseph Goffman,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 2024–18933 Filed 9–3–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket Nos. 22–408, 03–123, and 13–24; FCC 24–81; FR ID 241645]

TRS Fund Support for internet Protocol Captioned Telephone Service Compensation

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) adopts a revised, five-year plan for support of internet Protocol Captioned Telephone Service (IP CTS) by the Interstate Telecommunications Relay Services Fund (TRS Fund). To ensure that IP CTS providers have the appropriate incentive structure to support captioning with communications assistants (CAs) and with only automatic speech recognition (ASR), the Commission establishes separate compensation formulas for CA-assisted and ASR-only IP CTS. In addition, this compensation plan will give providers certainty regarding the applicable compensation levels, provide an incentive to improve efficiency, and allow the Commission an opportunity to timely reassess the compensation formulas in response to potential unanticipated cost changes and other significant developments.

DATES: Effective October 4, 2024.

FOR FURTHER INFORMATION CONTACT: Michael Scott, Consumer and Governmental Affairs Bureau, 202–418–1264, *Michael.Scott@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order and Order (*Report and Order*), in CG Docket Nos. 22–408, 03–123, and 13–24; FCC 24–81, adopted and released on July 31, 2024. The Commission previously sought comment on these issues in a notice of proposed rulemaking, released on December 22, 2022, and published at 88 FR 7049, February 2, 2023 (*NPRM*). The full text of this document can be accessed electronically via the FCC's Electronic Document Management System (EDOCS) website at: *https://docs.fcc.gov/public/attachments/FCC-24-81A1.pdf* or via the FCC's Electronic Comment Filing System (ECFS) website at: *www.fcc.gov/ecfs.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to: *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at: (202) 418–0530 (voice).

Synopsis

1. Section 225 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. 225, requires the Commission to ensure that telecommunications relay services (TRS) are available to persons who are deaf, hard of hearing, or deafblind or have speech disabilities, ''to the extent possible and in the most efficient manner.'' TRS are defined as ''telephone transmission services'' enabling such persons to communicate by wire or radio ''in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services.'' IP CTS, a form of TRS, permits an individual who can speak but who has difficulty hearing over the telephone to use a telephone and an internet Protocol (IP)-enabled device via the internet to simultaneously listen to the other party and read captions of what the other party is saying. IP CTS is supported entirely by the TRS Fund, which is composed of mandatory contributions collected from telecommunications carriers and Voice over internet Protocol (VoIP) service providers based on a percentage of each company's annual revenue. IP CTS providers receive monthly payments from the TRS Fund to compensate them for the reasonable cost of providing the service, in accordance with a per-minute compensation formula approved by the Commission.

2. Before 2020, IP CTS captions were produced by a CA, usually with the CA repeating (''revoicing'') a caller's speech into an ASR program, which then converted the CA's speech to text. In 2018, the Commission ruled that IP CTS also could be provided on a fully automatic basis, using only ASR technology to generate captions, without the participation of a CA.

3. Before 2018, compensation for IP CTS providers was determined by a proxy method, known as the Multistate Average Rate Structure (MARS) methodology, in which compensation was set equal to the average per-minute payment by state TRS programs to providers of an analogous service,

Captioned Telephone Service (CTS). In 2018, the Commission determined that this approach had resulted in providers receiving compensation substantially higher than the industry average cost to provide IP CTS. Therefore, the Commission adopted a different methodology, setting compensation based on the weighted average of the actual allowable costs reported by providers (that is, total allowable expenses of all providers divided by total IP CTS minutes). In the *2020 IP CTS Compensation Order,* published at 85 FR 64971, October 14, 2020, the Commission considered whether to adopt a separate compensation formula for calls captioned without CA involvement, to address what appeared to be the substantially lower average cost of ASR-only captioning. However, the Commission concluded it did not yet have sufficient data from the provision of fully automatic IP CTS to accurately estimate the relevant costs.

The 2022 Notice of Proposed Rulemaking

4. On December 22, 2022, the Commission released an *NPRM* seeking comment on establishing a revised IP CTS compensation plan. The Commission proposed to apply different compensation formulas to the provision of CA-assisted and ASR-only IP CTS and sought comment on additional issues potentially affecting the compensation formulas, including the appropriate application of such formulas; identifying the costs attributable to ASR-only captioning; whether to adjust certain allowable-cost criteria and the allowed operating margin; calculation of average per-minute cost and compensation level(s); the duration of the compensation period; adjustment factors for inflation or productivity; and alternatives to reasonable-cost-based compensation.

Separate Rates for CA-Assisted and ASR-Only IP CTS

5. *The Need for Separate Rates.* The Commission amends its rules to establish separate rates for CA-assisted and ASR-only IP CTS. Historically, while the Commission has applied separate compensation rates to different relay *services,* the Commission has rarely applied separate rates to different *methods* of providing a *single* relay service. In this instance, however, the record supports the Commission's initial view that special considerations warrant the application of different compensation formulas to the CA-assisted and ASR-only modes of providing IP CTS. The record also supports the concern that continued application of a single formula may lead to waste of TRS Fund resources and increase the risk of fraud and abuse. Deferring the adoption of separate formulas would prolong the adverse effects of the single rate and discourage providers from continuing to offer CA-assisted captioning, reducing the availability of a service mode that continues to be preferred for some calls.

6. *Cost Difference.* The updated cost reports confirm that there is a substantial cost difference between ASR-only and CA-assisted IP CTS. For 2023, historical allowable expenses reported by providers average approximately $0.60 per minute for ASR-only IP CTS and $1.04 per minute for CA-assisted IP CTS, a cost difference of $0.44 per minute. For 2024, providers' projected allowable expenses average approximately $0.65 per minute for ASR-only IP CTS and $1.32 per minute for CA-assisted IP CTS, a cost difference of $0.67 per minute.

7. *Benefits of CA-Assisted Service.* The record also confirms that, while consumers increasingly select ASR-only captioning when offered a choice, CA-assisted captioning continues to be preferred for some portion of IP CTS calls. Further, some research indicates that ASR technology may show algorithmic bias in the accuracy with which it transcribes voices and that the participation of CAs may improve the accuracy of captioning for a substantial portion of calls. Establishing separate formulas that better reflect the cost difference between ASR-only and CA-assisted service will strengthen the incentive for providers to continue providing CA-assisted captions when preferred by the consumer or needed for high-quality service. Conversely, maintaining a single rate is likely to reinforce what appears to be a substantial incentive for providers to limit the use of the CA-assisted mode, even where a consumer would prefer it. Once ASR-only service was introduced by most providers, it quickly became the most commonly used service mode—averaging 43.5% of compensable minutes in 2022, 74.6% in 2023, and a projected 84.5% in 2024. Although the percentage of ASR-only use is different for each provider, as of December 2023, average CA-assisted usage (as a percentage of total minutes) is substantially higher for providers that offer consumers a choice of service mode than for providers that unilaterally determine the service mode.

8. *TRS Fund Stewardship Concerns.* The current single rate of $1.30 per minute became effective July 1, 2021, when approximately 15% of IP CTS minutes were ASR-only. As the volume of ASR-only service has increased, the average per-minute cost of IP CTS has declined, resulting in excessive compensation at the current single rate. In 2023, compensation for ASR-only minutes produced an operating margin of $0.70 per minute—116.7% above expenses. Moving ASR-only compensation closer to actual cost will conserve the TRS Fund and may decrease the potential incentive for a provider to engage in fraudulent practices.

9. *Need for Metrics.* Various parties argue that it would be better as a matter of policy and good governance for the Commission to establish service quality metrics before resetting IP CTS compensation rates. Progress has been made toward establishing metrics. In February 2023, the MITRE Corporation (MITRE), in its capacity as a Federally Funded Research and Development Center, formed a working group to develop a recommendation on metrics and measures for IP CTS service quality. The working group, composed of community advocates, IP CTS providers, academia, and subject matter experts from related industries, was tasked by MITRE to: identify and define measures that can be used to quantify and compare caption quality as it relates to effective communication; propose methods for assessing IP CTS using these measures; and identify potential criteria for establishing meaningful thresholds for acceptable caption quality. The working group's report, completed June 5, 2024, includes six recommendations for further study to establish metrics:

- Work with an American National Standards Institute (ANSI)-certified standards developer to initiate a process to formalize caption quality standards;
- Continue to refine measures and metrics as technology improves, while recognizing that no single measure reflects caption quality for all users, and that there is a distinction between what is feasible today and what is needed for full functional equivalence;
- Adopt a more transparent testing framework, as described in the report;
- Use the recommended testing framework to measure caption accuracy, caption delay, non-speech information, and punctuation and formatting;
- Provide more transparency for research plans and results; and
- Perform additional research to improve measures, identify appropriate metrics, and establish thresholds for acceptable caption quality.

10. By reaching consensus on a number of issues that had been the subject of dispute among commenters on the *Telephone Caption Metrics*

NPRM, published at 86 FR 7681, February 1, 2021, the working group may have laid the foundation for ultimate adoption of caption quality metrics. However, it is unnecessary—and would not be appropriate—for the Commission to defer the adoption of revised compensation formulas until metrics are in place. The Commission need not resort to metrics to recognize that the current compensation rate for ASR-only service is unreasonably high. Continuing to support ASR-only IP CTS at this rate would be inconsistent with responsible stewardship of the TRS Fund.

11. One commenter's expert suggests that rate-setting should be delayed because the compliance cost of meeting such metrics are unknown today. The Commission's exogenous cost recovery criteria provide a mechanism for recovery of such compliance costs in appropriate circumstances.

12. In addition, continuing to pay a single rate for IP CTS, regardless of the captioning mode, inherently encourages providers to increase or promote even more use of lower-cost ASR-only captioning, regardless of whether the quality is better or worse than higher-cost CA-assisted captioning. Adopting bifurcated compensation rates will mitigate such incentives pending further information about the relative quality of the two service modes.

13. *Reliability of Cost Data.* Several commenters argued that the cost and demand data then available—consisting of historical cost and demand for 2021 and 2022 and projected cost and demand for 2023 and 2024—were insufficiently reliable to support a revised compensation plan, and especially the application of different rates to ASR-only and CA-assisted IP CTS. For example, it was argued that historical cost and demand data for 2021 and 2022 were unreliable due to the impact of the COVID–19 pandemic on the demand for IP CTS and that there was insufficient experience with ASR-only service to enable the Commission to reliably estimate its cost. However, now that the record has been updated to include providers' cost and demand reported in February 2024, which includes historical cost and demand for 2022 and 2023 and projections for 2024 and 2025, these arguments for further delay are less applicable.

14. The current record also suggests that any pandemic-related effects on IP CTS demand and cost have almost entirely dissipated. It now appears that, by mid-2022, IP CTS demand had resumed approximately its historical trajectory. As to the effects of the pandemic on labor cost, in the case of IP CTS, the Commission finds no persuasive evidence of any impact that would render the cost data for 2023 and 2024 unreliable. Unlike the supply of Video Relay Service (VRS) CAs, which is inherently restricted due to the need for highly trained American Sign Language interpreters, the supply of CAs of the type needed by most IP CTS providers appears to be more elastic, and a lasting labor shortage less likely—especially given the shift to mostly ASR-only captioning. The record—which shows that historical CA-assisted costs increased less than 3% from 2022 to 2023—appears to confirm that any unusual upward trend did not outlast the pandemic.

15. Regarding ASR-only IP CTS, an additional year of cost and demand data has significantly increased the confidence with which the Commission can reasonably estimate the average per-minute cost of ASR-only service. The cost and demand data now available include at least 20 months of historical ASR-only data from every IP CTS provider offering service prior to January 2024. This is substantially more than the 12 months of historical data the Commission ordinarily uses in setting rates. Also, because IP CTS compensation rates are set based on industry-wide averages, individual cost and demand variations are less important than they might have been if the Commission had found it necessary to set rates on a more individualized basis. And as noted above, delaying the establishment of a separate rate for ASR-only service will reinforce providers' incentive to decrease reliance on CAs, even where preferred by the consumer or needed for functionally equivalent service. By December 2023, ASR-only minutes increased to an average of 85% of total IP CTS minutes.

16. Additional experience with the ASR-only mode may further improve the Commission's ability to assess its effect on the cost of IP CTS. However, by taking account of current data, the compensation formulas herein will reflect the reasonable costs of each service mode more accurately than the current formula does. Adopting revised formulas also will substantially reduce the current waste of TRS Fund resources (as well as possible incentives for fraud and abuse) and reduce providers' incentive to inappropriately substitute ASR-only for CA-assisted service.

17. A commenter's expert consultant states that setting a separate, lower rate for ASR-only service would discourage innovation in the provision of automatic forms of IP CTS. However, no evidence is presented for this claim, and given the very substantial difference in reported costs for these services, a lower rate can be set for ASR-only without depriving providers of resources for innovative research and development.

Proposals for Additional Rate Categories

18. *Separate CA-Assisted Rate for CART-Based IP CTS.* The Commission declines to adopt a separate CA-assisted rate for calls that are captioned using the Communications Access Realtime Translation (CART) method, as advocated by InnoCaption. The term *CART* is used in this context to refer to a captioning method whereby a professional stenographer produces captions without any assistance from ASR software. The Commission finds that setting separate rates for the broad categories of CA-assisted and ASR-only methods of providing IP CTS is justified by special considerations, as a limited deviation from the historical practice of applying the same compensation formula to all methods of providing a particular relay service. However, except for the conditional rate supplement discussed further below, which is applicable to any qualifying provider of CA-assisted service, including providers using the CART method, the Commission is unpersuaded that any analogous considerations warrant a *further* subdivision of the CA-assisted rate.

19. Although the Commission recognizes that the CART method may have certain benefits, the record at this time does not indicate that those benefits are so clear as to warrant giving special support for this approach over other methods of CA-assisted captioning, despite its acknowledged higher cost. The evidence in the record regarding the particular advantages of the CART method is from 2020, and with recent improvements in ASR technology, providers have developed new methods of using ASR with CA-assisted captioning. Thus, there are now several variants of CA-assisted captioning being used by IP CTS providers—as well as variations in the methods used by providers to determine which service mode should be applied to a call. The process of developing metrics and measures for IP CTS service quality is not yet complete, and the current record does not provide definitive evidence as to whether testing of the methods in use today, using improved measurements, would indicate a material, qualitative difference between InnoCaption's performance using the CART method and the performance of IP CTS providers using other methods of producing CA-assisted captions.

Further, the efficacy of any particular captioning method is not determined solely by the technology used, but also by the resources and skill with which that technology may be implemented by a particular service provider. Given the statutory mandates for efficiency and technological neutrality, as well as the absence of definitive measurements of service quality, the Commission finds insufficient basis at this time for setting different compensation rates based on the specifics of each CA-assisted captioning method.

20. *Separate ASR-only Rates for Fully Automated and ''Hybrid'' Providers.* The Commission also declines to adopt a commenter's recommendation that two different compensation rates be set for ASR-only minutes, based on whether the service provider is fully automated, *i.e.,* does not employ CAs for captioning *any* calls, or is a hybrid provider that uses CA-assisted methods for some calls and ASR-only for others. The commenter also seems to suggest that a provider that uses CAs for every call should be subject to a different CA-assisted rate than the CA-assisted rate applicable to providers that do *not* provide CA assistance for every call. Currently, no provider uses CAs for every call; therefore, it is not necessary to address this theoretical concern on the current record.

21. The concerns noted above regarding deviations from the Commission's historical practice are also applicable here. In addition, if the Commission adopted the commenter's suggestion, the vast majority of ASR-only minutes would be compensated under the rate established for hybrid providers. For the same reason, an ASR-only rate based on the average ASR-only cost of the four hybrid providers would be similar to a cost-based ASR-only rate based on the ASR-only costs of all reporting providers. While fully automatic providers would receive a much higher compensation rate for their ASR-only minutes, their higher per-minute costs are likely attributable primarily to the very low volume of minutes projected by fully automatic providers, given the economies of scale that appear to be involved in ASR-only captioning. Therefore, it is unlikely that differentiating ASR-only rates in this manner would succeed in accounting for any cost differential that may be inherent in a provider's choice of whether to use multiple captioning methods.

Classification of Calls

22. As proposed, the CA-assisted compensation formula shall apply to any call (or any call minutes, if a CA is not present for the entire call) to which a CA is dedicated, provided that the CA is actively engaged in the captioning process. The applicability of the CA-assisted rate will not be affected by the specific nature of the active task(s) performed by the CA during such assignment (*i.e.,* revoicing, typing the captions, or monitoring and correcting the output of an automatic speech recognition program). The Commission concludes that assigning a CA to monitor and correct any errors in ASR-generated captions justifies compensation at the CA-assisted rate, provided that the CA is dedicated to these tasks from the beginning to the end of the call (or for the entire portion of the call that the provider designates as CA-assisted). However, the CA-assisted rate shall not apply if the CA is monitoring more than one call, or is splitting time between monitoring a call and attending to other tasks, or is only monitoring the captions, *e.g.,* for research purposes, without actually correcting or supplementing the ASR-generated captions when necessary. In such a case, the employee's involvement is more in the nature of general supervision of ASR-only operations.

23. The Commission is also sensitive to the potential risk that, given the substantial differential between the ASR-only and CA-assisted compensation rates adopted herein, an IP CTS provider might have an incentive to hire additional CAs or steer consumers to CA-assisted calls even if consumers would not benefit from such a mode of IP CTS. For example, if such CAs work at home while receiving minimal training and supervision, the incremental per-minute cost (for a low-cost provider) of additional CA-assisted minutes might be less than the rate differential under the Commission's bifurcated compensation plan. Therefore, the Commission delegates authority to the Consumer and Governmental Affairs Bureau, in coordination with the Office of the Managing Director, to work with the TRS Fund administrator to ensure that annual cost reports include information that will enable the Commission to determine the reasonableness of IP CTS providers' practices related to hiring, training, and supervising CAs and to prevent waste of TRS Fund resources.

24. In addition, the Commission reserves the right to revisit and revise the compensation formulas for CA-assisted and ASR-only IP CTS prior to the end of the compensation period, if it concludes that such intervention is called for to achieve statutory objectives. For example, if evidence suggests that CAs are being added to calls primarily to gain the higher compensation rate, without significantly increasing the accuracy of the captions, then—in addition to taking other appropriate measures—the Commission may revise the compensation formulas to correct providers' incentives and mitigate the risk of waste, fraud, and abuse.

Allowable Costs

25. As proposed in the *NPRM,* the Commission expands the criteria for IP CTS cost recovery for research and development (R&D), numbering, and user access software, harmonizing them with the VRS cost criteria adopted in 2023. *See* 88 FR 71994, October 19, 2023 (*2023 VRS Compensation Order*). The Commission declines to revisit the longstanding policy that the TRS Fund does not support the cost of providing, installing, or maintaining customer premises equipment.

26. *Research and Development.* The Commission revises its allowable cost criteria to allow TRS Fund support for the reasonable cost of R&D to enhance the functional equivalence of IP CTS, including improvements in service quality that may exceed the Commission's mandatory minimum TRS standards. As in the case of VRS, the Commission finds that the current criterion—allowing cost recovery only for R&D conducted to ensure that a provider's service meets the minimum TRS standards—is unnecessarily restrictive. Authorizing providers (as well as Commission-directed entities) to conduct additional research is consistent with the statutory mandate to encourage the use of improved technology for TRS and with the Commission's policy of authorizing multiple IP CTS providers to compete with one another based on service quality. Such competition logically may lead IP CTS providers to conduct research and development on innovative methods of producing and delivering captions, resulting in improved service quality that may exceed the level required by the minimum TRS standards. The Commission also finds support for this change in commenters' recent submissions emphasizing the need to ensure that the compensation plan supports research and development to improve IP CTS. To establish consistent allowable-cost criteria for all three forms of IP-based TRS, the Commission concludes that the expanded allowability of reasonable research and development costs shall also apply to internet Protocol Relay Service (IP Relay).

27. The Commission also sought comment on whether to adopt measures to prevent waste and ensure that the benefit of the conducted research and development actually enhances functional equivalence. However, the Commission also noted that by using an average cost methodology and setting compensation formulas for multi-year periods, the Commission can provide substantial incentives for providers to use research and development funds wisely and avoid incurring unnecessary costs. The Commission continues to believe that the above incentive structure is a robust safeguard against waste, and agrees with commenters that additional safeguards are not necessary at this time. The Commission stresses that, as with all provider-reported expenses, expenses for research and development to improve IP CTS are allowable only if reasonable. In addition, expenses incurred to develop proprietary user devices and software (or any non-TRS product or service) are not recoverable from the TRS Fund.

28. *Numbering.* The Commission treats as allowable the reasonable costs of acquiring North American Numbering Plan (NANP) telephone numbers for IP CTS users, in those circumstances where assignment of a telephone number is necessary to provide the service. In 2008, the Commission determined that such costs would not be supported by the TRS Fund, reasoning that they are not attributable to the use of relay service and that analogous costs incurred by voice service providers are typically passed through to their customers. Recently, however, the Commission revisited this issue with respect to IP Relay and VRS, concluding that the reasonable cost of assigning and porting NANP numbers for those services should be supported by the TRS Fund. Recognizing that the Commission's rules require the assignment of NANP numbers to IP Relay and VRS users and that, based on the current record, numbering costs are unlikely to be recoverable from users as a practical matter, the Commission concluded that such costs are now appropriately attributed to the use of relay to facilitate a call.

29. While the most common IP CTS configuration allows consumers to use existing telephone numbers to place and receive calls over a landline voice service, assignment of a new number may be necessary as a practical matter for some configurations of IP CTS—for example, where an over-the-top application enables captioning of calls placed and received on smartphones and other devices. In such instances, the provider may assign a new NANP number to the user, which is different from the user's landline or mobile number. The new number may be used, for example, to enable incoming calls (including 911 callbacks) to be received via the captioning app on a smartphone, rather than the phone's native telephony application. In such cases, as is true for VRS and IP Relay, the IP CTS provider typically does not have a billing relationship with the consumer, and there seems to be little point in creating such a relationship for the sole purpose of passing through what likely would be a *de minimis* monthly charge for any particular IP CTS user.

30. Therefore, the Commission revises the allowable-cost criteria for IP CTS to allow TRS Fund support of an IP CTS provider's reasonable costs of acquiring NANP telephone numbers when necessary to provide the service. The Commission stresses that the cost of number assignment is allowable only where such number assignment is necessary for the provision of IP CTS in a particular configuration. As noted above, most IP CTS users receive captioning on a landline phone, in a configuration that does not require the assignment of a new telephone number. As with other reported costs, if audits or other review reveals that numbering costs are being reported in excess of reasonable amounts, the excess will be disallowed.

31. The Commission also clarifies that, to the extent IP CTS providers are responsible for delivery of a user's 911 call to the nearest Public Safety Answering Point (PSAP), the TRS Fund supports reasonable expenses to connect the 911 call quickly and to automatically provide location data to the PSAP.

32. *Customer Premises Equipment.* The Commission's rules do not prohibit IP CTS providers or their partners from distributing customer premises equipment (CPE) to IP CTS users. However, the TRS Fund does not support the provision of CPE to TRS users, except where Congress has specifically authorized such support. The *NPRM* did not re-open or seek comment on this issue. Nonetheless, a number of commenters urge the Commission to revisit whether the TRS Fund should support the provision of CPE to IP CTS users. Because this question does not fall within the scope of the *NPRM,* it is not necessary for the Commission to address those comments in this document.

33. Further, even if those comments could be construed as within the scope of the *NPRM,* for the reasons articulated in the Commission's prior orders, commenters provide no persuasive reason to revisit the issue on its merits. The Commission long ago decided that costs attributable to equipment that a TRS provider distributes to a consumer, including installation, maintenance, and testing, are not compensable from the TRS Fund. The well-established distinction in the Commission's rules between relay services, which are supported by the TRS Fund, and end user devices, which are not, is grounded in the text of the governing statutory provision. As the Commission has explained, section 225 of the Act focuses on the provision of relay service, requiring common carriers to provide relay *services* either directly or indirectly (*e.g.,* through a TRS Fund-supported provider), and this is apparent from the plain language of section 225 of the Act, which is directed at services that carriers must offer in their service areas that enable communication between persons who use a TTY or other non-voice terminal device and an individual who does not use such device. The Commission has further held that costs associated with CPE are not part of a provider's expenses in making relay *services* available; rather they must be incurred by consumers to receive these services, just as people who do not use relay services must purchase their phones. The Commission's determinations disallowing CPE costs have been upheld by federal courts of appeals.

34. Contrary to ClearCaptions' argument, a mere analogy between section 225 of the Act and certain provisions in section 254 of the Act, 47 U.S.C. 254, carries no legal weight. TRS support is governed by section 225 of the Act, not section 254 of the Act, and the Commission rejects the suggestion that somehow its authority under the former provision can be expanded based on a purported analogy to how the Commission has exercised its authority under the latter provision.

35. In addition, even if the Commission had statutory authority to do so, it is unconvinced that TRS Fund support for provider distribution of user devices—in particular, purpose-built, proprietary equipment—would be necessary or appropriate to ensure the availability of functionally equivalent relay service. Authorizing TRS Fund support for the kinds of user devices currently offered by providers—*i.e.,* relatively expensive, proprietary equipment that can only be used with one provider's service and that has an unusually short useful life—appears inconsistent with the Commission's mandate to make TRS available in the most efficient manner. In the VRS context, the Commission has adopted

policies to encourage the use of non-proprietary, off-the-shelf, screen-equipped devices, such as smartphones, laptops, and personal computers, to access VRS. In general, the use of non-proprietary devices for TRS (*e.g.,* by downloading software applications developed by providers) has several advantages. First, it is less costly, as most people in the United States already own such devices and use them for a wide variety of purposes other than TRS. Second, the use of non-proprietary devices avoids ''locking in'' users to the service of a single TRS provider, which limits consumer choice and which also can encourage the offering of free devices as an inducement to use a particular provider's relay service. Third, the use of non-proprietary devices avoids ''siloing'' TRS users in ways that can hinder access to communication technologies available to mainstream users.

36. The record is clear that IP CTS can be accessed without proprietary equipment, by downloading providers' software applications to smartphones, tablets, and laptops. For example, many providers make their applications available on Google Play and the Apple App Store. Although a commenter argues that such applications are generally impractical for seniors (who comprise the bulk of IP CTS users), a survey indicates that smartphone ownership is growing faster among seniors than other age groups, and that as of 2021, 61% of seniors owned smartphones—a percentage that presumably will continue to increase. In addition, reasonable expenses incurred in helping seniors download and use a provider's smartphone application are allowable costs supported by the TRS Fund. Finally, even for those consumers who are unable to use smartphone or other software applications to access IP CTS, it appears that screen-equipped wireline telephones, usable for captioned phone calls (or screens that can be connected to a wireline telephone) are commercially available for home use.

37. *User Access Software.* The Commission adopts its proposal to allow TRS Fund support for the reasonable cost of developing, maintaining, and providing software and web-based applications that enable users to access IP CTS from off-the-shelf user devices, such as mobile phones, desktop computers, and laptops running on widely available operating systems. This change harmonizes the cost criteria for IP CTS with those adopted for VRS. As with VRS, such costs must be incurred by an IP CTS provider to enable users to connect to its service platform; therefore, they are attributable to the provision of IP CTS. Further, recovery of such costs is consistent with the efficiency mandate, as it supports the use of off-the-shelf IP-enabled user devices to access TRS and decreases consumers' dependence on TRS equipment specifically designed for connection to a particular TRS provider.

38. Consistent with its compensation ruling for VRS, the Commission declines to allow TRS Fund support for the cost of user access software needed for proprietary user equipment supplied by the provider or a third party. While TRS users need a software interface to access TRS, they do not need proprietary devices that can be connected to and used with only one provider's service, nor do they need software designed for such devices. Although the Commission does not prohibit providers from distributing such devices and software to consumers requesting them, it is not necessary to support proprietary devices and software with TRS Fund resources. Further, allowing recovery of such software costs would not advance the Commission's policy to enable users to access TRS from off-the-shelf IP-enabled devices and to avoid dependence on TRS equipment specifically designed for a particular provider's network. If an IP CTS provider supplies user access software for both off-the-shelf and proprietary devices, and the development costs for each type of software cannot be directly assigned, a provider may adopt a reasonable allocation method to separate such costs, to ensure that it does not seek recovery for costs associated with proprietary devices. The provider shall specify the method used in its cost reports, so that it can be evaluated by the TRS Fund administrator and the Commission.

39. *Field Staff Visits.* While the Commission did not seek comment on the issue of whether providers should be able to recover the costs associated with deploying their field staff, the Commission's ruling in the *2023 VRS Compensation Order* sufficiently addresses the issues raised in the comments regarding the treatment of costs incurred by IP CTS providers' field staff. In the *2023 VRS Compensation Order,* the Commission reaffirmed that, because the costs of installing, maintaining, and training customers to use provider-distributed devices (or software for proprietary provider-distributed devices) are not recoverable through TRS Fund compensation, expenses for field staff visits for such purposes are not allowable expenses for VRS or IP CTS. In addition, the Commission clarified that the reasonable cost of *service*-related work performed by field staff during a visit to a new or current user (*e.g.,* to assist customers with registration, use of the service on a non-proprietary device, or completing a port) is an allowable cost of providing VRS or IP CTS.

Determination of Cost-Based Rates

40. *Cost Averaging.* The Commission has broad discretion in choosing compensation methodologies and setting compensation rates within the parameters established by section 225 of the Act. To set cost-based benchmarks for IP CTS compensation rates, the Commission continues to rely on the methodology used in the *2020 IP CTS Compensation Order,* in which rates were set based on the weighted average of each provider's projected and historical costs for the current and immediately preceding calendar years (now 2023 and 2024). Under this weighted-average method, the allowable expenses reported by all CA-based and ASR-based IP CTS providers respectively for calendar years 2023 (historical expense) and 2024 (projected expenses) are totaled and the allowed operating margin (determined as a percentage of expenses) is added to total allowable expenses. The resulting total is divided by total historical (for 2023) and projected (2024) compensable minutes of demand for CA-based and ASR-based IP CTS respectively for those two calendar years, to yield an average cost per minute (including operating margin). This average cost per minute is called a ''weighted'' average because it gives more weight to the per-minute cost incurred by providers with relatively high demand and less weight to the per-minute cost incurred by providers with relatively low demand.

41. The Commission maintains this approach for essentially the same reasons cited in the *2020 IP CTS Compensation Order. First,* this methodology has produced consistent and reliable results without imposing undue administrative burdens on either IP CTS providers or the Commission. *Second,* average-cost-based compensation, especially when applied for more than one year, provides substantial incentives and opportunities for individual TRS providers to increase their efficiency and capture the resulting profits. *Third,* maintaining a consistent compensation methodology provides a measure of transitional stability at a time of technological change.

42. According to Hamilton Relay's expert, the Brattle Group, averaging is inappropriate for IP CTS because ''IP

CTS costs do not appear to follow a normal distribution, which typically would mean a few providers with very high costs, a few providers with low costs, and a majority of providers with costs somewhere in the middle of a bell curve.'' However, the Brattle Group cites no authority for the claim that cost-averaging is only appropriate when provider costs are in a bell-curve shaped distribution—which is unlikely to occur where, as here, the sample size is limited to nine providers, five of which are very small or start-ups. The Commission is also unpersuaded that there is justification for replacing the average-cost approach with a ''mean plus one standard deviation'' approach, as advocated by Hamilton Relay. Setting a CA-assisted rate based on this approach would overcompensate providers with average costs and substantially dilute the incentive for higher-cost providers to become more efficient.

43. *Tiered or Small-Provider Rates.* CaptionMate urges the Commission to adopt a tiered rate structure for IP CTS, or alternatively a separate rate for small providers, contending that supporting smaller providers with relatively high per-minute costs would offer consumers more choice and promote innovation. The Commission adopted tiered rates for VRS due to a combination of specific circumstances that were threatening the viability of competition among VRS providers. In 2020, the Commission declined to adopt tiered rates for IP CTS because it was not persuaded that similar or equally compelling factors are present in the IP CTS market to an extent that would justify introducing the complexities and potential inefficiencies of a tiered rate structure or an emergent provider rate. This remains the case today.

44. *First,* unlike in VRS, the IP CTS market has not been dominated for a long period by a single provider. The market share of the largest IP CTS provider is not comparable to that of the largest provider in the VRS market. *Second,* while there are economies of scale in IP CTS, there is little evidence that such economies of scale are preventing the emergence of efficient competitors. IP CTS's record of growth suggests that there are substantially greater opportunities than in the VRS context for a provider to reach efficient scale within a relatively short period of time. Where higher costs are incurred by a relatively large IP CTS provider, it is more likely attributable to business decisions concerning use of contractors as turnkey service providers, prior investments in technology and business processes, and differences in business models, rather than issues of scale. *Third,* unlike VRS, IP CTS is not dependent on interoperability and does not have other network effects that make it difficult for new entities to enter the market or obtain eligible IP CTS users as customers. *Fourth,* the relatively recent introduction of ASR-only IP CTS, as well as new methods of providing CA-assisted IP CTS, provides additional evidence that Commission policies are not deterring innovation in this arena. *Fifth,* the four recently granted applications for IP CTS certification indicate that new entrants believe that additional competitors can succeed and innovate in the provision of IP CTS. In summary, given the relative ease of new entry and the presence of vigorous competition based on service quality, the Commission concludes that the goals of offering consumer choice and encouraging innovation can continue to be achieved without resorting to the ratemaking challenges, complexities, and potential inefficiencies of a tiered rate structure or a separate small-provider rate.

45. The Commission also notes that none of the IP CTS providers advocating a special small-provider rate offers CA-assisted service. In a recently filed petition, advocates for accessibility contend that the TRS Fund should not support the provision of IP CTS by providers that do not allow users to select CA-assisted service. While the Commission does not prejudge this petition, the fact that none of the providers subject to the proposed small-provider rate offers a CA-assisted option reinforces its conclusion that the objectives of section 225 of the Act would not be served by adopting such a rate.

46. The Commission also emphasizes that it is mandated to make TRS available in the most efficient manner, not to ensure that every TRS provider is able to operate successfully, regardless of the cost. A small provider claims that it offers a service of unique value, targeting a younger demographic and offering captioning in 67 languages. However, the Commission must balance the potential benefits of diverse service offerings with the need for efficiency. To the extent that there is significant demand for multiple-language captioning, the record does not show that it cannot be made available by a provider supported by the TRS Fund at the rates set herein, or through other channels. Also, the compensation plan adopted herein, which limits the cumulative reduction in the ASR-only compensation rate during the five-year compensation period, allows all providers of ASR-only service to be compensated at a level higher than the current average cost. Thus, small ASR-only providers will also be afforded a period of stability to support their growth under relatively favorable conditions.

Estimating IP CTS Expenses

47. *Attribution of Expenses to Service Categories.* The Commission adopts the *NPRM*'s tentative conclusion that, when possible, providers must directly assign costs to either ASR-only or CA-assisted IP CTS, and when that is not possible, they must reasonably allocate such costs based on direct analysis of the origin of the costs. Where they could not directly attribute costs to one or another service, most providers have allocated joint expenses based on the share of their IP CTS minutes that are ASR-only or CA-assisted. The Commission finds this to be a reasonable method.

48. *Relevant Cost Data.* Since 2018, the Commission has established the cost basis for IP CTS provider compensation by averaging providers' reported historical expenses for the prior calendar year (here, 2023) with their projected expenses for the current calendar year (here, 2024). The Commission has found this method to be a useful way to counteract providers' tendency to overestimate future costs. The Commission finds no compelling reason for any substantial modification of this approach. IP CTS providers' cost projections in the record do not include such dramatic variations as were raised by VRS provider projections in the recently concluded VRS compensation proceeding.

49. *Adjustment Factor.* To ensure that compensation for CA-assisted service in the first year of the next period is sufficient to cover likely inflation-related cost increases (offset by productivity related decreases) between Fund Years 2023–24 and 2024–25, the Commission adjusts each provider's average allowable expenses for calendar years 2023 and 2024 by 3.77%, which is the change from fourth quarter 2022 to fourth quarter 2023 in the Bureau of Labor Statistics (BLS) index of seasonally adjusted ''total compensation for private industry workers in professional, scientific, and technical services.'' This adjustment uses the same index that will be used to adjust compensation for CA-assisted IP CTS in subsequent years of the compensation period. The Commission does not apply an adjustment factor to ASR-only service. As explained below, an adjustment factor for ASR-only cost is not needed for this compensation period.

50. *Newly Allowable Cost Categories.* Although the Commission revises several allowable-cost categories, the record does not indicate that these changes will result in any significant increase in the estimated cost of service. Previously non-allowable expenses reported for numbering activities are identified by each IP CTS provider in its annual cost report. However, because most IP CTS users do not require the assignment of numbers, average per-minute expenses reported for number assignment are less than $.001 per minute, resulting in only a trivial cost adjustment. In the other categories of previously non-allowable costs, only one provider reported relevant non-allowable expenses for 2023 and 2024, and that provider has stated it was not able to segregate proprietary from non-proprietary software costs, or research and development for proprietary equipment from research and development for relay service. As a result, even this provider did not report any expenses in newly allowable cost categories other than number assignment. Therefore, the changes in allowable cost categories do not result in any adjustment of estimated average allowable per-minute expenses for either CA-assisted or ASR-only IP CTS. For the reasons stated above, costs for customer support provided by field staff remain non-allowable to the extent that they are attributable to installation, maintenance, or customer assistance with provider-distributed devices or software for proprietary devices.

51. *Technology Cost.* Some commenters argue that the Commission should adjust allowable expenses to take account of an asserted need for increases in technology investment, beyond the amounts estimated in annual cost reports. Given the excess in average TRS Fund payments above reasonable cost for the last several years, the Commission finds it implausible that IP CTS providers have been unable to spend reasonably necessary amounts in technology-related cost categories (engineering and research and development). Due to the extraordinarily high average operating margins recently achieved by IP CTS providers, ample resources have been available to enable providers to purchase any technology they may need or develop it in-house. In 2021, IP CTS providers reported average expenses of approximately $0.93 per minute and were paid approximately $1.36 per minute from the TRS Fund ($1.42 in January-June and $1.30 in July-December), for an operating margin of 46.2%. In 2022, they reported average expenses of approximately $0.83 per minute and were paid $1.30, for an operating margin of 56.9%. In 2023, they reported average expenses of approximately $0.72 per minute and were paid $1.30, for an operating margin of 80.6%. Further, the proliferation of ASR technology in other areas, including captioning for video conferencing and television, is likely to ensure that ASR development costs need not be borne by IP CTS providers alone. As noted above, providers have not reported incurring any additional research and development expenses for 2023 and 2024 in the newly allowable category of expenses for research and development to improve IP CTS beyond what is necessary to meet minimum TRS standards. Therefore, the Commission is not persuaded that extraordinary levels of additional support from the TRS Fund will be needed to assist IP CTS providers in securing necessary technology. In addition, the compensation plan limits the cumulative reduction in the ASR-only compensation rate during the next compensation period, providing an above-cost ''cushion'' as a safeguard against any unpredicted increases in technology-related cost.

52. *CA Cost.* Some commenters argue that the current compensation rate is insufficient to support a wage rate for CAs at the level they assert is needed—specifically, the federal contractor minimum. In contrast with the VRS compensation proceeding, the record here does not show that there is a continuing shortage of people qualified to work as IP CTS CAs. Indeed, the recent substantial decline in CA-assisted IP CTS minutes suggests the opposite. On the other hand, the Commission agrees that the quality of CA-assisted service likely will benefit if CAs are paid at higher hourly rates. To this end, the Commission prescribes two rates for CA-assisted service: a base rate, determined using the established average cost methodology; and a supplemental rate, applicable to the minutes handled by those CAs whose hourly wages exceed a threshold amount.

53. *Marketing and Outreach Cost.* Some commenters contend that the Commission should set rates that provide an additional incentive to engage in marketing and outreach, *e.g.,* to ensure the IP CTS industry invests in growth by reaching and offering the service to more qualifying consumers. They claim that only a small fraction of consumers who would benefit from IP CTS are being served. ClearCaptions blames declining compensation rates for causing a reduction in marketing expenditures by providers. According to providers' cost reports, however, marketing expenditures have *increased* substantially since 2020, both in dollars per minute and as a percentage of total allowable expenses. IP CTS providers reported spending an average of $.0903 per minute, or 13.0% of total expenses, on marketing in 2023, and projected spending $.1114 per minute, in 2024, or 15.0% of total expenses, in 2024. These percentages are far higher than in any recent year—and will continue to be supported at that level by the rates set in the *Report and Order.* Given the significant increase in marketing expenditures, the cost data do not suggest a need to provide additional monetary incentives for providers to find new IP CTS customers.

54. The Commission also does not find it credible that, despite the extraordinarily large operating margins (far above the allowed 10% level) actually earned by providers at the current rate, IP CTS providers have been unable to spend what is needed to market the service to likely customers. Nor does the Commission find it credible that IP CTS providers cannot continue to do so as rates are reduced to allow more reasonable operating margins. In this regard, despite some commenters' claims, the number of people in the United States who could benefit from IP CTS is largely a matter of speculation. While ClearCaptions suggests that the estimated 12.8 million U.S. residents with moderate to profound hearing loss are all ''potential IP CTS customers,'' many individuals who use hearing aids do not need the additional assistance of IP CTS. There are a variety of other sources of communications assistance available to this population, including hearing-aid compatible telephones and mobile phones, specialized high-amplification phones, and increasingly, commercially available ASR-enabled telephones and services. In addition, many seniors with moderate to profound hearing loss may be precluded from benefitting from a captioning service due to vision-related or cognitive disabilities. The Commission is setting TRS Fund support at a level that should encourage reasonable efforts to promote IP CTS among people who can benefit from it, but there is no evidence to support the assumption that everyone with at least moderate hearing loss needs, wants, and is able to use the service.

Operating Margin

55. The Commission adopts the proposal in the *NPRM* to maintain the previously established reasonable range of operating margins (7.6%–12.35%),

and the Commission sets the operating margin for the next period at 10%, the same level set by the Commission in the *2020 IP CTS Compensation Order.* In the *NPRM,* the lower bound of this range was incorrectly stated as 7.75%. The Commission finds no reason to change the operating margin from the previously allowed level. In particular, the record does not support arguments that the allowed 10% operating margin is insufficient to encourage capital investment in IP CTS.

56. The current range of reasonable operating margins for IP CTS is based on an average of the margins earned in analogous industries, including government contracting and the professional service sector that includes translation and interpretation services, as well as information technology consulting. For CA-assisted IP CTS, like VRS, labor costs continue to comprise a large percentage of total costs. Therefore, the Commission finds that the current range of operating margins is appropriate for the same reasons cited in the *2023 VRS Compensation Order.* ASR-based IP CTS, by contrast, is not labor intensive, as the CAs are replaced by ASR software. Nonetheless, the Commission finds that the current reasonable range, with the approximate midpoint at 10%, remains appropriate for ASR-based IP CTS.

57. ASR-based IP CTS does not depend on labor to generate captions. In addition to saving on labor costs, it requires even less physical plant than CA-assisted IP CTS, thus saving on capital costs as well. Nor is it a very high-risk business. Apart from the spike in demand during the COVID–19 pandemic, demand for IP CTS has shown steady growth since 2015. Further, while other businesses may face price fluctuations based on, for example, changing demand and the pricing decisions of competitors, IP CTS providers can rely on government-established prices that are predetermined for a period of several years.

58. ClearCaptions' expert, FTI Consulting (FTI), does not provide a convincing explanation of its view that average margins for the competitive telecommunications firms, or for a mix of firms in the communications and information technologies sector, would provide a more appropriate benchmark. As a preliminary matter, the Commission notes that FTI's initial study of the margins earned by allegedly comparable firms included telecommunications carriers. As explained in prior Commission orders, the operating margin approach was adopted because the Commission recognized that TRS providers are *unlike* the telecommunications industry, in that TRS is not a capital-intensive business. Any proposed benchmark that includes the operating margins of telecommunications carriers clearly would not be appropriate for IP CTS.

59. While the most recent analysis submitted by FTI does purport to filter out capital-intensive companies from the sample of information and communications technology firms, the use of a benchmark based on the high technology sector remains flawed, for several reasons. First, while ASR-only IP CTS relies on technology, technology costs do not loom large in the providers' cost profiles. Rather, the biggest expense categories in IP CTS providers' cost reports are subcontractor expenses, marketing, and operations support. Engineering expenses—even when combined with R&D—come fourth. Second, the FTI analysis looks at a sample of companies with net profit of up to 100%. The Commission is not persuaded that the companies from the sample are comparable to TRS providers. Third, IT companies typically involve high risk, while the degree of risk faced by IP CTS providers is limited.

60. The Commission does not see a reason why ASR-only IP CTS would have a higher risk level than CA-assisted IP CTS and therefore warrant a higher operating margin. While CA-assisted IP CTS faces some labor market risk, ASR-only IP CTS does not. Both services share a stable demographic from which to draw customers, and predictable support levels. Based on these factors, the Commission finds that it is appropriate for ASR-only IP CTS to have the same reasonable range of operating margins as CA-assisted IP CTS.

Compensation Period and Rates

61. *Compensation Period.* The Commission adopts a compensation period that begins the first month after the effective date of this Final Rule and ends June 30, 2029—approximately a five-year period. The Commission concludes that this period is long enough to give providers some degree of certainty regarding the applicable compensation levels and an incentive to improve efficiency, but also short enough to allow timely reassessment of the compensation formulas in response to potential unanticipated cost changes and other significant developments. There is substantial support in the record for adopting this time frame.

62. *ASR-only Rate.* For ASR-only service, the Commission estimates average cost as follows. First, the Commission totals all providers' reported allowable expenses for 2023 and 2024, respectively (including newly allowable costs that were reported). Next, the Commission divides these results by 2023 and 2024 minutes, to yield average expenses per minute. Then the Commission averages the per-minute rates for 2023 ($0.61) and 2024 ($0.65) to get a blended average of expenses per minute for 2023–24 ($0.63). Finally, the Commission adds a 10% operating margin, for an average per-minute cost of $0.69.

63. *Glide Path for ASR-Only Rate.* The average per-minute cost (including operating margin) for ASR-only IP CTS for 2023–24 is $0.69. To fulfill the Commission's role as steward of the TRS Fund, it is important to set a course toward a rate reduction. However, the Commission is concerned that an immediate 47% rate reduction could disrupt the provision of both methods of IP CTS by forcing less efficient providers to immediately adjust their spending to reflect reduced revenue. Further, while the Commission has found the current cost and demand data sufficiently reliable to justify setting a separate ASR-only rate, future cost developments for this service mode are not easy to predict, and the bifurcation of the rate itself may cause some cost changes over time. Therefore, the Commission adopts a variant of the ''glide path'' approach similar to that used in prior TRS compensation proceedings.

64. Under this approach, the ASR-only rate will be reduced by approximately 10% annually for the first three years of the period. The initial ASR-only rate, applicable from the effective date through June 30, 2025, will be $1.17; the second-year rate, applicable from July 1, 2025, through June 30, 2026, will be $1.05; the third-year rate, applicable from July 1, 2026, through June 30, 2027, will be $0.95. For the fourth and fifth years, through June 30, 2029, the ASR-only compensation rate will remain at $0.95.

65. As discussed above, the cost and demand data now available on ASR-only service, which includes at least 20 months of historical data (as well as 24 months of projected cost data) from every mature IP CTS provider, has significantly increased the Commission's confidence that the average per-minute cost of ASR-only service is substantially below the cost of CA-assisted service. But the Commission acknowledges that ASR is a nascent service, that ASR-only cost patterns may change over time in unpredicted ways, and that there is room for improvement in the quality of ASR-only service, which could entail

increased cost. To the extent that providers compete to provide a superior quality of service, such costs may be incurred regardless of whether the Commission establishes and enforces quality-of-service metrics. By limiting the cumulative reduction of the ASR-only compensation rate during this period, the Commission is able to leave the issue of quantifying such costs to be addressed in the future, based on actual provider cost reports, should that be necessary. At the end of the five-year rate cycle established in the Order, the Commission will be able to assess additional years of ASR-only cost data and adjust costs as necessary at that time.

66. The Commission concludes that this approach provides a sufficient safeguard against the possibility of unexpected increases in ASR-only IP CTS costs during the compensation period, including any plausible need for additional investment in R&D and technology. In effect, this approach establishes a $0.95 ''floor'' on the compensation rate for ASR-only service for the duration of the compensation period, rather than the $1.00 or $0.99 ''floor'' advocated by some commenters. Although advocates for a somewhat higher ''floor'' contend that their preferred level is necessary to ensure sufficient support for specified (but unreported) levels of marketing and technology expenses, as well as non-allowable CPE-related costs, the Commission rejects these arguments for the various reasons discussed above. In any event, the Commission is not precluded from revisiting the compensation plan prior to its expiration, should that be deemed necessary.

67. A commenter also contends that the floor it advocates is needed to ensure that the per-minute dollar amount of operating margin earned by a provider from ASR-only service is not lower than the dollar amount of operating margin earned from CA-assisted service. While the Commission does not necessarily agree with the premise of this argument (that provider incentives are based on the per-minute dollar amount of operating margin rather than the percentage of underlying cost that it represents), it is unnecessary to decide this question. A $0.95 rate for ASR-only service still provides a substantial cushion above allowable per-minute expenses, rendering it highly unlikely that the average dollar amount of ASR-only operating margin will fall below the average dollar amount of CA-assisted operating margin.

68. *CA-Assisted Rate.* For CA-assisted service, the Commission establishes a base compensation rate by applying the methodology discussed above. This is a ''base'' rate because it is subject to annual adjustment. The Commission totals all providers' reported allowable expenses for 2023 and 2024 (including newly allowable costs that were reported), and then adjusts the totals for inflation. Next, the Commission divides the results by 2023 and 2024 minutes, to yield average expenses per minute. Then the Commission averages the per-minute rates for 2023 ($1.08) and 2024 ($1.37) to get a blended average of expenses per minute for 2023–24 ($1.23). Finally, the Commission adds a 10% operating margin to arrive at a base rate. This rate for CA-assisted IP CTS is $1.35, $0.05 higher than the current rate and will apply in the first year of the new compensation period, Fund Year 2024–25.

69. *Alternative CA-Assisted Rate Proposals.* The Commission declines to adopt the alternative CA-assisted rates recommended by ClearCaptions ($1.58 per minute), CaptionCall ($1.67 per minute), and Hamilton ($1.78 per minute). The rates recommended by ClearCaptions and CaptionCall are based on their requests that the Commission revisit its longstanding policy disallowing TRS Fund support for the cost of provider-distributed CPE, increase support for CA wages, technology costs, and outreach/marketing beyond cost-based levels, and increase the allowed operating margin to the 16–21% range. For the reasons stated above, the Commission declines most of these requests. However, support for CA wages is addressed through a conditional rate supplement, discussed below. Hamilton's recommended $1.78 rate is based on its recommendation to use a ''mean plus one standard deviation'' approach in lieu of average cost, which the Commission declines to adopt for the reasons stated earlier.

70. *Conditional Supplement to the CA-Assisted Rate.* The Commission seeks to ensure that IP CTS providers have the ability to provide a high quality of CA-assisted service. The record reflects that some IP CTS CAs are currently paid below the federal contractor minimum wage (currently $17.20 per hour). There is likely a correlation between the quality of CA-assisted service and the amount of compensation that CAs receive. Therefore, the Commission seeks to ensure that providers are able, if they choose, to pay CA wages at least equal to the federal contractor minimum. To this end, the Commission establishes a supplemental rate for CA-assisted service, applicable to any of the four providers currently certified to provide CA-assisted service (CaptionCall, ClearCaptions, Hamilton, and InnoCaption), for those minutes of service for which the CAs producing captions were paid a minimum hourly rate, initially set at $17.20. If the Commission were to set a generally applicable compensation rate for CA-assisted service based on the assumption that, going forward, all IP CTS providers would pay that minimum, the Commission would have no assurance that reality will match that assumption. Especially in the absence of a labor shortage comparable to that affecting VRS providers, the Commission has less confidence that labor market factors will induce IP CTS providers to pay higher wages to CAs. The Commission concludes that, in these circumstances, payment of a higher rate for CA service meeting the stated condition will produce service-quality improvements that are approximately commensurate with the higher cost to the TRS Fund, and therefore will not significantly affect the efficiency with which IP CTS is provided.

71. The record contains limited information on the CA wages currently paid by IP CTS providers and their subcontractors. However, the Commission estimates that if CA wages averaged $17.20 per hour in 2023–24, the average cost of CA service (including a 10% operating margin) would rise by approximately $0.21. To ensure reasonable compensation for providers of CA-assisted service that raise CA wages to this threshold, the Commission adopts a rate supplement of $0.21 per minute, initially applicable to those minutes for which the CA producing captions is paid at least $17.20 per hour. The threshold amount of $17.20 per hour will be adjusted in the second and third years of the compensation period by the same factor applicable to the rates for CA-assisted service.

72. The Commission directs the TRS Fund administrator to issue instructions to the four providers of CA-assisted service defining the method and format by which wage information should be submitted for any CA as to which a provider claims application of the rate supplement. The Commission delegates authority to the Consumer and Governmental Affairs Bureau and the Office of the Managing Director to review and approve such instructions.

73. To prevent waste, fraud, and abuse of the TRS Fund, the rule expressly provides that the initial

payment of this compensation supplement is a preliminary payment, conditional on subsequent verification by audit that the CAs producing captions for minutes for which the supplement was paid actually were paid the hourly rate claimed by the provider. In this regard, any of the four IP CTS providers certified for CA-assisted service may request application of the rate supplement to minutes for which captioning was provided by a subcontractor. However, the provider is responsible for ensuring and documenting the accuracy of its representations to the TRS Fund administrator regarding the wages paid to the subcontractor's CAs. Further, a subcontractor's CA wages are equally subject to subsequent verification and audit. In such subsequent audit, if an IP CTS provider fails to produce documentation, satisfactory to the TRS Fund administrator, verifying the hourly rate paid to affected CAs—whether employed by the provider or a subcontractor—then the administrator is entitled to immediately reclaim any prior payments of the rate supplement for minutes handled by such CAs, by offsetting such prior payments against any amounts claimed in the provider's next monthly compensation request.

74. *When the Revised Rates Apply.* To ensure that no party is adversely affected by the timing of the *Report and Order,* the new rates will not be applicable until the first day of the first month that begins after the effective date of the *Report and Order.* Therefore, the Commission directs the TRS Fund administrator to continue compensating providers of IP CTS under the current compensation formula of $1.30 per minute for all service provided through the last day of the calendar month that immediately precedes the effective date of the *Report and Order.* Service provided on or after November 1, 2024, shall be paid in accordance with the formulas adopted in *Report and Order.*

Annual Adjustment of Formulas

75. For CA-assisted IP CTS, as a price indexing formula to be applied during the compensation period to reflect inflation and productivity, the Commission adopts its proposal to use the Bureau of Labor Statistics' Employment Cost Index for ''professional, scientific, and technical services'' (ECI–PST)—the same index used to annually adjust compensation for VRS and IP Relay, on the basis that this seasonally adjusted index, which includes translation and interpreting services. This approach is consistent with the index currently used to adjust the compensation formulas for VRS and IP Relay. As with IP Relay and VRS, labor is the largest expense incurred to provide CA-assisted IP CTS and the most likely to cause a cost increase over time. And as with VRS and IP Relay, the ECI–PST index tracks an industry sector similar to CA-assisted IP CTS. The Commission assumes that this index reasonably captures relevant productivity enhancements as well, and that accordingly, it is not necessary to set a separate productivity factor at this time.

76. For ASR-only IP CTS, the Commission concludes it is unnecessary to adopt an adjustment factor at this time. It is possible that a technology-based service of this kind may exhibit productivity enhancements over time, which may more than offset the general inflation rate. However, technology cost is only one component—and not the largest component—of the cost of ASR-only service. After five years of additional experience with ASR-only service, the Commission will be better positioned to adopt an appropriate adjustment factor. In the interim, the Commission concludes that an adjustment factor is not needed, as a 10% annual reduction in the ASR-only rate will leave this rate substantially above average 2023–24 cost through the end of the compensation period.

77. As proposed in the *NPRM,* the compensation rule also provides for annual review and adjustment of any claims for exogenous cost recovery, in accordance with the criteria adopted in 2020.

Final Regulatory Flexibility Analysis

78. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission incorporated an Initial Regulatory Flexibility Analysis (IRFA) in the. The Commission sought written public comment on the proposals in the *NPRM,* including comment on the IRFA. No comments were filed addressing the IRFA.

79. *Need for, and Objectives of, Report and Order.* In the *Report and Order,* pursuant to 47 U.S.C. 225, the Commission adopts multi-year compensation plans for IP CTS. To provide the appropriate compensation for the provision of, and continued availability of IP CTS, the Commission adopts separate compensation levels for IP CTS using only automatic speech recognition technology (ASR-only IP CTS) and IP CTS provided with communications assistants (CA-assisted IP CTS). Establishing two compensation formulas gives the Commission the ability to encourage the provision of both ASR-only IP CTS and CA-assisted IP CTS, while limiting the burden to the TRS Fund. For ASR-only IP CTS, the Commission adopts a compensation plan that reduces the ASR-only rate in stages, giving the Commission an opportunity to reassess the reasonable cost of ASR-only IP CTS, in light of future developments, before the rate actually reaches the cost-based level indicated by current cost data. For CA-assisted IP CTS, the Commission adopts a compensation plan that addresses cost changes due to inflation. The Commission also updates the reasonable cost criteria to improve the ability of IP CTS providers to provide and receive compensation for IP CTS, whether provided as ASR-only IP CTS or CA-assisted IP CTS. The Commission takes these steps to ensure the provision of IP CTS in a functionally equivalent manner to persons who are deaf, hard of hearing, DeafBlind, or have speech disabilities.

80. *Description and Estimate of the Number of Small Entities to Which the Rules Will Apply.* The policies adopted in the *Report and Order* will affect obligations of IP CTS providers. Neither the Commission nor the SBA has developed a small business size standard specifically for TRS providers. All Other Telecommunications is the closest industry with an SBA small business size standard.

81. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* The provider compensation plan adopted in the *Report and Order* clarifies certain existing reporting, recordkeeping, and other compliance requirements for small entities. The adopted rules establish the compensation structure for IP CTS providers which may impose additional costs for small providers. The Commission retains the status quo of continuing to require IP CTS providers, including small providers, to file annual cost and demand data reports with the TRS Fund administrator. The Commission clarifies the data related to engineering, research and development, and communications assistant costs that shall be collected in the providers' annual cost and demand data filing. While there are no new or additional burdens on IP CTS providers to file these reports, small entities may need to hire professionals to complete cost reports with new formulas and calculations such as the glidepath approach for the ASR-only formula for example, so that they may comply with the adopted rules. These calculations and reports must also be adjusted to include certain expenses that were previously not allowable, such as for research and development to enhance

functional equivalence of IP CTS; the costs of acquiring NANP telephone numbers; and the reasonable costs of developing, maintaining, and providing software and web-based applications that enable users to access IP CTS from off-the-shelf user devices running on widely available operating systems. Although the Commission allows IP CTS providers to recover reasonable costs for numbering, certain software, and certain research and development costs, these allowances do not change the cost categories reported by providers. When it is possible to directly assign costs to either ASR-only or CA-assisted IP CTS, providers must do so, and when that is not possible, they must reasonably allocate such costs based on direct analysis of the origin of the costs themselves.

82. *Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The adopted compensation structure and levels will apply only to entities which are, or may become, certified by the Commission to offer ASR-only IP CTS or CA-assisted IP CTS in accordance with the Commission's rules. The Commission adopted these multi-year compensation levels to compensate providers for their reasonable cost of providing service, to reduce the burden on TRS Fund contributors and their subscribers, and to ensure that TRS is made available to the greatest extent possible and in the most efficient manner. Among the steps taken to minimize significant impact on small and other entities is the adoption of separate compensation structures for ASR-only IP CTS and CA-assisted IP CTS based on their reported costs. The compensation for ASR-only IP CTS will be adjusted over a multi-year glide path. The CA-assisted rate will be subject to adjustment based on a factor that reasonably predicts whether relevant costs will rise or fall in the coming years. The compensation period will be effective for approximately five years, which is longer than the three-year alternative proposed in the *NPRM,* providing an incentive to improve efficiency and reassess formulas in response to unanticipated cost changes. These actions by the Commission should minimize the economic impact for small entities who provide IP CTS.

83. The Commission considered various proposals from small and other entities, and the adopted rules reflect its best efforts to minimize significant economic impact on small entities. The Commission adjusted the allowable cost categories that it considers in determining the appropriate compensation formulas for the provisioning of IP CTS to allow small and other providers to recover costs and benefit economically from the increased compensation they will receive.

Ordering Clauses

84. Pursuant to sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 225, the Report and Order is ADOPTED and the Commission's rules are hereby AMENDED as set forth.

Congressional Review Act

85. The Commission sent a copy of the Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

Final Paperwork Reduction Act of 1995 Analysis

86. The *Report and Order* does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. Therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Reduction Act of 2002, Public Law 107–198. *See* 44 U.S.C. 3506(c)(4).

List of Subjects in 47 CFR Part 64

Individuals with disabilities, Telecommunications, Telephones.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

Subpart F—Telecommunications Relay Services and Related Customer Premises Equipment for Persons With Disabilities

■ 1. The authority citation for part 64, subpart F, continues to read as follows:

Authority: 47 U.S.C. 151–154; 225, 255, 303(r), 616, and 620.

■ 2. Add § 64.641 to read as follows:

§ 64.641 Compensation for Internet Protocol Captioned Telephone Service.

(a) *Captioning with only automatic speech recognition technology.* For the period from November 1, 2024, through June 30, 2029, TRS Fund compensation for the provision of Internet Protocol Captioned Telephone Service when captioning is produced using only automatic speech recognition technology (ASR-only IP CTS) shall be as described in this paragraph (a).

(1) *Initial rate.* For the period from November 1, 2024, through June 30, 2025, the Compensation Level for ASR-only IP CTS shall be $1.17 per minute.

(2) *Second year rate.* For the period from July 1, 2025, through June 30, 2026, the Compensation Level for ASR-only IP CTS shall be $1.05 per minute.

(3) *Rates for subsequent years.* For the period from July 1, 2026, through June 30, 2029, the Compensation Level for ASR-only IP CTS shall be $0.95 per minute.

(b) *Captioning with communications assistants.* For the period from November 1, 2024, through June 30, 2029, TRS Fund compensation for the provision of internet Protocol Captioned Telephone Service when captioning is produced with communications assistants (CA-assisted IP CTS) shall be as described in this paragraph (b).

(1) *Initial rate.* For the period from November 1, 2024, through June 30, 2025, the Compensation Level for CA-assisted IP CTS shall be $1.35 per minute.

(2) *Succeeding years.* For each succeeding TRS Fund Year through June 30, 2029, the per-minute CA-assisted Compensation Level shall be determined in accordance with the following equation:

Equation 1 to Paragraph (b)(2)

$$L_{FY} = L_{FY-1} * (1 + AF_{FY})$$

Where L_{FY} is the CA-assisted Compensation Level for the new Fund Year, L_{FY-1} is the CA-assisted Compensation Level for the previous Fund Year, and AF_{FY} is the Adjustment Factor for the new Fund Year.

(3) *Adjustment Factor.* The Adjustment Factor for a Fund Year (AF_{FY}), to be determined annually on or before June 30, is equal to the difference between the Initial Value and the Final Value, as defined in paragraphs (b)(3)(i) and (ii) of this section, divided by the Initial Value. The Initial Value and Final Value, respectively, are the values of the Employment Cost Index compiled by the Bureau of Labor Statistics, U.S. Department of Labor, for total compensation for private industry workers in professional, scientific, and technical services, for the following periods:

(i) *Final Value.* The fourth quarter of the Calendar Year ending 6 months before the beginning of the Fund Year; and

(ii) *Initial Value.* The fourth quarter of the preceding Calendar Year.

(c) *Supplemental Compensation for CA-assisted IP CTS.* For the period from November 1, 2024, through June 30, 2029, Supplemental Compensation for CA-assisted IP CTS may be paid in accordance with this paragraph (c) to any of the following four IP CTS providers currently certified to provide CA-assisted IP CTS: CaptionCall, ClearCaptions, Hamilton, InnoCaption (Certified Providers).

(1) *Initial rate.* For the period from November 1, 2024, through June 30, 2025, the Supplemental Compensation Rate for CA-assisted IP CTS shall be $0.21 per minute. This rate shall be paid, in addition to the compensation defined in paragraph (b) of this section, for all compensable minutes of CA-assisted service provided by a Certified Provider for which the communications assistant producing captions was paid an hourly wage of at least $17.20 (the Minimum Hourly Wage).

(2) *Succeeding years.* (i) For each succeeding TRS Fund Year through June 30, 2027, the per-minute Supplemental Compensation Rate for CA-assisted IP CTS shall be determined in accordance with the following equation:

Equation 2 to Paragraph (c)(2)(i)

$$L_{FY} = L_{FY-1}*(1+AF_{FY})$$

Where L_{FY} is the CA-assisted Compensation Level for the new Fund Year, L_{FY-1} is the CA-assisted Compensation Level for the previous Fund Year, and AF_{FY} is the Adjustment Factor for the new Fund Year, as defined by paragraph (b)(3) of this section.

(ii) The rate in paragraph (c)(2)(i) of this section shall be paid, in addition to the compensation defined in paragraph (b) of this section, for all compensable minutes of CA-assisted service provided by a Certified Provider for which the communications assistant producing captions was paid a Minimum Hourly Wage of at least the amount determined by the following equation:

Equation 3 to Paragraph (c)(2)(ii)

$$W_{FY} = W_{FY-1}*(1+AF_{FY})$$

Where W_{FY} is the Minimum Hourly Wage for the new Fund Year, W_{FY-1} is the Minimum Hourly Wage for the previous Fund Year, and AF_{FY} is the Adjustment Factor for the new Fund Year, as defined by paragraph (b)(3) of this section.

(3) *Verification and offset.* The initial payment of Supplemental Compensation for CA-assisted IP CTS is a preliminary payment only and is conditional on subsequent verification by audit that the CAs producing captions for those minutes for which the supplement was paid actually were paid the hourly rate claimed by the provider. The Certified Provider is responsible for ensuring and documenting the accuracy of its representations to the TRS Fund administrator regarding the wages paid to each affected CA, whether such wages were paid by the Certified Provider or by a subcontractor. In such subsequent audit, if a Certified Provider fails to produce documentation, satisfactory to the TRS Fund administrator, verifying the hourly rate paid to affected CAs—whether employed by the Certified Provider or a subcontractor—then the administrator is entitled to immediately reclaim any prior payments of Supplemental Compensation for minutes handled by such CAs, by offsetting such prior payments against any amounts claimed in the provider's next monthly compensation request.

(d) *Exogenous cost adjustments.* In addition to the applicable per-minute Compensation Level, an IP CTS provider shall be paid a per-minute exogenous cost adjustment if claims for exogenous cost recovery are submitted by the provider and approved by the Commission on or before June 30. Such exogenous cost adjustment shall equal the amount of such approved claims divided by the provider's projected IP CTS minutes for the Fund Year. An exogenous cost adjustment shall be paid if an IP CTS provider incurs well-documented costs that:

(1) Belong to a category of costs that the Commission has deemed allowable;

(2) Result from new TRS requirements or other causes beyond the provider's control;

(3) Are new costs that were not factored into the applicable compensation formula(s); and

(4) If unrecovered, would cause a provider's current allowable-expenses-plus-allowed-operating margin to exceed its revenues.

[FR Doc. 2024–19559 Filed 9–3–24; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 200124–0029; RTID 0648–XE221]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; 2024 Red Snapper Private Angling Component Closure in Federal Waters off Texas

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces a closure for the 2024 fishing season for the red snapper private angling component in the exclusive economic zone (EEZ) off Texas in the Gulf of Mexico (Gulf) through this temporary rule. The red snapper recreational private angling component in the Gulf EEZ off Texas closes on September 7, 2024, until 12:01 a.m., local time, on January 1, 2025. This closure is necessary to prevent the private angling component from exceeding the Texas regional management area annual catch limit (ACL) and to prevent overfishing of the Gulf red snapper resource.

DATES: This closure is effective from 12:01 a.m., local time, on September 7, 2024, until 12:01 a.m., local time, on January 1, 2025.

FOR FURTHER INFORMATION CONTACT: Daniel Luers, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *daniel.luers@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery, which includes red snapper, is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council, approved by the Secretary of Commerce, and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The final rule implementing Amendment 40 to the FMP established two components within the recreational sector fishing for Gulf red snapper: the private angling component, and the Federal for-hire component (80 FR 22422, April 22, 2015). Amendment 40 also allocated the red snapper recreational ACL (recreational quota) between the components and established separate seasonal closures for the two components. On February 6, 2020, NMFS implemented Amendments 50 A–F to the FMP, which delegated authority to the Gulf states (Louisiana, Mississippi, Alabama, Florida, and Texas) to establish specific management measures for the harvest of red snapper in Federal waters of the Gulf by the private angling component of the recreational sector (85 FR 6819, February 6, 2020). These amendments allocated a portion of the private angling ACL to each state, and each state is required to constrain landings to its allocation.

As described at 50 CFR 622.23(c), a Gulf state with an active delegation may request that NMFS close all, or an area of, Federal waters off that state to the harvest and possession of red snapper by private anglers. The state is required to request the closure by letter to NMFS, providing dates and geographic coordinates for the closure. If the request is within the scope of the analysis in Amendment 50A, NMFS publishes a notice in the **Federal Register** implementing the closure for the fishing year. Based on the analysis in Amendment 50A, Texas may request a closure of all Federal waters off the state to allow a year-round fishing season in state waters. As described at 50 CFR 622.2, ''off Texas'' is defined as the waters in the Gulf west of a rhumb line from 29°32.1′ N lat., 93°47.7′ W long. to 26°11.4′ N lat., 92°53′ W long., which line is an extension of the boundary between Louisiana and Texas.

On November 8, 2023, NMFS received a request from the Texas Parks and Wildlife Department (TPWD) to close the EEZ off Texas to the red snapper private angling component for the first part of the 2024 fishing year. Texas requested that the closure be effective from January 1, 2024, until June 1, 2024. NMFS determined that the TPWD request was within the scope of analysis contained within Amendment 50A, and subsequently published a temporary rule in the **Federal Register** implementing that closure request (88 FR 83041, November 28, 2023). In that temporary rule, NMFS noted that TPWD would monitor private recreational landings, and if necessary, request that NMFS again close the EEZ in 2024 to ensure the Texas regional management area ACL is not exceeded.

On August 26, 2024, NMFS received a new request from the TPWD to close the EEZ off Texas to the red snapper private angling component for the remainder of the 2024 fishing year. Texas requested that the closure be effective on September 7, 2024, through the end of the 2024 fishing year. NMFS has determined that this request is within the scope of analysis contained within Amendment 50A, which analyzed the potential impacts of a closure of all Federal waters off Texas when a portion of the Texas quota has been landed. As explained in Amendment 50A, Texas intends to maintain a year-round fishing season in state waters, during which the remaining part of Texas' ACL could be caught.

Therefore, the red snapper recreational private angling component in the Gulf EEZ off Texas will close from 12:01 a.m., local time, on September 7, 2024, until 12:01 a.m., local time, on January 1, 2025. This closure applies to all private-anglers (those on board vessels that have not been issued a valid charter vessel/headboat permit for Gulf reef fish) regardless of which state they are from or where they intend to land.

On and after the effective dates of the closure in the EEZ off Texas, the harvest and possession of red snapper in the EEZ off Texas by the private angling component is prohibited and the bag and possession limits for the red snapper private angling component in the closed area is zero.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 622.23(c), which was issued pursuant to section 304(b) of the Magnuson-Stevens Act, and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment are unnecessary and contrary to the public interest.

Such procedures are unnecessary because the rule implementing the area closure authority and the state-specific private angling ACLs has already been subject to notice and comment, and all that remains is to notify the public of the closure. Such procedures are contrary to the public interest because a failure to implement the closure immediately would be inconsistent with Texas's state management plan and may result in less access to red snapper in state waters.

For the aforementioned reasons, there is good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: August 28, 2024.

Kelly Denit,

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

[FR Doc. 2024–19744 Filed 8–29–24; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 240304–0068; RTID 0648–XE227]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; modification of a closure; request for comments.

SUMMARY: NMFS is opening directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 meters) length overall (LOA) using hook-and-line or pot gear in the Bering Sea and Aleutian Islands Management Area (BSAI). This action is necessary to fully use the 2024 total allowable catch of Pacific cod allocated to catcher vessels less than 60 feet (18.3 meters) LOA using hook-and-line or pot gear in the BSAI.

DATES: *Effective date:* Effective 1200 hours, Alaska local time (A.l.t.), September 1, 2024, through 2400 hours, A.l.t., December 31, 2024.

Comments due date: Comments must be received at the following address no later than 4:30 p.m., A.l.t., September 19, 2024.

ADDRESSES: You may submit comments on this document, identified by docket number NOAA–NMFS–2023–0124, by any of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2023–0124 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Mail: Submit written comments to Gretchen Harrington, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *https://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*), confidential business information, or

otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Krista Milani, 907–581–2062.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR parts 600 and 679.

NMFS closed directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 meters) LOA using hook-and-line or pot gear in the BSAI under § 679.20(d)(1)(iii) on January 25, 2024 (89 FR 5135, January 26, 2024).

NMFS has determined that as of August 28, 2024, approximately 1,800 metric tons of Pacific cod remain in the 2024 Pacific cod apportionment for catcher vessels less than 60 feet (18.3 meters) LOA using hook-and-line or pot gear in the BSAI. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully use the 2024 total allowable catch (TAC) of Pacific cod in the BSAI, NMFS is terminating the previous closure and is opening directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 meters) LOA using hook-and-line or pot gear in the BSAI. The Administrator, Alaska Region, NMFS, (Regional Administrator) considered the following factors in reaching this decision: (1) the current catch of Pacific cod by catcher vessels less than 60 feet (18.3 meters) LOA using hook-and-line or pot gear in the BSAI and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels in participating in this fishery.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion, and would delay the opening of directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 meters) LOA using hook-and-line or pot gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 28, 2024.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice.

Without this inseason adjustment, NMFS could not allow the fishery for Pacific cod by catcher vessels less than 60 feet (18.3 meters) LOA using hook-and-line or pot gear in the BSAI to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address (see **ADDRESSES**) until September 19, 2024.

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

Dated: August 28, 2024.

Kelly Denit,

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

[FR Doc. 2024–19745 Filed 8–29–24; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 89, No. 171
Wednesday, September 4, 2024

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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2024–2087; Airspace Docket No. 23–ANM–22]

RIN 2120–AA66

Proposed Establishment of Class E Airspace; Dubois, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace extending upward from 700 feet above the surface at Dubois Airport, Dubois, WY, in support of the airport's transition from visual flight rules (VFR) to instrument flight rules (IFR) operations.

DATES: Comments must be received on or before October 21, 2024.

ADDRESSES: Send comments identified by FAA Docket No. [FAA–2024–2087] and Airspace Docket No. [23–ANM–22] using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at *www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FAA Order JO 7400.11H, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jeffrey Drasin, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–2248.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish Class E airspace to support IFR operations at Dubois Airport, Dubois, WY.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the office of the at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198.

Incorporation by Reference

Class E5 airspace designations are published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023,

and effective September 15, 2023. These updates would be published in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

FAA Order JO 7400.11H lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 that would establish Class E airspace extending upward from 700 feet above the surface at Dubois Airport, Dubois, WY, in support of the airport's forthcoming transition from VFR to IFR operations.

This airspace would extend 8.2 miles southeast and 4.5 miles north and northwest of the airport. The configuration is designed to contain departing and missed approach IFR operations until reaching 1,200 feet above the surface. Additionally, this proposal is designed to contain arriving IFR operations below 1,500 feet.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'', prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 feet or More Above the Surface of the Earth.

* * * * *

ANM WY E5 Dubois, WY [New]

Dubois Municipal Airport, WY
(Lat. 43°32′55″ N, long. 109°41′27″ W)

That airspace extending upward from 700 feet above the surface within 1.9 miles on either side of the 117° bearing extending from the airport to 8.2 miles southeast, and within 4.8 miles northeast and 1.9 miles southwest of the 297° bearing extending from the airport to 4.5 miles northwest.

* * * * *

Issued in Des Moines, Washington, on August 28, 2024.

B.G. Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2024–19794 Filed 9–3–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–111629–23]

RIN 1545–BM80

Guidance Regarding Elections Relating to Foreign Currency Gains and Losses; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document contains corrections to the proposed regulations (REG–111629–23), published in the **Federal Register** on August 20, 2024. The proposed regulations are regarding the time for making and revoking certain elections relating to foreign currency gain and loss.

DATES: Written or electronic comments and requests for a public hearing are still being accepted and must be received by October 18, 2024.

ADDRESSES: Commenters were strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–111629–23) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the ''Comments and Requests for a Public Hearing'' section of the notice of proposed rulemaking published on August 20, 2024 (89 FR 67336). Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (''Treasury Department'') and the IRS will publish for public availability any comments submitted to the IRS's public docket. Send hard copy submissions to: CC:PA:01:PR (REG–111629–23), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Edward Tracy at (202) 317–5443 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations (REG–111629–23) subject to this correction are proposed to be issued under sections 954 and 988 of the Internal Revenue Code.

Corrections

Accordingly, FR Doc. 2024–18281 (REG–111629–23), appearing on page 67336 in the **Federal Register** on Tuesday, August 20, 2024, is corrected as follows:

1. On page 67339, in the first column, in the first partial paragraph, the fifth line is corrected to read ''year. Taxpayers''.

2. On page 67339, in the first column, in the first partial paragraph, the last line is corrected to read ''2017 proposed regulations for taxable years ending after August 19, 2024.''.

3. On page 67339, in the first column, in the first full paragraph, the last line is corrected to read ''regulations, except to make elections for taxable years beginning on or before August 19, 2024.''.

4. On page 67340, in the second column, under the heading ''Partial Withdrawal of Proposed Regulations'' the first full paragraph is corrected to read ''Under the authority of 26 U.S.C. 7805: (1) proposed § 1.954–2(g)(3)(iii)

and (g)(4)(iii), contained in the notice of proposed rulemaking that was published in the **Federal Register** on December 19, 2017 (82 FR 60135), are withdrawn for taxable years ending after August 19, 2024; (2) proposed § 1.988–7(d) and (e), contained in the notice of proposed rulemaking that was published in the **Federal Register** on December 19, 2017 (82 FR 60135), are withdrawn as of August 19, 2024; and (3) proposed § 1.988–7(c) contained in the notice of proposed rulemaking that was published in the **Federal Register** on December 19, 2017 (82 FR 60135), is withdrawn for taxable years beginning after August 19, 2024.''.

§ 1.988–7 [Corrected]

■ 5. On page 67341, in the first column, in § 1.988–7, the last line of paragraph (c)(1) is corrected to read ''election is made, or if applicable, with a request for an extension of time to file that return.''.

Oluwafunmilayo A. Taylor,

Chief, Publications and Regulations Section, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2024–19792 Filed 9–3–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 3

[Docket ID: DoD–2021–OS–0071]

RIN 0790–AK98

Transactions Other Than Contracts, Grants, or Cooperative Agreements for Prototype Projects

AGENCY: Office of the Under Secretary of Defense for Acquisition and Sustainment (OUSD(A&S)), Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing revisions to its regulations on Other Transaction (OT) agreements for prototype projects to implement changes in statutory authority enacted by Congress since the last update in 2004. The Department is proposing changes in: the authority to provide for follow-on production OTs and contracts; special circumstances for award of OTs to small businesses, nontraditional defense contractors, nonprofit research institutions, and consortia; approval requirements for large dollar OTs; the authority to supply prototypes and production items to another contractor as Government furnished items; and applying procurement ethics requirements to covered OT agreements.

DATES: Comments must be received by November 4, 2024.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Identifier Number (RIN) 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 Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Attn: Mailbox 24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the Docket ID No. Comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. Do not submit any information you consider to be Confidential Business Information (CBI) through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Larry McLaury and Mr. Jesse Bendahan, 703–697–6710.

SUPPLEMENTARY INFORMATION:

I. Background and Authority

These proposed changes update 32 CFR 3 under section 4022 of title 10, United States Code (section 4022). An OT is a legal instrument (award) issued by the Federal Government that is not a procurement contract, cooperative agreement or grant, and is the defining characteristic of OTs. OTs pursuant to section 4022 can take many forms and generally are not required to comply with Federal laws and regulations that apply to procurement contracts, grants, and/or cooperative agreements. To the extent that a particular law or regulation is not tied to the type of instrument used (*e.g.,* fiscal and property laws), it would generally apply to an OT.

The purpose of these types of agreements is to provide agility in the contracting process by attracting nontraditional defense contractors and small businesses with leading edge technologies. They are meant to enable acquisition of innovative technologies by allowing for flexibility in terms of the award process and the terms and conditions of a contract.

The Department currently has permanent authority to award OT under three areas.

- Research—Section 4021 of title 10, United States Code (section 4021) provides authority for basic, applied, and advanced research projects. These OTs are intended to spur dual-use research and development to take advantage of economies of scale without burdening companies with Government regulatory overhead, which would make them non-competitive in the commercial (non-defense) sector. The update proposed here is limited to authority for prototype OTs under section 4022, but section 4022 states that OTs for prototypes are under the authority of section 4021.
- Prototype—This allows for prototype projects under section 4022 authority that are directly relevant to enhancing the mission effectiveness of personnel of the Department of Defense or improving platforms, systems, components, or materials proposed to be acquired or developed by the Department of Defense, or to improvement of platforms, systems, components, or materials in use by the armed forces.
- Follow-on Production OTs and Contracts—This allows for a non-competitive, follow-on OTs to a Prototype OT agreement under section 4022 authority that was competitively awarded and successfully completed. Although advance consideration of transition from a prototype agreement to a follow-on production OT is recommended as best practice, explicit notification is not required within the request for proposal for the transaction if: competitive procedures were used for the selection of parties for participation in the transaction; and the participants in the transaction successfully completed the prototype project provided for in the transaction.

This proposed rule covers prototype OTs and follow-on production OTs and contracts under section 4022. This part of the CFR was last updated on March 30, 2004 (61 FR 16481–16483). The changes proposed facilitate statutory alignment and ensure up-to-date information and policy are codified in the CFR.

For the purposes of this proposed rule, prototype projects can address:

- a proof of concept, model, or process, including a business process;
- reverse engineering to address obsolescence;
- a pilot or novel application of commercial technologies for defense purposes;
- agile development activity; and
- the creation, design, development, demonstration of operational utility; or any combination of the foregoing.

The current provisions of Part 3 in Title 32 are based on authority in section 845 of the NDAA for Fiscal Year 1994, Public Law 103–160, as amended

(section 845). This authority permitted the use of OT agreements for prototype projects directly relevant to weapons or weapon systems proposed to be acquired or developed by the DoD. It was permanently codified when section 2371b, (which is now 10 U.S.C. 4022) was enacted.[1] Although section 4022 replaced section 845, many of the provisions regarding OT agreements for prototype projects are retained in section 4022 and are retained in this proposed rule.

However, DoD is proposing to retain some of the current language from the now replaced Section 845 with some modifications based on changes in the law in the following areas:

- changing the use of OTs for prototype projects so it does not require a cost share from a performer[2] when at least one nontraditional defense contractor is participating to a significant extent.
- Providing authority for the senior procurement executive of the agency to make an exceptional circumstances justification to use such a prototype OT transaction.
- Including a limitation on cost sharing.
- Comptroller General access and DoD access to records policy provisions.
- Adding authority for follow-on production contracts.

II. Major Provisions

The following is a section-by-section overview of the amendments proposed by this rule.

Section 3.1 Purpose. The proposed amendments reflect the statutory implementation as the basis for the authority to award OT agreements for prototype projects. The amendment identifies the changes in the law since the current rule was published. It also expands the background on the intended use of OTs for prototype projects. Specifically, DoD is aligning the intended uses consistent with law that are directly relevant to enhancing the mission effectiveness of personnel of the DoD or improving platforms, systems, components, or materials proposed to be acquired or developed by the DoD, or to improvement of platforms, systems, components, or materials in use by the armed forces.

Section 3.2 Background. The proposed amendments clarify that OT agreements for prototype projects are legally binding instruments that include the elements of: offer; acceptance; consideration; authority; a legal purpose; a meeting of the minds; and are approved by an Agreements Officer who has authority to bind the Government. The proposed amendments to this section also highlight that DoD has an internal OT Guide that provides instruction for DoD employees on the planning, publicizing, soliciting, evaluating, negotiation, award, and administration of OTs for prototype projects. It was most recently revised in July 2023, and includes changes codified in 10 U.S.C. 4022.[3]

Section 3.3 Applicability. The proposed amendments detail how this part applies to OT agreements for prototype projects and follow-on production OTs and contracts awarded under this part. This section also specifies that authority for OT agreements for prototype projects and any follow-on production contract or follow-on production OT under this part has been delegated to specified officials. The amendment proposes to add offices that have been delegated OT authority to include, the Commanding Officers of the Combatant Commands with contracting authority, the Directors of Field Activities with contracting authority, the Director of the Defense Innovation Unit, or any other official designated by the Secretary of Defense to carry out OTs for prototype projects. The proposed amendment also recognizes changes in applicability to include follow-on production OTs and contracts under the authority of this part.

Section 3.4 Definitions. The definitions are retained from the current rule, except that the definition of the term, ''nontraditional defense contractor'' has been changed to reflect statutory changes in the definition of the term. A definition of the terms ''covered official'' and ''prototype project'' are added to the rule consistent with the definitions in 10 U.S.C. 4022.

Section 3.5 Appropriate use. This section is amended to reflect changes that align the appropriate use of the authority related to nonprofit research institutions and use of small businesses. If a performer meets the required category under this section, there is no requirement for a cost share for the prototype project. The proposed amendment also amends the basis for an exceptional circumstances justification (to forego a requirement for a cost share) to include an opportunity to expand the defense supply base in a manner that would not be practical or feasible under a contract. Per the National Defense Authorization Act for Fiscal Year 2024, section 821, Public Law 118–31, this section also recognizes that the cost sharing requirements do not apply to follow-on production OTs or contracts.

Section 3.6 Limitations on cost-sharing. This section is proposed to be amended to clarify cost sharing limitations related to OT transactions for prototype projects. The amendment proposes to change the official approving the limits on cost sharing from the agreements officer to the official responsible for entering into the transaction, recognizing that there may be a few cases where approval for a limitation on cost sharing is required above the level of the agreements officer.

Section 3.7 Comptroller General access. This section is proposed to be amended to update changes in the authority from section 845 to 10 U.S.C. 4022, and for organizational changes with the DoD, and for flowdown requirements. The cognizant office is changed to the Principal Director, Defense Pricing, Contracting, and Acquisition Policy. This rule also clarifies the flowdown requirements to any entity that participates in the performance of the agreement that provide for total government payments in excess of $5,000,000 as discussed in section 4022(c)(1).

Section 3.8 DoD access to records policy. This section is proposed to be amended to update authority for the Single Audit Act, 31 U.S.C. 7501–7506, and for organizational changes within DoD for the Principal Director, Defense Pricing, Contracting, and Acquisition Policy. The amendment also updates the contact address for DoD IG.

Section 3.9 Follow-on production contracts or transactions. This section is revised to add authority for follow-on production OT agreements for prototype projects, and revise authority for follow-on contracts. This section also proposes to add special conditions regarding the

[1] Section 845 was codified in section 2371b of title 10, U.S.C. by section 815 of the FY16 NDAA, Public Law 114–92. Section 1841 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116–283, transfers section 2371b to section 4003 of title 10, U.S.C. This change was effective January 1, 2022 by section 1801(d)(1). Further, section 1701(u)(2)(B) of the National Defense Authorization Act for Fiscal Year 2022 transferred section 4003 to section 4022 of title 10, U.S.C. Further references in the proposed revision are to section 4022.

[2] For OTs under section 4022, awardees are considered ''performers'', which is contrasted with traditional FAR procurement contract awardees that are considered ''contractors''.

[3] The DoD OT Guide is issued by the Office of the Under Secretary of Defense for Acquisition and Sustainment. *https://www.acq.osd.mil/asda/dpc/cp/policy/other-policy-areas.html.* The OT Guide provides internal guidance to DoD practitioners and does not direct any requirements for OT performers. The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or departmental policies.

use of consortium. The current provision provides authority for follow-on production contracts and does not address special circumstances for use of consortium. The amendment adds authority for follow-on production OTs or contracts and amends the conditions for approval. The proposed amendment provides that a follow-on production OT or contract may be awarded to the participants in the OT without the use of competitive procedures, if: (1) competitive procedures were used for the selection of parties for participation in the OT for prototype project; (2) the participants in the OT successfully completed the prototype project provided for in the OT; and (3) even if explicit notification was not listed within the request for proposal for the original prototype project transaction. The proposed amendment also provides that follow-on production contract or OT may be awarded to a consortium when the Department determines that an individual prototype or prototype subproject as part of a consortium is successfully completed by the participants. The proposed section recognizes that it is not a condition for award of a follow-on production contract or OT to a consortium to require the successful completion of all activities within a consortium for the prototype projects awarded to the consortium.

Section 3.10 Approval requirements. This is a new section consistent with section 4022 to reflect internal DoD approval requirements for proposed large dollar OT agreements for prototype projects and follow-on production OTs and contracts. Per requirements in section 4022(a)(2) OTs in excess of $100,000,000 but not in excess of $500,000,000 (including all options) require a written determination by the senior procurement executive for the agency, or for the Defense Advanced Research Projects Agency (DARPA), the Defense Innovation Unit (DIU), or the Missile Defense Agency (MDA), the director of the agency. OTs in excess of $500,000,000 (including all options) require a written determination by either the Under Secretary of Defense for Research and Engineering, or the Under Secretary of Defense for Acquisition and Sustainment. This latter category also requires congressional notice before exercising such authority. Follow-on production OTs and contracts in excess of $100,000,000 (including all options) require a written determination by a covered official (defined in § 3.4), including a congressional notice at the time such authority is exercised.

Section 3.11 Authority to provide prototypes and follow-on production items as government-furnished equipment. This is a new section consistent with section 4022 to provide prototypes and follow-on production items as government furnished equipment (GFE). This section reflects authority added in 10 U.S.C. 4022 for providing GFE to support another contractor. The GFE may be provided to another contractor, or to a performer of an OT.

Section 3.12 Competition requirements. This is a new section consistent with section 4022 to reflect competition requirements that were included in section 845, but are not reflected in the current rule, and such competition requirements are retained in 10 U.S.C. 4022. The competition standard under section 4022 is competition to the maximum extent practicable.

Section 3.13 Applicability of procurement ethics requirements. This is a new section consistent with section 4022 to reflect the applicability of the post-Government employment restrictions to OTs under this part covered in the Procurement Integrity Act, in 41 U.S.C. chapter 21. The ethics provisions of the Procurement Integrity Act include a prohibition that a former Government employee may not accept compensation from a contractor (or performer) as an employee, officer, director, or consultant of the contractor (or performer) for a period of one year after the official either served in a specified role, or personally made for the Federal agency a specified decision.

III. Expected Impact of This Rule

OMB Circular No. A–4, Subject: Regulatory Analysis (Nov. 2023) provides guidance to Federal agencies on the development of regulatory analysis as required under Section 6(a)(3)(C) of Executive Order 12866. Under OMB Circular A–4, a benefit-cost analysis is the primary analytical tool used for regulatory analysis. In developing a regulatory analysis for a proposed rule, identifying and evaluating the need for the regulatory action, and defining the baseline are important initial steps. The proposed rule to update 32 CFR 3 for Other Transactions is necessary because the current rule has not been updated in over 20 years, and there have been several changes to OT authority since the current rule.

The OMB Circular A–4 baseline criteria states, ''The benefits and costs of a regulation are generally measured against a no-action baseline: an analytically reasonable forecast of the way the world would look absent the regulatory action being assessed, including any expected changes to current conditions over time.'' (p. 11). In the case of the proposed rule to update 32 CFR 3 for OT authority, absent the proposed rule, we have the current regulation that is based on the statutory authority of section 845. In establishing a baseline, A–4 states:

> In general, an agency's first regulatory action implementing a new statutory authority should be assessed in a manner that accounts for the effects of the statute itself—that is, assessed against a without-statute baseline.[4] However, in some cases, substantial portions of a regulation may simply restate statutory requirements that are self-implementing even in the absence of the regulatory action or over which an agency clearly has essentially no regulatory discretion. In these rare cases, you may use a with-statute baseline in your regulatory analysis, focusing on the discretionary elements of the action and potential alternatives.

A ''without-statute baseline'' (or pre-statutory baseline) does not fit the proposed rule because the current rule is firmly based on the statutory authority of section 845. The proposed rule cites 10 U.S.C. 4022 (section 4022). However, section 4022 is not a ''new statutory authority'' under the OMB Circular A–4 criteria for establishing a baseline.[5] Section 845 is the original OT authority and has been permanently codified as section 4022. Section 845 was originally temporary authority and included as a note to 10 U.S.C. 2371.[6] Section 815 of the National Defense Authorization Act for Fiscal Year 2016, Public Law 114–92, amended OT authority by permanently codifying OT authority in section 2371b of title 10 U.S.C., and thereby repealed section 845. As a result of reorganization of title 10 U.S. Code, section 2371b became the current section 4022. However, the OT authority of section 845 continued as the current section 4022. Therefore, as

[4] Footnote from A–4: The terms ''pre-statute baseline'' and ''post-statute baseline'' were used in OMB Circular No. A–4 as originally issued in 2003. However, as noted elsewhere, the baseline for a regulatory analysis is (and has been) the predicted future state of the world in the absence of the policy being assessed, so more precise terms—that avoid the potentially misleading temporal element of the prefixes ''pre-'' or ''post-''—without-statute or with-statute are now used.

[5] OT statutory authority in the context of this proposed rule is intended to cover OTs for prototype projects under the original section 845 and now section 4022. It is recognized that basic OT authority, including research OTs, is under the original section 2371, and now section 4021 of title 10, U.S.C. titled, ''Research projects: transactions other than contracts and grants.'' It is further recognized that OT for prototype project authority is under the authority of section 4021.

[6] Section 845 of the NDAA for Fiscal Year 1994, Public Law 103–160, as amended.

indicated above, section 4022 is not ''new statutory authority''. As a result, the baseline for the proposed rule is the statutory authority of section 845, continued as section 4022. The proposed rule is a direct implementation of OT authority in section 4022. It simply restates OT authority in section 4022 and does not add any new requirements. DoD practitioners are currently using OT authority in section 4022 to award OTs for prototype projects without the benefit of an updated rule. OMB Circular A–4 states that a statute baseline is authorized where a proposed rule simply restate[s] statutory requirements that are self-implementing even in the absence of the regulatory action or over which an agency clearly has essentially no regulatory discretion.'' Section 845 is a predecessor OT statutory authority of the current section 4022.[7] Section 845 and section 4022 share several OT provisions. Therefore, it does not appear appropriate to apply a ''without-statute baseline'' (or pre-statutory baseline) to our proposed rule. The proposed rule is intended to make the CFR provisions consistent with the current section 4022. The current provisions of section 4022 are self-implementing and are currently being used by DoD practitioners to award OTs without the benefit of updated CFR provisions. The proposed rule does not add any new requirements beyond section 4022. The impact of the proposed rule should be measured by comparing the current rule with section 4022 as authority (a with-statute baseline).

The current rule provides authority for OTs for prototypes as a significant asset in the DoD toolbox for acquisition of items to support the DoD mission. The current rule and the underlying statutory authority provide a valuable alternative to traditional Federal Acquisition Regulation (FAR) procurement contracts [8] because they encourage participation by small businesses and nontraditional defense contractors [9] and allow flexibility in negotiation of terms of the agreement. OTs for prototype agreements are generally not subject to procurement laws and regulations.[10] The proposed rule provides qualitative benefits and cost savings by encouraging small business and nontraditional defense contractors to meet DoD warfighter requirements. The proposed rule and the underlying statutory authority provide incentives to small business and nontraditional defense contractors by waiving cost share requirements if conditions (discussed below) are met. The current rule is out of date with the statutory authority for OTs for prototypes. The proposed rule supports innovation because it authorizes flexibility in negotiation of terms, which require less Government oversight, for prototype projects as an alternative acquisition method if available in certain circumstances specified in statute instead of regulatory contracts governed by the FAR.[11] The proposed rule may promote additional competition and spur innovation by attracting nontraditional and small businesses with leading-edge technologies to enable acquisition of innovative technologies.[12] OTs support additional competition because of statutory incentives to small businesses and nontraditional defense contractors that potentially may not participate absent these incentives. OT authority encourages participation by small businesses by waiving cost share requirements if certain statutory conditions are met. Section 4022(d) provides that if all significant participants in the transaction other than the Federal Government are small businesses, or nontraditional defense contractors, the cost share requirements are waived. Further, if a nontraditional defense contractor or a nonprofit research institution participates to a significant extent in the transaction, cost share requirements are met. Small businesses qualify as nontraditional defense contractors in most cases.[13]

It is believed that if the proposed rule is implemented, it will result in only a small number of new OTs. DoD practitioners are presently awarding OTs for prototype projects based on the direct authority of section 4022. Based on anecdotal evidence, few DoD practitioners of OT authority are even aware of the current rule in 32 CFR 3. We do not expect that implementation of the proposed rule will change the practice of using section 4022 as authority without consideration of the 32 CFR 3. Therefore, we estimate that implementation of the proposed rule will result in less than a 10% increase new OT awards.[14] Further, we do not believe the proper measurement of the impact of the proposed rule is to count the obligation amounts for OTs. If DoD warfighters have a requirement for an item, they obtain funding for the program and decide as part of acquisition planning what is the appropriate acquisition vehicle to fulfill the requirement. If DoD determines an OT is appropriate for the requirement, it will award an OT, or if not, use a FAR procurement contract as the appropriate vehicle in the acquisition toolbox. However, if an OT is used, it is not a unique impact to the economy because if an OT was not selected, the requirement with the same funding would be fulfilled by a FAR procurement contract. Section 4022 and the proposed rule do not promote OTs over FAR procurement contracts. DoD must meet specific requirements to use OT authority. DoD does not get a separate appropriation for OTs that may independently impact the economy. Therefore, we do not expect that implementation of the proposed rule will significantly impact the economy.

Further, when OTs for prototype projects requirements are met and are available as an alternative to traditional FAR procurement contracts, it can potentially reduce the costs of doing business for both OT performers and the Government because the compliance costs for traditional FAR procurement contracts are reduced by the use of OTs for prototype projects.

Section 4022 provides flexibility in negotiation of terms compared to a traditional FAR procurement contract. Examples of flexibility of negotiation of terms that may not apply to OTs under section 4022 are obtaining certified cost and pricing data; intellectual property reporting provisions; [15] payment

[7] Section 1841 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116–283, transfers section 2371b to section 4003 of title 10, U.S.C. This change was effective January 1, 2022 by section 1801(d)(1). Further, section 1701(u)(2)(B) of the National Defense Authorization Act for Fiscal Year 2022 transferred section 4003 to section 4022 of title 10, U.S.C.

[8] See IBM Center for the Business of Government, ''Other Transaction Authorities: After 60 Years, Hitting their Stride, or Hitting the Wall'' (2021). *https://www.businessofgovernment.org/sites/default/files/Other%20Transactions%20Authorities.pdf.*

[9] See 10 U.S.C. 3014 for the definition of the term ''nontraditional defense contractor'' (NDC). The definition of an NDC (paraphrased from 10 U.S.C. 3014) is a company that has not done business with DoD within the last year, or does not meet the full coverage requirements for cost accounting standards. This definition permits a large number of entities, including nearly all small business concerns, to be considered NDCs to help drive innovation.

[10] See IBM report above.

[11] See IBM report above.

[12] Congressional Research Service (CRS) Report, ''Department of Defense Use of Other Transaction Authority: Background, Analysis, and Issues for Congress'' updated February 22, 2019. *https://crsreports.congress.gov/product/pdf/R/R45521.*

[13] See 10 U.S.C. 3014.

[14] We believe that practitioners will continue to perform acquisition planning of whether a FAR contract or OT is the appropriate way to fill a requirement. As indicated above, use of an OT under section 4022 requires meeting statutory requirements (see section 4022(a) and (d)).

[15] For example on flexibility, intellectual property (IP) provisions in DoD FAR procurement contracts

procedures; and more extensive audit requirements. Procurement contract laws and regulations generally do not apply to OTs for prototype projects and follow-on production OTs. Therefore, the time and paperwork burden for an offeror and performer of an OT for prototype project agreement is less than that for a traditional contract under the FAR. Section 4022 promotes and encourages award of OTs for prototype projects and follow-on production OTs and contracts to small businesses, including those that are nontraditional defense contractors.[16] It is recognized that with increased flexibility in negotiation of OT terms, that it raises the potential of risks on oversight of such agreements. The oversight risks for OTs are significantly reduced by a statutory requirement in section 4022(c) for Comptroller General access to performer records for OT agreements over $5M. Further, § 3.8 in the current rule in 32 CFR 3 authorizes DoD access to performer records for cost-type OT agreements. These protections make the risk of flexibility manageable for OT agreements.

Benefits

It has been stated many companies do not pursue Federal Government contracts because they are unwilling to forfeit intellectual property rights or adhere to some of the procurement regulations.[17] One of the goals of OTs is to expand the defense marketplace by creating a mechanism for access to technologies and services of companies that would not otherwise work with DoD, particularly startups and companies developing innovative technology. Section 4022(d) provides that if a nontraditional defense contractor or nonprofit research institution participates to a significant extent in the prototype project, or if all significant participants in the prototype project are either small businesses, or nontraditional defense contractors, there is no requirement for the participants to provide a one-third cost share of the project. This is a significant benefit for small businesses. The proposed rule in implementing 10 U.S.C. 4022 repeats this policy, and assists small businesses, and should make it easier for them to compete in a particular sector of the economy than large businesses.

In FY 2022, it is estimated that over 90 percent of dollars obligated under OT agreements for prototype projects went to performers that included nontraditional defense contractors performing a significant part of the project,[18] and in FY 2022 it is estimated that the majority of dollars obligated went to nontraditional defense contractors.[19] Many nontraditional defense contractors are small businesses. Based on the present data available, it is also estimated that 30–40 percent of OT actions for prototype projects were awarded to small businesses.

The proposed rule will promote the growth and well-being of such small entities. The economic impact to small businesses will be beneficial. The effect of the proposed rule will be to encourage more competition and awards to small business of OTs for prototype agreements, and it is expected there will be a reduction in the paperwork burden for small businesses compared to traditional FAR procurement contracts.

The proposed rule would provide an opportunity for public comments and provide updated external guidance on OT for prototype policy in accordance with the statutory provisions of 10 U.S.C. 4022. Public comments are solicited on the aspects of the costs and benefits of the proposed rule. The proposed rule supports the use of small businesses and will enable DoD to gain access to innovative technologies by performers that will not accept doing business through a traditional FAR procurement contract. There are no significant costs related to the adoption of the proposed rule.

A potential alternative to the proposed rule is to delete the present rule in 32 CFR 3. This potential alternative has the benefit of removing an out-of-date regulation. However, the potential benefit is outweighed by the costs of such an alternative. OT for prototype authority is an important tool in the DoD acquisition toolbox, and deletion of such regulatory coverage would be inconsistent with DoD's policy to support innovation through acquisition policy. Further, the current rule includes § 3.8 DoD access to records policy. The current rule provision on audit access is the only section that is not directly from the statutory authority in section 845.[20] Removal of this audit access section would deprive DoD of important oversight authority for OTs. Another potential alternative is to expand the proposed rule to include best practices for DoD practitioners. This alternative is not recommended since such best practices are included in the DoD internal OT Guide. The proposed rule is the best alternative.

III. Regulatory Compliance Analysis

A. Executive Order 12866, ''Regulatory Planning and Review,'' as Amended by Executive Order 14094, ''Modernizing Regulatory Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

This rulemaking has been determined to be a significant action under Executive Order 12866, as amended by Executive Order 14094. It does not have economic, environmental, public health, safety effects, or distributive impacts. It raised policy issues for which centralized review was meaningful for resolution. Accordingly, the rule was reviewed by the Office of Management and Budget.

B. Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

The Under Secretary of Defense for Acquisition and Sustainment certified that this proposed rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

Although the proposed rule will be beneficial to a substantial number of small entities as discussed in the expected impact section, it will not have a significant economic impact on small businesses. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

C. Sec. 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

Section 202 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) requires agencies to assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. This rule will not

are subject to the Baye-Dole Act (Pub. L. 96–517 (1980)) specifying IP rights and duties and several proscriptive clauses in the DoD FAR Supplement. IP provisions in OTs are not subject to these provisions and allow for more flexibility in negotiation.

[16] See IBM Report on OTs.

[17] *Id.*

[18] Where an OT transaction includes a nontraditional defense contractor performing to a significant extent, DoD does not presently have access to data to determine the percentage of obligations that went to the prime performer versus the nontraditional defense contractor. DoD is working to improve the transparency of data to determine the amount of obligations for a nontraditional defense contractor.

[19] This data is included in the DoD Report to Congress on the Use of Other Transactions (OT) Authority for Prototype Projects in Fiscal Year 2022 (April 20223). Annual Reports to Congress may be viewed at *https://www.acq.osd.mil/asda/dpc/cp/policy/other-policy-areas.html.*

[20] The proposed rule only makes administrative changes to section 3.8 on audit policy.

mandate any requirements for State, local, or Tribal governments, and will not affect private sector costs.

D. Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that this rule does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

E. Executive Order 13132, ''Federalism''

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has federalism implications. This rule will not have a substantial effect on State and local governments.

F. Executive Order 13175, ''Consultation and Coordination With Indian Tribal Governments''

Executive Order 13175 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct compliance costs on one or more Indian Tribes, preempts Tribal law, or effects the distribution of power and responsibilities between the Federal Government and Indian Tribes. This rule will not have a substantial effect on Indian Tribal Governments.

List of Subjects in 32 CFR Part 3

Government procurement.

Accordingly, the Department of Defense proposes to amend 32 CFR part 3 as follows:

PART 3—TRANSACTIONS OTHER THAN CONTRACTS, GRANTS, OR COOPERATIVE AGREEMENTS FOR PROTOTYPE PROJECTS

■ 1. The authority citation is revised to read as follows:

Authority: 10 U.S.C. 4022.

§ 3.1 Purpose.

This part implements the authority for Other Transaction (OT) agreements for prototype projects established under section 4022 of title 10, United States Code (U.S.C.). Section 4022 of title 10, United States Code (U.S.C.) authorizes the Department of Defense (DoD) to carry out prototype projects that are directly relevant to enhancing the mission effectiveness of personnel of the Department of Defense or improving platforms, systems, components, or materials proposed to be acquired or developed by the DoD, or to the improvement of platforms, systems, components, or materials in use by the armed forces.

■ 2. Revise § 3.2 to read as follows:

§ 3.2 Background.

OT agreements for prototype projects are legally binding instruments that include the elements of: offer; acceptance; consideration; authority; a legal purpose; a meeting of the minds; and are approved by an Agreements Officer who has authority to bind the Government. OTs for prototype projects are not procurement contracts under the Federal Acquisition Regulation (FAR), and generally are not subject to the Federal laws and regulations limited in applicability to procurement contracts, grants, and cooperative agreements. As such, they are generally not required to comply with the FAR and its DoD supplement. OTs for prototype projects spur innovation and attract nontraditional and small businesses with leading-edge technologies to enable acquisition of innovative technologies more rapidly. The DoD has broad flexibility in terms of the award process and the terms and conditions of an OT for prototype project are negotiable between the parties, subject to the provisions specified in 10 U.S.C. 4022 and its implementation. The DoD has issued the Other Transactions Guide for the promulgation of internal policy on the planning, publicizing, soliciting, evaluating, negotiation, award, and administration of OTs for prototype projects.

■ 3. Revise § 3.3 to read as follows:

§ 3.3 Applicability.

This part applies to:

(a) OT performers, companies, non-profit research institutions, and consortiums of organizations that are awarded OT agreements for prototype projects and follow-on OTs and contracts awarded under the authority of 10 U.S.C. 4022 implemented in this part. The applicability of this part is distinguished from awardees of procurement contracts under the Federal Acquisition Regulation.

(b) The authority for OT agreements for prototype projects under this part has been delegated to the following officials: the Secretaries of the Military Departments, the Commanding Officers of the Combatant Commands with contracting authority, the Directors of the Defense Agencies, the Directors of Field Activities with contracting authority, the Director of the Defense Innovation Unit, or any other official designated by the Secretary of Defense to carry out OTs for prototype projects, and follow-on production OTs and contracts under the authority of this part.

■ 4. Amend § 3.4 by:

■ a. adding in alphabetical order a definition for ''covered official'';

■ b. revising the definition of ''Nontraditional Defense contractor''; and

■ c. adding in alphabetical order a definition for ''prototype project''

The additions and revision read as follows:

§ 3.4 Definitions.

* * * * *

Covered official. An official of the DoD to include:

(1) A service acquisition executive;

(2) The Director of the Defense Advanced Research Projects Agency;

(3) The Director of the Missile Defense Agency;

(4) The Undersecretary of Defense for Acquisition and Sustainment;

(5) The Undersecretary of Defense for Research and Engineering; or

(6) The Director of the Defense Innovation Unit (DIU).

* * * * *

Nontraditional Defense contractor. An entity that is not currently performing and has not performed, for at least the one-year period preceding the solicitation of sources by the Department of Defense for the procurement or transaction, any contract or subcontract for the Department of Defense that is subject to full coverage under the cost accounting standards.

* * * * *

Prototype Project. Includes a project that addresses any combination of the following:

(1) A proof of concept, model, or process, including a business process;

(2) Reverse engineering to address obsolescence;

(3) A pilot or novel application of commercial technologies for defense purposes;

(4) Agile development activity;

(5) The creation, design, development, or demonstration of operational utility; or

* * * * *

■ 5. Revise § 3.5 to read as follows:

§ 3.5 Appropriate use.

OT agreements for prototype project authority under this part may be used only when one of the following conditions is met:

(a) At least one nontraditional defense contractor or nonprofit research institution is participating to a significant extent in the prototype project;

(b) All significant participants in the transaction other than the Federal Government are small businesses or nontraditional defense contractors;

(c) At least one third of the total cost of the prototype project is to be paid out of funds provided by sources other than the Federal Government. If any of the conditions of paragraphs (a), (b), or (d) of this section are met, there is no requirement that at least one third of the total cost of the prototype project is to be paid out of funds provided by sources other than the Federal Government.

(d) The Senior Procurement Executive for the agency determines in writing that exceptional circumstances justify the use of a transaction that provides for innovative business arrangements or structures that would not be feasible or appropriate under a contract, or would provide an opportunity to expand the defense supply base in a manner that would not be practical or feasible under a contract.

■ 6. Amend § 3.6 by:

■ a. Revising paragraph (a) introductory text.

■ b. In paragraph (a)(1), removing the words ''OT agreement'' and adding in its place the word ''transaction''.

■ c. In paragraph (a)(2), removing the words ''OT agreement'' and adding in its place the word ''transaction''.

■ d. In paragraph (b), removing the words ''may be recognized when using'' and adding in its place the words ''is utilized for''.

The revision reads as follows:

§ 3.6 Limitations on cost-sharing.

(a) If cost-sharing is provided by a non-Federal party under § 3.5 of this part, the non-Federal amounts counted as provided, or to be provided, by the business units of an awardee or subawardee participating in the performance of the transaction for a prototype project shall not include costs that were incurred before the date on which the transaction becomes effective. Costs that were incurred for a prototype project by the business units of an awardee or subawardee after the beginning of negotiations, but prior to the date the transaction becomes effective, may be counted as non-Federal amounts provided if and to the extent that the official responsible for entering into the transaction determines in writing that:

* * * * *

■ 7. Amend § 3.7 by:

■ a. Removing the word ''subparagraph'' wherever it appears and adding in its place the word ''paragraph.''

■ b. Revising paragraph (a).

■ c. In paragraph (c)(1), removing the words ''845 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103–160; 10 U.S.C. 2371'' and adding in their place the words ''10 U.S.C. 4022.''

■ d. In paragraph (d), removing the words ''Director, Defense Procurement'' and adding in their place the words ''Principal Director, Defense Pricing, Contracting, and Acquisition Policy (D, DPCAP)''.

■ e. Revising paragraph (e).

■ f. Redesignating paragraph (g)(3)(A) and (g)(3)(B) as (g)(3)(i) and (g)(3)(ii), respectively.

■ g. In newly-redesignated paragraph (g)(3)(i), removing the words ''845 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103–160; 10 U.S.C. 2371'' and adding in their place the words ''10 U.S.C. 4022.''

■ h. Revising paragraph (g)(6).

The revisions read as follows:

§ 3.7 Comptroller General access.

(a) A clause must be included in solicitations and agreements for Other Transaction (OT) agreements for prototype projects awarded under authority of this part that provide for total government payments in excess of $5,000,000 to allow Comptroller General access to records that directly pertain to such agreements.

* * * * *

(e) The HCA must notify the PD, DPCAP prior to any finalization of a waiver under paragraph (d) of this section, and also of situations where there is evidence that the Comptroller General Access requirement caused companies to refuse to participate or otherwise restricted the Department's access to companies that typically do not do business with the Department.

* * * * *

(g) * * *

(6) The recipient of the agreement shall flow down this provision to any entity that participates in the performance of the agreement that provide for total government payments in excess of $5,000,000.

■ 8. Amend § 3.8 by:

■ a. Revising paragraph (a) introductory text.

■ b. In paragraph (a)(2), removing the words ''Public Law 98–502, as amended by Public Law 104–156, 110 STAT. 1396–1404'' and adding in its place the words ''31 U.S.C. 7501–7506 (Single Audit Act, or in this section the Act)''.

■ c. In paragraph (a)(2)(v)(A), removing the word ''statute'' and adding in its place the words ''this part.''

■ d. In paragraph (b)(1)(iv), removing the words ''Director, Defense Procurement'' and adding in its place the words ''Principal Director, Defense Pricing, Contracting, and Acquisition Policy (PD, DPCAP)''.

■ e. In paragraph (b)(2)(iii), removing the words ''Director, Defense Procurement'' and adding in its place the acronym ''PD, DPCAP''.

■ f. In paragraph (b)(3), adding a sentence at the end of the paragraph.

■ g. In paragraph (c)(2):

■ i. Removing the words ''(Public Law 98–502, as amended by Public Law 104–156, 110 STAT. 1396–1404)''.

■ ii. Removing the words ''that Act'' and adding in its place the words ''the Act''.

■ h. In paragraph (c)(2)(ii), removing the acronym ''DCAA'' and adding in its place the words ''the Defense Contract Audit Agency (DCAA)''.

■ i. In paragraph (c)(2)(iii), removing the words ''Director, Defense Procurement'' and adding in its place the acronym ''PD, DPCAP''.

■ j. In paragraph (c)(2)(iii)(B), removing the words ''3 years'' and adding in its place the words ''three years''.

■ k. In paragraph (c)(2)(iii)(C), removing the address ''400 Army Navy Drive, Suite 737, Arlington VA 22202''; and adding in its place the address ''4800 Mark Center Drive, Alexandria, Virginia 22350–1500.''

■ l. In paragraph (d), removing the words ''the DoDIG or GAO'' and adding in its place the words ''the DoDIG and the Comptroller General''.

The additions and revisions read as follows:

§ 3.8 DoD access to records policy.

(a) *Applicability.* This section provides policy concerning DoD access to awardee and subawardee records on OT agreements for prototype projects awarded under the authority of this part. This policy includes access to follow-on production transactions awarded under § 3.9 of this part. This access is separate and distinct from Comptroller General access provided in § 3.7 of this part.

* * * * *

(b) * * *

(3) * * * Such deviation shall be consistent with the requirements of the Single Audit Act, and paragraph (c)(2)(ii) of this section.

* * * * *

■ 9. Revise § 3.9 to read as follows:

§ 3.9 Follow-on production contracts or transactions.

(a) An OT agreement for a prototype project entered into under the authority of this part may provide for the award of a follow-on production contract or OT to the participants in the OT for prototype project. If such a strategy is

considered, the acquisition plan for the OT for prototype project, and the solicitation, and the OT agreement for the prototype project at the time of award should all specify that a follow-on production contract or OT is authorized subject to the below requirements. A follow-on production contract or OT provided for in an OT for prototype project may be awarded to the participants in the OT without the use of competitive procedures, notwithstanding the requirements of the Competition in Contracting Act, 10 U.S.C. 3201 (CICA) if:

(1) competitive procedures were used for the selection of parties for participation in the OT for prototype project;

(2) the participants in the OT successfully completed the prototype project provided for in the OT; and

(3) even if explicit notification was not listed within the request for proposal for the original prototype project transaction.

(b) The OT agreement shall specify at the time of award of the prototype project how a project is determined to be successfully completed by the participants. Follow-on contracts and OTs entered into pursuant to this part may be awarded using the authority in this part, under the authority of 10 U.S.C. chapter 221, or under such procedures, terms, and conditions as the Secretary of Defense may establish by regulation.

(c) There are additional circumstances for follow-on OT agreements or contracts with consortium. An OT includes all individual prototype subprojects awarded under the OT to a consortium of United States industry and academic institutions. A follow-on production contract or OT may be awarded, pursuant to this section, when the Department determines that an individual prototype or prototype subproject as part of a consortium is successfully completed by the participants. Award of a follow-on production contract or OT pursuant to the terms under this section is not contingent upon the successful completion of all activities within a consortium as a condition for an award for follow-on production of a successfully completed prototype or prototype subproject within that consortium.

(d) The cost sharing requirements for prototype projects under § 3.5 of this part do not apply to follow-on production OTs and contracts.

■ 10. Add § 3.10 to read as follows:

§ 3.10 Approval requirements.

(a) An OT agreement entered into under the authority of this part may be exercised for a transaction for a prototype project that is expected to cost the Department of Defense in excess of:

(1) $100,000,000 but not in excess of $500,000,000 (including all options) only upon a written determination by the senior procurement executive for the agency as designated for the purpose of 41 U.S.C. 1702(c) or, for the Defense Advanced Research Projects Agency (DARPA), the Defense Innovation Unit (DIU), or the Missile Defense Agency (MDA), the director of the agency that:

(i) the requirements of § 3.5 of this part will be met for the prototype project; and

(ii) the use of the authority of this section is essential to promoting the success of the prototype project; and

(2) $500,000,000 (including all options) only if:

(i) the Under Secretary of Defense for Research and Engineering or the Under Secretary of Defense for Acquisition and Sustainment determines in writing that:

(A) the requirements of § 3.5 of this part will be met for the prototype project; and

(B) the use of the authority of this section is essential to meet critical national security objectives; and

(C) the congressional defense committees are notified in writing at least 30 days before such authority is exercised.

(ii) Reserved.

(b) The authority of a senior procurement executive or director of DARPA, DIU or MDA under paragraph (a)(1) of this section, and the authority of the Under Secretaries of Defense under paragraph (a)(2) of this section may not be delegated.

(c) A follow-on production OT or contract may be entered into under the authority of this part that is expected to cost the Department of Defense in excess of: $100,000,000 (including all options) only upon a written determination by a covered official (as defined in § 3.4 of this part) that:

(1) the requirements of § 3.5 of this part will be met for the prototype project;

(2) the use of the authority of this section is essential to meet critical national security objectives; and

(3) the congressional defense committees are notified in writing of the determinations at the time such authority is exercised.

■ 11. Add § 3.11 to read as follows:

§ 3.11 Authority to provide prototypes and follow-on production items as government-furnished equipment.

An OT agreement for a prototype project, or a follow-on contract or OT entered into under the authority of this part may provide for prototypes or follow-on production items to be provided to another contractor, or to a performer of an OT, as Government-furnished equipment.

■ 12. Add § 3.12 to read as follows:

§ 3.12 Competition requirements.

An OT for a prototype project entered into under the authority of this part shall use competitive procedures when entering into agreements to carry out prototype projects, to the maximum extent practicable.

■ 13. Add § 3.13 to read as follows:

§ 3.13 Applicability of procurement ethics requirements.

An OT entered into under the authority of this part shall be treated as a Federal agency procurement for the purposes of the Procurement Integrity Act, in 41 U.S.C. chapter 21.

Dated: August 26, 2024.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–19457 Filed 9–3–24; 8:45 am]

BILLING CODE 6001–FR–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2024–0380; FRL–12206–01–R6]

Finding of Failure to Attain by the Attainment Date for the 2010 1-Hour Primary Sulfur Dioxide National Ambient Air Quality Standard; Louisiana; Evangeline Parish Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to determine that the Evangeline Parish, Louisiana, sulfur dioxide (SO_2) nonattainment area (NAA) has failed to attain the 2010 1-hour primary SO_2 national ambient air quality standard (2010 SO_2 NAAQS) by the applicable statutory attainment date of April 9, 2023. This determination is based on analysis of reported emissions records and available modeling data. This action, if finalized, will address the

EPA's obligation under CAA section 179(c) to determine whether the Evangeline Parish SO_2 NAA attained the 2010 SO_2 NAAQS by the April 9, 2023, attainment date.

DATES: Written comments must be received on or before October 4, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–OAR–2024–0380 at *https://www.regulations.gov,* or via email to *Thomas.Ronald@epa.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to 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. The 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, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For 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*.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov*. While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Ronald Thomas, SO_2 and Regional Haze Section (R6–ARSH), Air & Radiation Division, U.S. Environmental Protection Agency, Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270. His direct telephone number is (214) 665–7478. Mr. Thomas can also be reached via electronic mail at *Thomas.Ronald@epa.gov*. We encourage the public to submit comments via *https://www.regulations.gov*. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we refer to the EPA.

I. Background

A. The 2010 1-Hour Primary SO_2 NAAQS

Under section 109 of the CAA, the EPA has established primary and secondary NAAQS for certain pervasive air pollutants (referred to as ''criteria pollutants'') and conducts periodic reviews of the NAAQS to determine whether they should be revised or whether new NAAQS should be established. The primary NAAQS represent ambient air quality standards that the EPA has determined are requisite to protect the public health, while the secondary NAAQS represent ambient air quality standards that the EPA has determined are requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such an air pollutant in the ambient air.

Under the CAA, the EPA must establish a NAAQS for SO_2, which is primarily released to the atmosphere through the burning of fossil fuels by power plants and other industrial facilities. SO_2 is also emitted from industrial processes including metal extraction from ore and heavy equipment that burn fuel with a high sulfur content. Short-term exposure to SO_2 can damage the human respiratory system and increase breathing difficulties. Small children and people with respiratory conditions, such as asthma, are more sensitive to the effects of SO_2. Sulfur oxides at high concentrations in ambient air can also react with compounds to form small particulates (fine particulate matter or $PM_{2.5}$) that can penetrate deeply into the lungs and cause acute health problems and/or chronic diseases. The EPA first established primary SO_2 standards in 1971 at 140 parts per billion (ppb) over a 24-hour averaging period and at 30 ppb over an annual averaging period.[1]

On June 22, 2010, the EPA published in the **Federal Register** a strengthened, primary 1-hour SO_2 NAAQS, establishing a new standard at a level of 75 ppb, based on the 3-year average of the annual 99th percentile of daily maximum 1-hour average concentrations of SO_2.[2] The revised SO_2 NAAQS provides increased protection of public health. Along with revision of the SO_2 NAAQS, EPA revoked the 1971 primary annual and 24-hour SO_2 standards for most areas of the country following area designations under the new NAAQS.

[1] 36 FR 8186 (April 30, 1971).

[2] 75 FR 35520.

B. Designations, Classifications, and Attainment Dates for the 2010 SO_2 NAAQS

Following promulgation of a new or revised NAAQS, the EPA is required to designate all areas of the country as either ''attainment,'' ''nonattainment,'' or ''unclassifiable,'' pursuant to CAA section 107(d)(1). On December 21, 2017, the EPA designated as nonattainment six areas in three States and two territories in the third round of SO_2 designations.[3] With that action, the EPA designated as nonattainment a small, rectangular area within Evangeline Parish, centered around the location of the Cabot Corporation's Ville Platte Plant (Cabot) near the city of Ville Platte, Louisiana.[4] Pursuant to section 192(a) of the CAA, the attainment date for the Evangeline Parish NAA was no later than five years after the effective date of the initial designation, or April 9, 2023.

CAA section 191(a) requires States that contain an area designated nonattainment for the 2010 1-hour primary SO_2 NAAQS to develop and submit a nonattainment area (NAA) State Implementation Plan (SIP) to the EPA within 18 months of the effective date of an area's designation as nonattainment. For SO_2, a NAA SIP (also referred to as an attainment plan) must meet the requirements of sections 110, 172(c), 191, and 192 of the CAA, and provide for attainment of the NAAQS by the applicable statutory attainment date, or no later than five years from the effective date of designation. The effective date of designation was April 9, 2018, which required the attainment SIP submission to be due on October 9, 2019. As of the drafting of this document, Louisiana had not submitted a SIP revision for the Evangeline Parish NAA. On November 3, 2020, effective December 3, 2020, the EPA issued a Finding of Failure to Submit (a SIP) for Louisiana for failing to submit a SIP revision for the Evangeline Parish NAA.[5]

C. EPA's Finding of Failure To Attain by the Attainment Date

Section 179(c)(1) of the CAA requires the EPA to determine whether a NAA attained an applicable standard by the applicable statutory attainment date based on the area's air quality as of the attainment date. The EPA is to issue this

[3] 83 FR 1098 (January 9, 2018).

[4] For designations technical discussions, see EPA's Technical Support Document, Chapter 16, Section 4, 27–47, at *https://www.epa.gov/sulfur-dioxide-designations/intended-sulfur-dioxide-area-designations-august-2017,* available in the docket for this action.

[5] 85 FR 69504 (November 3, 2020).

determination within six months of the attainment date. Thus, the EPA had a mandatory duty under CAA section 179(c) to determine by October 9, 2023, whether the NAA attained the NAAQS by the statutory attainment date. With this action, the EPA proposes to determine, in accordance with CAA section 179(c), that the Evangeline Parish NAA failed to attain the 2010 1-hour primary SO_2 NAAQS by the April 9, 2023, attainment date.

A determination of whether an area's air quality meets applicable standards is generally based upon the most recent three years of complete, quality-assured data gathered at established State and local air monitoring stations (SLAMS) in an NAA and other available information. The EPA's 2014 Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions states, ''The EPA will determine whether or not an SO_2 nonattainment area has attained the NAAQS based on air quality monitoring data (when available) and air quality dispersion modeling information for the affected area, and/or a demonstration that the control strategy has been fully implemented.'' [6] In the case of Evangeline Parish, the designation was based on our review of dispersion modeling results submitted by the Louisiana Department of Environmental Quality (LDEQ) that showed violations of the NAAQS.[7] The modeling analysis included the only major source of SO_2 emissions in the parish, Cabot, and relied upon reported SO_2 emissions for Cabot for 2013–2015. In addition, as noted above, Louisiana has not submitted a control strategy (via SIP revision) for the NAA.

II. Proposed Determination

A. Area Characterization

The Evangeline Parish NAA is located in south central Louisiana, approximately sixty kilometers north of Lafayette, Louisiana; it encompasses a rectangular area (2150 meters by 3000 meters) approximately six kilometers north of the city of Ville Platte, bounded by the designated NAA coordinate vertices provided in table 1. The Evangeline Parish NAA includes the Cabot carbon black plant within the extent of the modeled SO_2 violation impacts from Cabot.

TABLE 1—BOUNDARY CORNER COORDINATES OF THE EVANGELINE PARISH RECTANGULAR NONATTAINMENT AREA

UTM [8] Easting (m)	UTM Northing (m)	UTM Zone	Datum
570250	3400300	15	NAD 83
570250	3403300	15	NAD 83
572400	3403300	15	NAD 83
572400	3400300	15	NAD 83

B. Evaluation of SO_2 Emissions Data and Modeling

As noted earlier, the EPA based the nonattainment designation on modeling submitted by LDEQ. In our review of that modeling, as documented in EPA's TSD [9] accompanying the designation, we concluded that the source characterization, modeling parameters, and modeling techniques submitted by LDEQ for this designation conformed with the guidelines of the EPA's modeling Technical Assistance Document (TAD).[10]

The EPA's designation of the Evangeline Parish area relied on the modeled SO_2 emissions for the years 2013 through 2015. Cabot is the only major SO_2 source in the parish. These SO_2 emissions are generated from Cabot's carbon black manufacturing facility through the process of converting carbonaceous feedstock materials into various grades of carbon black in a mostly continuous process, wherein Cabot's feedstock inherently contains sulfur compounds that are combusted, oxidized, and emitted with the tail gas as SO_2. Following the designation, Cabot has not completed the installation of controls to reduce emissions, and the State has not provided a demonstration that the area has attained the NAAQS.

The EPA evaluated annual SO_2 emissions trends for the only major stationary SO_2 source in the area, Cabot Ville Platte facility, via LDEQ's emissions database.[11] Table 2 lists the total reported SO_2 emissions for each year 2013 through 2022.

TABLE 2—ANNUAL EMISSIONS FROM MAJOR STATIONARY SO_2 SOURCES IN THE EVANGELINE PARISH NONATTAINMENT AREA FOR 2013 THROUGH 2022

[Tons of SO_2 per year]

Year	Cabot Ville Platte
2013	8,519.76
2014	8,661.39
2015	8,094.10
2016	8,289.22
2017	11,029.06
2018	11,069.91
2019	11,033.92
2020	7,562.72
2021	8,425.99
2022	9.964.47

The 2010 SO_2 NAAQS is met at an ambient air quality monitoring site when the three-year average of the annual (99th percentile) of the daily maximum 1-hour average concentrations is less than or equal to 75 ppb.[12] CAA section 179(c) requires EPA's determination of whether the area attained by the attainment date to be

[6] *Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions*; EPA, April 23, 2014, can be found at *https://www.epa.gov/so2-pollution/guidance-1-hour-sulfur-dioxide-so2-nonattainment-area-state-implementation-plans-sip, available in the docket for this action.*

[7] See EPA's Technical Support Document accompanying the area's initial designation, Chapter 16, Section 4, 27–47, at *https://www.epa.gov/sulfur-dioxide-designations/intended-sulfur-dioxide-area-designations-august-2017,* available in the docket for this action.

[8] Universal Transverse Mercator coordinate system (an ellipsoid earth map projection). The easting is longitudinal, and the northing is latitudinal.

[9] See EPA's Technical Support Document accompanying the area's initial designation, Chapter 16, Section 4, 27–47, at *https://www.epa.gov/sulfur-dioxide-designations/intended-sulfur-dioxide-area-designations-august-2017,* available in the docket for this action.

[10] SO_2 NAAQS Designations Modeling Technical Assistance Document, EPA, August 2016, available at *https://www.epa.gov/sites/default/files/2016-06/documents/so2modelingtad.pdf* and available in the docket for this action.

[11] LDEQ's ERIC Annual Certified Emissions datasets: *https://deq.louisiana.gov/page/eric-public-reports.*

[12] 40 CFR 50.17(b).

based on the area's air quality as of the attainment date. Therefore, even though EPA is not relying on ambient air quality monitoring data for its proposed determination, because such monitoring data does not exist, the three-year period of 2020 through 2022 is the relevant time period for evaluation in fulfilling the Agency's obligation under CAA section 179(c). EPA compared the annual source emissions from the 2020–2022 period with the annual source emissions from the 2013–2015 period, which were the emissions used in the air quality modeling underlying the EPA's designation of the area as nonattainment. The average of the annual source emissions from 2020–2022 is 8,651 tons per year, higher than the 2013–2015 average of the annual source emissions of 8,469 tons per year. These source emissions data indicate that no reduction in emissions has occurred since designation of the Evangeline Parish NAA; therefore, these data, viewed in light of the 2017 initial designation modeling, demonstrate that air quality did not improve in the area near Cabot [13] and support the proposed finding that the Evangeline Parish NAA failed to attain the 2010 SO_2 NAAQS by the statutory attainment date of April 9, 2023.

The peak modeled receptor design value from EPA's designations TSD is summarized in table 3. The modeling analysis showed that the area was violating the NAAQS based on source emissions from 2013–2015, with a modeled DV of 277.6 compared to the NAAQS of 196.4 μg/m^3. Given that average emissions for 2020–2022 have increased since the 2013–2015 period, and no emissions control strategy has been implemented by Cabot by the attainment date, there is no evidence that the State had remedied the original modeled violations by the attainment date.

TABLE 3—SUMMARY OF 2013–2015 PEAK MODELED RECEPTOR 1-HOUR SO_2 DESIGN VALUE FOR THE EVANGELINE PARISH NAA

Averaging period	Data period	Receptor location (UTM zone 15)		99th percentile daily maximum 1-hour SO_2 concentration (μg/m^3)	
		UTM easting (m)	UTM northing (m)	Modeled concentration (including background)	NAAQS level
99th Percentile 1-hour Avg	2013–2015	571696	3402478	277.6	196.4*

* Equivalent to the 2010 NAAQS of 75 ppb using 2.619 μg/m^3 conversion factor.

C. Conclusion

We propose to determine that the Evangeline Parish NAA failed to attain the 2010 1-hour SO_2 NAAQS by the statutory attainment date of April 9, 2023, based on data showing that emissions have increased when comparing the 2020–2022 period to the modeled emissions at designation. Based on this increase in emissions, there is nothing to suggest that the area is no longer in violation of the NAAQS as demonstrated by the 2017 modeling analysis for the initial designation of the area. At the time of drafting of this document, Cabot had not fully implemented a control strategy to reduce emissions, and LDEQ had not submitted an attainment plan (SIP revision).

Under CAA section 179(d), if the EPA determines that an area did not attain the NAAQS by the applicable deadline, the responsible air agency has up to 12 months from the publication of the final notice of the determination to submit a revised SIP for the area demonstrating attainment and containing any additional measures that the EPA may reasonably prescribe that can be feasibly implemented in the area in light of technological achievability, costs, and any non-air quality and other air quality-related health and environmental impacts as required. Under CAA section 179(d)(3), such a revised SIP is to achieve attainment of the 2010 SO_2 NAAQS as expeditiously as practicable, but no later than 5 years from the date of notice of the area's failure to attain (*i.e.,* 5 years after the EPA publishes a final action in the **Federal Register** determining that the area failed to attain the 2010 SO_2 NAAQS). In addition to triggering requirements for a new SIP submittal, a final determination that a NAA failed to attain the NAAQS by the attainment date would trigger the implementation of contingency measures adopted under 172(c)(9).

III. Proposed Action and Request for Public Comment

Based on the EPA's review of all available evidence described in this document, the EPA is proposing to find that the Evangeline Parish NAA failed to attain the 2010 SO_2 NAAQS by the statutory attainment date of April 9, 2023. This action will not impact the designation status of the NAA, and the Evangeline Parish NAA will remain designated nonattainment for the 2010 SO_2 NAAQS until such time as Louisiana submits to the EPA a SIP with permanent, enforceable limitations that meet the requirements of the CAA, and the EPA takes action to redesignate the area. If finalized, this action will address the EPA's obligation under CAA section 179(c) to determine if the Evangeline Parish NAA attained the 2010 1-hour SO_2 NAAQS by the April 9, 2023, attainment date. The EPA is soliciting public comments on this document; these comments will be considered before taking final action.

IV. Environmental Justice Considerations

Information on Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) and how EPA defines environmental justice (EJ) can be found in the section, below, titled ''V. Statutory and Executive Order Reviews.'' EPA is providing additional analysis of environmental justice associated with this action, the results of which are being provided for informational and transparency purposes only, not as a basis of our proposed action.

The EPA conducted a screening analysis using EJScreen, an

[13] Emission reductions alone would not be sufficient evidence to claim the area has attained. The EPA would require technical analyses and/or modeling to demonstrate that the emission reductions were sufficient to bring the area into attainment.

environmental justice mapping and screening tool that provides EPA with a nationally consistent dataset and approach for combining various environmental and demographic indicators.[14] The EJScreen tool presents these indicators at a Census block group (CBG) level or a larger user-specified ''buffer'' area (around a certain point location or boundary area) that covers multiple CBGs.[15] An individual CBG is a cluster of contiguous blocks within the same census tract and generally contains between 600 and 3,000 people. EJScreen is not a tool for performing in-depth risk analyses but is instead a screening tool that provides an initial representation of indicators related to environmental justice and is subject to uncertainty in some underlying data (*e.g.,* some environmental indicators are based on monitoring data which are not uniformly available; others are based on self-reported data).[16] To help mitigate this uncertainty, we have summarized EJScreen data within a larger ''buffer'' area covering multiple block groups and representing the average resident within the buffer area surrounding the Cabot carbon black plant in Evangeline Parish.

We use EJScreen environmental indicators to help screen for locations where residents may experience a higher overall pollution burden than would be expected for another block group with the same total population. These indicators of overall pollution burden include estimates of ambient particulate matter ($PM_{2.5}$) and ozone concentrations, a score for traffic proximity and volume, percentage of pre-1960 housing units (lead paint indicator), and scores for proximity to Superfund sites, risk management plan (RMP) sites, and hazardous waste facilities.[17] EJScreen also provides information on demographic indicators, including percent low-income, communities of color, linguistic isolation, and less than high school education.

The EPA prepared an EJScreen report covering a buffer area of approximately a 6-mile radius around the Cabot facility. Table 4 presents a summary of some of the more pertinent results from the EPA's screening-level analysis for Cabot compared to the U.S. as a whole. From that report, the area around Cabot does not contain EJ environmental indicator indices greater than the 80th percentiles. The demographic indicators for low income and people with less than a high school education are both at the 90th percentile. The full, detailed EJScreen Community Report is provided in the docket for this action.

TABLE 4—EJSCREEN ANALYSIS SUMMARY FOR CABOT VILLE PLATTE

Variables	EJScreen Values for 6-mile buffer area (radius) around Cabot compared to the U.S. average	
	Cabot (Evangeline Parish NAA) (value and percentile in the U.S.)	U.S. average (indicator value)
Pollution Burden Indicators		
Particulate matter ($PM_{2.5}$), annual average	7.78 μg/m^3 (37th %ile)	8.45 μg/m^3.
Ozone, summer seasonal average of daily 8-hour max	33.2 ppb (11th %ile)	41 ppb.
Traffic proximity and volume score*	39,000 (10th %ile)	1,700,00.
Lead paint (percentage pre-1960 housing)	0.16% (44th %ile)	0.30%.
Superfund proximity score*	0 (0th %ile)	0.39.
RMP proximity score*	0.02 (0th %ile)	0.57.
Hazardous waste proximity score*	0.62 (37th %ile)	3.5.
Demographic Indicators		
People of color population	50% (65th %ile)	40%.
Low-income population	63% (90th %ile)	30%.
Linguistically isolated population	2% (64th %ile)	5%.
Population with less than high school education	28% (90th %ile)	11%.
Population under 5 years of age	7% (67th %ile)	5%.
Population over 64 years of age	16% (51st %ile)	18%.

* The traffic proximity and volume indicator is a score calculated by daily traffic count divided by distance in meters to the road. The Superfund proximity, RMP proximity, and hazardous waste proximity indicators are all scores calculated by site or facility counts divided by distance in kilometers.

This action is proposing a Finding of Failure to Attain the 2010 1-hour primary SO_2 NAAQS for the Evangeline Parish NAA by the statutory attainment date of April 9, 2023. Information on SO_2 and its relationship to negative health impacts can be found at final **Federal Register** notice titled ''Primary National Ambient Air Quality Standard for Sulfur Dioxide'' (75 FR 35520, June 22, 2010).[18] We expect that this particular action will not have a detrimental environmental impact on the populations in the Evangeline Parish NAA, including people of color and low-income populations in the Evangeline Parish NAA. The Act requires that the EPA determine whether areas attained the NAAQS by the attainment date and prescribes consequences for areas that fail to do so. This action triggers those consequences.

V. Statutory and Executive Order Reviews

This action proposes to find that an area has failed to attain the NAAQS by

[14] The EJScreen tool is available at *https://www.epa.gov/ejscreen.*

[15] See *https://www.census.gov/programs-surveys/geography/about/glossary.html.*

[16] In addition, EJScreen relies on the five-year block group estimates from the U.S. Census American Community Survey. The advantage of using five-year over single-year estimates is increased statistical reliability of the data (*i.e.,* lower sampling error), particularly for small geographic areas and population groups. For more information, see *https://www.census.gov/content/dam/Census/library/publications/2020/acs/acs_general_handbook_2020.pdf.*

[17] For additional information on environmental indicators and proximity scores in EJScreen, *see* ''EJScreen Environmental Justice Mapping and Screening Tool: EJScreen Technical Documentation for Version 2.3,'' Chapter 3 (July 2024) at *https://www.epa.gov/system/files/documents/2024-07/ejscreen-tech-doc-version-2-3.pdf.*

[18] See *https://www.federalregister.gov/d/2010-13947.*

the relevant attainment date and does not impose additional or modify existing requirements. 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 14094 (88 FR 21879, April 11, 2023);
- 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); and
- 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;

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.'' As noted in section IV, the EPA performed an EJ analysis, but we did not consider EJ as a basis for this action. Due to the nature of the action being taken here, this action is not expected to have a detrimental impact on the populations, including people of color and low-income populations, in the Evangeline Parish NAA. Consideration of EJ is not required as part of this action, which finds that an NAA failed to attain the 2010 SO_2 NAAQS by the applicable attainment date, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

In addition, this proposed rulemaking, the finding of failure to attain by the attainment date for the Evangeline Parish SO_2 NAA, does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because this action is not intended to apply in Indian country located in the State, and the EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: August 27, 2024.

Earthea Nance,

Regional Administrator, Region 6.

[FR Doc. 2024–19616 Filed 9–3–24; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 401

[Docket No. USCG–2024–0406]

RIN 1625–AC94

Great Lakes Pilotage Rates—2025 Annual Review; Correction

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: The Coast Guard published a document in the **Federal Register** of August 28, 2024, extending the comment period of the Great Lakes Pilotage Rates—2025 Annual Review. The document contained an incorrect date for a meeting.

FOR FURTHER INFORMATION CONTACT: For information about this document, call or email Mr. Brian Rogers, Commandant, Office of Waterways and Ocean Policy—Great Lakes Pilotage Division (CG–WWM–2), Coast Guard; telephone 410–360–9260, email *Brian.Rogers@uscg.mil*.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of August 28, 2024 (89 FR 68847), in FR Document 2024–19089, the following corrections are made:

1. On page 68847, in the third column, in the first line of the paragraph in the Summary, the date ''September 6, 2024'' is corrected to read ''September 10, 2024''.

2. On page 68848, in the second column, in the first line of the second paragraph, the date ''September 6, 2024'' is corrected to read ''September 10, 2024''.

Dated: August 29, 2024.

T. Haviland,

Director, Great Lakes Pilotage, U.S. Coast Guard.

[FR Doc. 2024–19840 Filed 9–3–24; 8:45 am]

BILLING CODE P

Notices

Federal Register
Vol. 89, No. 171
Wednesday, September 4, 2024

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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Closed Malaria Vaccine Development Program Scientific Advisory Committee Meeting

AGENCY: Agency for International Development (USAID).

ACTION: Notice of closed Federal advisory committee meeting.

SUMMARY: USAID is publishing this notice to announce a closed meeting of the USAID Malaria Vaccine Development Program (MVDP) Scientific Advisory Committee (SAC).

DATES: The meeting will be held Tuesday, October 22, 2024, from 8:00 a.m. to 5:30 p.m. Eastern Daylight Time (EDT) and Wednesday, October 23, 2024, from 8:00 a.m. to 3:00 p.m. EDT.

ADDRESSES: The closed meeting will be held at 455 Massachusetts Avenue NW, Suite 1000, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Email: *MVDPSACSecretariat@usaid.gov,* or Susan Youll, Designated Federal Officer, 202–712–4300 (Voice). Mailing address is: USAID, 1300 Pennsylvania Ave NW, Washington, DC.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The MVDP SAC will consult with, provide information to, and advise USAID on matters and issues relating to malaria vaccine development, scientific technologies, and any other related matters. The SAC will provide broad scientific review of USAID MVDP activities and investments to ensure MVDP focus and coherence, and to ensure the application of the highest standards of technical and scientific excellence.

Background: The SAC consists of no more than 13 members with demonstrated technical expertise and experience in areas related to malaria vaccine development, including, but not limited to: vaccine development, immunology, malariology, structural biology, preclinical animal models, regulatory affairs, and clinical research. These individuals may include, but not be limited to, employees of international organizations involved in vaccine development, academic institutions, pharmaceutical or biotechnology companies, and other U.S. government agencies. The members will be selected to represent diverse points of view and appointments will be made free from all forms of discrimination. The members are appointed by the US Global Malaria Coordinator.

As stated in its charter, the SAC's role is to:

(a) review written updates provided by the MVDP and their partners;

(b) receive presentations with data and progress from the last meeting and any strategy changes from MVDP staff and partners,

(c) discuss data and ask questions of MVDP staff and partners regarding presentations;

(d) submit a meeting report that may:

- provide strategic advice and scientific guidance;
- include recommendations on overall program strategy; and,
- identify new research and development opportunities that support MVDP objectives.

MVDP SAC meetings are held approximately once a year. More information USAID's Malaria Vaccine Development Program is available at: *https://www.usaid.gov/global-health/health-areas/malaria/research-innovation/malaria-vaccine-development-program-mvdp.*

Closed Meeting Exemption and Determination

This meeting is being held under the provisions of *chapter 10 of title 5, United States Code* (U.S.C.) (commonly known as the ''Federal Advisory Committee Act'' or ''FACA'') and *5 U.S.C. 552b* (commonly known as the ''Government in the Sunshine Act'').

The exemption is authorized by section 10(d) of the FACA, which permits the closure of advisory committee meetings, or portions thereof, if the head of the agency to which the advisory committee reports determines such meetings may be closed to the public in accordance with subsection (c) of the Government in the Sunshine Act (*5 U.S.C. 552b(c)*). In this case, the applicable provisions of *5 U.S.C. 552b(c)* are subsection 552b(c)(4), which permits closure to protect information that would disclose confidential trade secrets or commercial property such as patentable material.

The Administrator, on April 9, 2024, delegated authority to close MVDP SAC meetings to the public, to the U.S. Global Malaria Coordinator. The Global Malaria Coordinator, with the concurrence of the General Counsel, formally determined on August, 27, 2024, pursuant to section 10 of the FACA, (*5 U.S.C. 1009(d)*), that the MVDP SAC meeting shall be exempt from the provisions relating to public meetings found in *5 U.S.C. 1009(a)(1)* and *1009(a)(3).*

Susan Youll,

USAID Designated Federal Officer for the MVDP SAC, Global Health Bureau, U.S. Agency for International Development.

[FR Doc. 2024–19718 Filed 9–3–24; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–856]

Certain Corrosion-Resistant Steel Products From Taiwan: Preliminary Results and Rescission, In Part, of Antidumping Duty Administrative Review; 2022–2023

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that certain corrosion-resistant steel products (CORE) from Taiwan are being sold in the United States at below normal value during the period of review (POR), July 1, 2022, through June 30, 2023. We invite interested parties to comment on these preliminary results.

DATES: Applicable September 4, 2024.

FOR FURTHER INFORMATION CONTACT: Deborah Cohen or Anjali Mehindiratta, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4521 or (202) 482–9127, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 25, 2016, Commerce published the antidumping duty order on CORE from Taiwan in the **Federal Register**.[1] On July 3, 2023, we published in the **Federal Register** a notice of opportunity to request an administrative review of the *Order*.[2] On September 11, 2023, pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), Commerce initiated an administrative review of the *Order* covering nine entities.[3] On March 12, 2024, Commerce extended the deadline for the preliminary results until July 30, 2024.[4] On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.[5] The deadline for these preliminary results is now August 6, 2024.

For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[6] A list of topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Order

The products covered by this *Order* are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. A full description of the scope of the *Order* is contained in the Preliminary Decision Memorandum.

Rescission of Review, In Part

As noted above, we initiated this review with respect to nine companies.[7] During the course of the review, we selected two mandatory respondents, which included two of the named companies: Prosperity Tieh Enterprises Co., Ltd. (Prosperity); and Sheng Yu Steel Co. (SYSCO).[8] As a consequence, there are seven companies upon which review was requested and which were not selected for individual examination.

Pursuant to 19 CFR 351.213(d)(3), Commerce will rescind an administrative review when there are no reviewable suspended entries. Based on our analysis of U.S. Customs and Border Protection (CBP) information, six companies listed in the *Initiation Notice* had no entries of subject merchandise during the POR: (1) China Steel Corporation; (2) Chung Hung Steel Corporation; (3) Great Fortune Steel Co., Ltd.; (4) Great Grandeul Steel Co., Ltd.; (5) Great Grandeul Steel Corporation; and (6) Xxentria Technology Materials Company Ltd. On May 6, 2024, we notified parties of our intent to rescind this administrative review with respect to the six companies that had no reviewable suspended entries during the POR.[9] No party to the proceeding provided comments on our Intent to Rescind Memorandum. As a result, we are rescinding this review, in part, with respect to the six entities listed above which had no entries in the POR.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Act. Export price was calculated in accordance with section 772 of the Act. Normal value was calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Rate for Non-Examined Company

The Act and Commerce's regulations do not directly address the establishment of a rate to be applied to individual companies not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual review in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.''

In this administrative review, we preliminarily calculated a dumping margin of zero percent for SYSCO. We preliminary calculated a dumping margin of 1.63 percent for Prosperity. Thus, we preliminary assigned to the non-selected company, Great Grandeul Steel Company Limited (Samoa),[10] a weighted-average dumping margin of 1.63 percent, based on the rate calculated for Prosperity, the only rate that is not zero, *de minimis,* or based entirely on facts otherwise available.

---

[1] *See Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders, 81 FR 48390 (July 25, 2016) (Order).*

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review and Join Annual Inquiry Service List,* 88 FR 42693 (July 3, 2023).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 88 FR 62322 (September 11, 2023) (*Initiation Notice*). The *Initiation Notice* identified 10 firms, including Yieh Phui Enterprise Co., Ltd. (Yieh Phui). However, pursuant to the U.S. Court of International Trade's final judgment pertaining to the less-than-fair value (LTFV) investigation of this proceeding, Yieh Phui was excluded from the *Order. See Prosperity Tieh Enterprise Co., Ltd. and Yieh Phui Enterprise Co., Ltd.* v. *United States,* Consol. Court No. 16–00138, Slip Op. 23–95 (CIT 2023) (sustaining Commerce's second remand redetermination for the less-than-fair-value investigation of CORE from Taiwan); *see also Corrosion-Resistant Steel Products from Taiwan: Notice of Third Amended Final Determination of Sales at Less Than Fair Value Pursuant to Court Decision and Partial Exclusion from Antidumping Duty Order,* 88 FR 58245 (August 25, 2023), corrected by *Corrosion-Resistant Steel Products from Taiwan: Notice of Third Amended Final Determination of Sales at Less than Fair Value Pursuant to Court Decision and Partial Exclusion from Antidumping Duty Order; Correction,* 88 FR 65153 (September 21, 2023) (collectively, *Third Amended Final Determination*). Accordingly, a subsequent **Federal Register** notice corrected the *Initiation Notice* applicable to the instant review to clarify that Commerce is not conducting an administrative review of Yieh Phui for the July 1, 2022, through June 30, 2023 POR. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 88 FR 84784, 84787 (December 6, 2023) (*Corrected Initiation Notice*).

[4] *See* Memorandum, ''Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated March 12, 2024.

[5] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,'' dated July 22, 2024.

[6] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Administrative Review of the Antidumping Duty Order for Corrosion-Resistant Steel Products from Taiwan; 2022–2023,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[7] *See Initiation Notice,* as corrected by *Corrected Initiation Notice,* 88 FR at 84787.

[8] *See* Memorandum, ''Respondent Selection,'' dated October 17, 2023.

[9] *See* Memorandum, ''Notice of Intent to Rescind Review, In Part,'' dated May 6, 2024 (Intent to Rescind Memorandum).

[10] We note that Great Grandeul Steel Company Limited (Samoa) was spelled incorrectly as Great Grandeul Steel Company Limited (Somoa) in the *Initiation Notice. See Initiation Notice,* 88 FR at 62328.

Preliminary Results of Review

As a result of this review, we preliminarily determine the following estimated weighted-average dumping margins exist for the period July 1, 2022, through June 30, 2023:

Producer/exporter	Weighted-average dumping margin (percent)
Prosperity Tieh Enterprises Co., Ltd	1.63
Sheng Yu Steel Co	0.00
Great Grandeul Steel Company Limited (Samoa)	1.63

Disclosure

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days after the date of publication of this notice, or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).[11]

Public Comment

Interested parties may submit case briefs no later than 30 days after the date of publication of this notice.[12] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the date for filing case briefs.[13] Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[14]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their briefs that should be limited to five pages total, including footnotes. In this review, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[15] Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this administrative review. We request that interested parties include footnotes for relevant citations in the public executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[16]

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically via ACCESS by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.[17] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. Issues raised in the hearing will be limited to those raised in the case and rebuttal briefs. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing at a time and location to be determined.[18] Parties should confirm by telephone the date, time, and location of the hearing no fewer than two days before the scheduled date.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), Commerce will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their case briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties, where applicable.[19] Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

If the respective weighted-average dumping margins are above *de minimis* (*i.e.,* 0.50 percent) in the final results of this review, we will calculate importer-specific *ad valorem* antidumping duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).[20] If the respondent has not reported entered values, we will calculate a per-unit assessment rate for each importer by dividing the total amount of dumping calculated for the examined sales made to that importer by the total quantity associated with those sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.,* 0.50 percent). Where either the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

In accordance with Commerce's ''automatic assessment'' practice, for entries of subject merchandise during the POR produced by the respondents for which they did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate entries not reviewed at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

For the company which wase not selected for individual examination, we will instruct CBP to assess antidumping duties at an *ad valorem* assessment rate equal to the company-specific weighted-average dumping margin determined in the final results. For the companies for which the administrative review is rescinded, antidumping duties shall be assessed at a rate equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon

[11] *See* 19 CFR 351.224(b).

[12] *See* 19 CFR 351.309(c)(1)(ii).

[13] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Procedures*).

[14] *See* 19 CFR 351.309(c)(2) and (d)(2).

[15] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[16] *See APO and Service Procedures.*

[17] *See* 19 CFR 351.310(c).

[18] *See* 19 CFR 351.310.

[19] *See* section 751(a)(2)(C) of the Act.

[20] In these preliminary results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

publication of the notice of the final results of the administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results, as provided by section 751(a)(2) of the Act: (1) the cash deposit rate for each company listed above will be equal to the dumping margins established in the final results of this review, except if the ultimate rate is *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rates will be zero; (2) for merchandise exported by producers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the producer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment of the proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 11.04 percent, the all-others rate established in the *Third Amended Final Determination*.[21] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, 19 CFR 351.213(h)(2), and 19 CFR 351.221(b)(4).

[21] *See Third Amended Final Determination,* 88 FR at 58247.

Dated: August 5, 2024.

Scot Fullerton,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Rescission of Review, In Part
V. Companies Not Selected for Individual Examination
VI. Discussion of the Methodology
VII. Currency Conversion
VIII. Recommendation

[FR Doc. 2024–19717 Filed 9–3–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–074]

Common Alloy Aluminum Sheet From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that countervailable subsidies were provided to producers and exporters of common alloy aluminum sheet (CAAS) from the People's Republic of China (China) during the period of review (POR), January 1, 2022, through December 31, 2022.

DATES: Applicable September 4, 2024.

FOR FURTHER INFORMATION CONTACT: Scarlet K. Jaldin or Amber Hodak, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4275 or (202) 482–8034, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 5, 2024, Commerce published the *Preliminary Results* of this administrative review in the **Federal Register**.[1] On June 6, 2024, Commerce extended the deadline for issuing these final results to August 21, 2024.[2] On July 12, 2024, Commerce released its Post-Preliminary Analysis.[3] On July 12, 2024, we invited parties to comment on both the *Preliminary Results* and the Post-Preliminary Results.[4] We received timely filed case and rebuttal briefs from Aluminum Association Common Alloy Aluminum Sheet Trade Enforcement Working Group and its individual members [5] (collectively, the domestic industry),[6] Jiangsu Alcha Aluminum Co., Ltd. (Jiangsu Alcha), Yinbang Clad Material Co., Ltd. (Yinbang). On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.[7] The deadline for the final results is now August 28, 2024. For a detailed description of the events that followed the *Preliminary Results, see* the Issues and Decision Memorandum.[8]

Scope of the Order [9]

The product covered by the *Order* is CAAS from China. For a complete description of the scope of the of the *Order, see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised by the interested parties in their case briefs are addressed in the Issues and Decision Memorandum. A list of the issues raised is attached as an appendix to this notice. The Issues and Decision Memorandum is a public document and

[1] *See Common Alloy Aluminum Sheet from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review and Rescission of Review, in Part; 2022,* 89 FR 15819 (March 5, 2024) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Extension of Deadline for Final Results of Countervailing Duty Administrative Review,'' dated June 6, 2024.

[3] *See* Memorandum, ''Post-Preliminary Analysis,'' dated July 12, 2024 (Post Preliminary Results).

[4] *See* Memorandum, ''Briefing Schedule,'' dated July 12, 2024.

[5] The individual members of the Aluminum Association Common Alloy Aluminum Sheet Trade Enforcement Working Group are: Arconic Corporation; Commonwealth Rolled Products, Inc; Constellium Rolled Products Ravenswood, LLC; Jupiter Aluminum Corporation; JW Aluminum Company; and Novelis Corporation.

[6] *See* Jiangsu Alcha and Yinbang's Letter, ''Case Brief,'' dated April 4, 2024; *see also* Domestic Industry's Letter, ''Domestic Industry's Affirmative Case Brief,'' dated July 22, 2024; Domestic Industry's Letter, ''Domestic Industry's Rebuttal Case Brief,'' dated July 29, 2024 (Domestic Industry's Rebuttal Brief); and Alcha Group's Letter, ''Rebuttal Case Brief,'' dated July 29, 2024 (Alcha Group's Rebuttal Brief).

[7] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,'' dated July 22, 2024.

[8] *See* Memorandum, ''Decision Memorandum for the Final Results of the Countervailing Duty Administrative Review of Common Alloy Aluminum Sheet from the People's Republic of China; 2022,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[9] *See Common Alloy Aluminum Sheet from the People's Republic of China: Countervailing Duty Order,* 84 FR 2157 (February 6, 2019) (*Order*).

is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade/gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on arguments raised and a review of the record and all supporting documentation, we made certain changes to the *Preliminary Results* with respect to the subsidy rate calculations for the provision of primary aluminum for less than adequate remuneration (LTAR), the provision of electricity for LTAR, and Alcha Group's 2022 equity infusion. For a discussion of the issues and changes, *see* Issues and Decision Memorandum.

Methodology

Commerce conducted this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found to be countervailable, we determine that there is a subsidy, *i.e.,* a financial contribution from a government or public entity that gives rise to a benefit to the recipient, and that the subsidy is specific.[10] For a full description of the methodology underlying Commerce's conclusions, including our reliance, in part, on facts otherwise available with adverse inferences pursuant to sections 776(a) and (b) of the Act, *see* the Issues and Decision Memorandum.

Final Results of Administrative Review

In accordance with 19 CFR 351.221(b)(5), Commerce calculated the following net countervailable subsidy rates for the period January 1, 2022, through December 31, 2022:

Company	Subsidy rate (percent *ad valorem*)
Jiangsu Alcha Aluminium Group Co., Ltd., and Jiangsu Alcha Aluminum Group Co., Ltd. (both formerly known as Jiangsu Alcha Aluminum Co., Ltd., Jiangsu Alcha Aluminium Co., Ltd.);[11] Alcha International Holdings Limited; Baotou Alcha Aluminium Co., Ltd., Baotou Alcha Aluminum Co., Ltd., Baotou Alcha North Aluminum Co., Ltd., and Baotou Changlv Northern Aluminium Industry Co., Ltd.;[12] and Jiangsu Alcha New Energy Materials Co., Ltd.[13]	21.41
Yinbang Clad Material Co., Ltd	22.76
Zhengzhou Mingtai Industry Co., Ltd.[14]	373.06

Disclosure

Commerce intends to disclose the calculations and analysis performed to interested parties for these final results within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of final results in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(2), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries for the above-listed companies at the applicable *ad valorem* assessment rates. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Instructions

In accordance with section 751(a)(1) of the Act, Commerce also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for each company above on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. With regard to Jiangsu Alcha, we intend to instruct CBP to collect cash deposits of estimated countervailing duties under its new names (*i.e.,* ''Jiangsu Alcha Aluminium Group Co., Ltd.'' and ''Jiangsu Alcha Aluminum Group Co., Ltd.''). Concerning Baotou Alcha, we intend to instruct CBP to collect cash deposits of estimated countervailing duties under all of its names as identified in this notice. These cash deposit requirements, effective upon publication of these final results, shall remain in effect until further notice.

Administrative Protective Order

This notice also serves as a final reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

These final results are issued and published in accordance with sections 751(a)(l) and 777(i)(l) of the Act, and 19 CFR 351.221(b)(5).

[10] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[11] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 88 FR 21609, 21624 (April 11, 2023) (*Initiation Notice*). In the *Initiation Notice,* Commerce also initiated a review on Jiangsu Alcha Aluminium Group., Ltd. and Jiangsu Alcha Aluminum Group Co., Ltd. The respondent reported that Jiangsu Alcha Aluminium Group Co., Ltd. is the current legal name of the company, but is used interchangeably with Jiangsu Alcha Aluminum Group Co., Ltd. The respondent also reported that due to the recent change, Jiangsu Alcha Aluminum Group Co., Ltd. and Jiangsu Alcha Aluminium Group Co., Ltd. refer to the same entity.

[12] It was reported that although the legal name for one of Jiangsu Alcha's subsidiaries is ''Baotou Alcha Aluminium Co., Ltd.,'' other names (*i.e.,* ''Baotou Alcha Aluminum Co., Ltd.,'' ''Baotou Alcha North Aluminum Co., Ltd.,'' and ''Baotou Changlv Northern Aluminium Industry Co., Ltd.'') also refer to the same entity due to different English translations of its Chinese-language name. Accordingly, we have treated ''Baotou Alcha Aluminium Co., Ltd.,'' ''Baotou Alcha Aluminum Co., Ltd.,'' ''Baotou Alcha North Aluminum Co., Ltd.,'' and ''Baotou Changlv Northern Aluminium Industry Co., Ltd.'' as one entity (Baotou Alcha). For further discussion, *see supra,* n.11; *see also Preliminary Results* PDM.

[13] *See Preliminary Results* PDM at Section II, ''Background.''

[14] We calculated this company's rate based entirely on AFA, in accordance with section 776 of the Act. *See Preliminary Results* PDM at 19–25.

Dated: August 28, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Use of Facts Otherwise Available and Application of Adverse Inferences
V. Subsidies Valuation Information
VI. Analysis of Programs
VII. Programs Determined to Confer a Non-Measurable Benefit During the POR
VIII. Programs Determined to Be Not Used
IX. Changes Since the *Preliminary Results*
X. Discussion of the Issues
Comment 1: Whether Commerce Failed to Ensure the Consistency and Accuracy of the Primary Aluminum Pricing Data
Comment 2: Whether Commerce Should Continue to Use the Average Prices for Alloyed and Non-Alloyed Aluminum to Calculate the Primary Aluminum Benchmark
Comment 3: Whether Commerce Should Use a Different Value Added Tax Rate When Calculating the Primary Aluminum Benchmark
Comment 4: Whether Commerce Should Correct Its Calculation of Inland Freight
Comment 5: Whether Commerce Should Continue to Apply Facts Available to Yinbang's Provision of Land for LTAR
Comment 6: Whether Commerce Should Continue to Apply Facts Available to Alcha Group's Policy Loans to the CAAS Industry
Comment 7: Whether Commerce Should Revise Its Methodology to Attribute Alcha International's Policy Loans
Comment 8: Whether Commerce Should Revise the Calculations for the Provision of Electricity
XI. Recommendation

[FR Doc. 2024–19832 Filed 9–3–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–48–2024]

Foreign-Trade Zone 262—Southaven, Mississippi; Application for Reorganization (Expansion of Service Area) under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Northern Mississippi FTZ, Inc., grantee of Foreign-Trade Zone 262, requesting authority to reorganize the zone to expand its service area under the alternative site framework (ASF) adopted by the FTZ Board (15 CFR 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new subzones or ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the FTZ Board's standard 2,000-acre activation limit for a zone. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on August 29, 2024.

FTZ 262 was approved by the FTZ Board on October 1, 2004 (Board Order 1353, 69 FR 60841, October 13, 2004) and reorganized under the ASF on April 6, 2020 (Board Order 2095, 85 FR 19922, April 9, 2020). The zone currently has a service area that includes DeSoto County, Mississippi.

The applicant is now requesting authority to expand the service area of the zone to include Lafayette, Marshall, Panola and Tate Counties, Mississippi, as described in the application. If approved, the grantee would be able to serve sites throughout the expanded service area based on companies' needs for FTZ designation. The application indicates that the proposed expanded service area is adjacent to the Memphis Customs and Border Protection Port of Entry.

In accordance with the FTZ Board's regulations, Camille Evans of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is November 4, 2024. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to November 18, 2024.

A copy of the application will be available for public inspection in the ''Online FTZ Information Section'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.* For further information, contact Camille Evans at *Camille.Evans@trade.gov.*

Dated: August 29, 2024.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2024–19828 Filed 9–3–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Announcement of Approved International Trade Administration Trade Mission

AGENCY: International Trade Administration, Department of Commerce

SUMMARY: The United States Department of Commerce, International Trade Administration (ITA), is announcing one upcoming trade mission that will be recruited, organized, and implemented by ITA. This mission is: Advanced Manufacturing Business Development Mission to Türkiye and Poland—September 21–27, 2025. A summary of the mission is found below. Application information and more detailed mission information, including the commercial setting and sector information, can be found at the trade mission website: *https://www.trade.gov/trade-missions.* For this mission, recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*https://www.trade.gov/trade-missions-schedule*) and other internet websites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows.

FOR FURTHER INFORMATION CONTACT: Jeffrey Odum, Trade Events Task Force, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–6397 or email *Jeffrey.Odum@trade.gov.*

SUPPLEMENTARY INFORMATION:

The Following Conditions for Participation Will Be Used for the Mission

Applicants must submit a completed and signed mission application and supplemental application materials, including adequate information on their products and/or services, primary market objectives, and goals for participation that is adequate to allow the Department of Commerce to evaluate their application. If the Department of Commerce receives an incomplete application, the Department may either: reject the application, request additional information/clarification, or take the lack of information into account when evaluating the application. If the requisite minimum number of participants is not selected for a

particular mission by the recruitment deadline, the mission may be canceled.

Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, are marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content by value. In the case of a trade association or organization, the applicant must certify that, for each firm or service provider to be represented by the association/organization, the products and/or services the represented firm or service provider seeks to export are either produced in the United States or, if not, marketed under the name of a U.S. firm and have at least 51% U.S. content by value.

A trade association/organization applicant must certify the above for all of the companies it seeks to represent on the mission.

In addition, each applicant must:

- Certify that the products and services that it wishes to market through the mission would be in compliance with U.S. export controls and regulations.
- Certify that it has identified any matter pending before any bureau or office in the Department of Commerce.
- Certify that it has identified any pending litigation (including any administrative proceedings) to which it is a party that involves the Department of Commerce; and
- Sign and submit an agreement that it and its affiliates (1) have not and will not engage in the bribery of foreign officials in connection with a company's/participant's involvement in this mission, and (2) maintain and enforce a policy that prohibits the bribery of foreign officials.

In the case of a trade association/organization, the applicant must certify that each firm or service provider to be represented by the association/organization can make the above certifications.

The Following Selection Criteria Will Be Used for the Mission

Targeted mission participants are U.S. firms, services providers, and trade associations/organizations providing or promoting U.S. products and services that have an interest in entering or expanding their business in the mission's destination country. The following criteria will be evaluated in selecting participants:

- Suitability of the applicant's (or in the case of a trade association/organization, represented firm's or service provider's) products or services to these markets;
- The applicant's (or in the case of a trade association/organization, represented firm's or service provider's) potential for business in the markets, including the likelihood of exports resulting from the mission; and
- Consistency of the applicant's (or in the case of a trade association/organization, represented firm's or service provider's) goals and objectives with the stated scope of the mission.

Balance of company size and location may also be considered during the review process. Referrals from a political party or partisan political group or any information, including on the application, containing references to political contributions or other partisan political activities will be excluded from the application and will not be considered during the selection process. The sender will be notified of these exclusions.

Definition of Small- and Medium-Sized Enterprise

For purposes of assessing participation fees, an applicant is a small or medium-sized enterprise (SME) if it qualifies as a ''small business'' under the Small Business Administration's (SBA) size standards (*https://www.sba.gov/document/support--table-size-standards*), which vary by North American Industry Classification System (NAICS) Code. The SBA Size Standards Tool (*https://www.sba.gov/size-standards*) can help you determine the qualifications that apply to your company.

Mission List: (additional information about trade missions can be found at *https://www.trade.gov/trade-missions*).

Advanced Manufacturing Business Development Mission to Türkiye and Poland, September 21–27, 2025

Summary

The United States Department of Commerce, International Trade Administration (ITA), is organizing an Advanced Manufacturing Business Development Mission to Türkiye and Poland September 21 through September 27, 2025. The purpose of this business development mission is to expand opportunities for U.S. companies in advanced manufacturing markets in Türkiye and Poland, with a focus on digital technologies and services, industrial automation, and precision machinery.

The business development mission will bring a minimum of 12 and maximum of 20 firms and/or trade associations will be selected to participate in the mission from across the U.S. advanced manufacturing sector to Türkiye and Poland.

The mission's primary goal will be to increase U.S. exports to each market by raising brand awareness of U.S. technology solutions in advanced manufacturing and identifying opportunities for commercial collaboration. The mission will help participating firms and trade associations gain market insights, make industry contacts, solidify business strategies, and advance specific projects and initiatives in the target markets. By participating in an official U.S. industry delegation, rather than traveling to the region individually, U.S. industry representatives will enhance their ability to secure meetings and gain greater exposure to each market, as well as leverage the networks of pre-screened industry buyers, distributors, and industry stakeholders developed by commercial specialists. In addition, this business development mission provides the U.S. government a platform to advocate on behalf of U.S. companies that also aligns with and advances U.S. policy objectives, including manufacturing supply chain resiliency and the adoption of international standards related to advanced manufacturing.

Türkiye Stop

Türkiye's youthful population, vibrant entrepreneurial sector, and strategic location linking Europe and Asia have established it as a pivotal manufacturing and distribution hub. The country harnesses competitive advantages like lower labor costs and adaptable production capabilities, boosting manufacturing's GDP share to 22.2% in 2022 from 19.1% in 2020. Key sectors like automotive and aviation, with major international companies with extensive local supplier networks, lead in adopting advanced manufacturing technologies.

Aligned with EU standards through a customs union, Türkiye faces the challenge of meeting new environmental regulations, necessitating significant investments in cleantech solutions. Türkiye's 2023 Industry and Technology Strategy outlines incentives for R&D and digital transformation across 300+ product categories, including in the aerospace, defense, electronics, and pharmaceuticals sectors.

Türkiye anticipates annual investments of $1 to $1.5 billion over the next decade to integrate advanced manufacturing solutions. The industrial automation market, valued at $1.8 billion in 2022, is poised for 15% annual growth, with projections to reach $2.5 billion within the next three years. Internet of Things (IoT) sales surged to

$1.2 billion in 2021, indicative of expanding digital integration across industries.

With a focus on enhancing its manufacturing capabilities, Türkiye is keen to explore U.S. advanced manufacturing technologies to foster bilateral trade relations and ensure competitiveness on the global stage.

The mission stop in Türkiye will include a market briefing by the Consulate's Interagency Country Team and meetings with advanced manufacturing organizations. The delegation will also participate in individualized business to business and business to government meetings, and join a networking reception hosted at the Consul General's Residence in Istanbul.

Poland Stop

Poland is an increasingly attractive market for advanced manufacturing technologies, with many leading companies looking to Poland as a hub for their Central and Eastern European supply chains and sales networks. Despite the COVID–19 pandemic and the war in Ukraine, Polish manufacturing continues to develop at a rapid pace, including in key sectors such as: automotive, metal products, rubber and plastic, electrical equipment, chemicals and chemical products, non-metallic mineral products, basic metals, furniture, paper and paper products, machinery and equipment, computer, electronic, and optical products. U.S. firms will find ample potential in the local market, with the Polish Government increasingly prioritizing this sector and pushing for development and investment. In 2019, the Polish Government established The Future Industry Platform, a non-profit Polish governmental foundation, supervised by the Ministry of Development Funds and Regional Policy, with the aim to accelerate the digital transformation of Polish industry. There are a variety of potential funding sources, both at the local and EU level, that are accessible to firms in Poland, including the Horizon Europe funds: the EU's research & innovation funding program for 2021–2027 with a budget of EUR 95.5 billion

The mission stop in Poland will include a multi-day program focusing on creating connections between mission delegates and key public and private sector stakeholders. The delegation will receive a welcome market briefing by the Commercial Counselor and Embassy Warsaw Deal Team, and join plenary and roundtable discussions on market issues, best practices, and finding local partners. The delegation will also participate in individualized business to business and business to government meetings, as well as join a networking reception hosted at the Chief of Mission Residence, plus other networking opportunities throughout the visit.

PROPOSED TIMETABLE

[* Note: The final schedule and potential site visits will depend on the availability of host government and business officials, specific goals of mission participants, and ground transportation.]

Sunday, September 21, 2025.	• Business development mission participants arrive in Istanbul. • Welcome reception.
Monday, September 22, 2025.	• Morning: Market intelligence briefing by ITA's commercial team and industry leaders. • Various site visits.
Tuesday, September 23, 2025.	• B2B meetings between U.S. companies and associations, and relevant Turkish stakeholders. • Evening: Networking reception at the Consul General's Residence.
Wednesday, September 24, 2025.	• AM-Travel to Warsaw, Poland (there are four daily direct flights to Warsaw from Istanbul). • Market intelligence briefing by ITA's commercial team and Embassy interagency experts. • Welcome reception.
Thursday, September 25, 2025.	• Policy panel discussions with Polish government stakeholders and industry experts. • Potential site visits. • Evening: Networking reception at U.S. Ambassador's Residence.
Friday, September 26, 2025.	• B2B meetings between U.S. companies and associations, and relevant Polish stakeholders. • Closing luncheon.
Saturday, September 27, 2025.	• Return to U.S.

Participation Requirements

All parties interested in participating in the business development mission must complete and submit an application package for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. A minimum of 12 and a maximum of 20 firms and/or trade associations will be selected to participate in the mission from the applicant pool.

Fees and Expenses

After a firm or trade association has been selected to participate in the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee for the Business Development Mission will be $6,300 for small or medium-sized enterprises (SME) [1]; and $7,900 for large firms or trade associations. The fee for each additional firm representative (large firm or SME/trade organization) is $1,000.00. Expenses for travel, lodging, meals, and incidentals will be the responsibility of each mission participant. Interpreter and driver services can be arranged for additional cost. Delegation members will be able to take advantage of U.S. Embassy rates for hotel rooms.

If and when an applicant is selected to participate in a particular mission, a payment to the Department of Commerce in the amount of the designated participation fee above is required. Upon notification of acceptance to participate, those selected have 5 business days to submit payment or the acceptance may be revoked.

Participants selected for a trade mission will be expected to pay for the cost of personal expenses, including, but not limited to, international travel, lodging, meals, transportation, communication, and incidentals, unless otherwise noted. Participants will, however, be able to take advantage of U.S. Government rates for hotel rooms. In the event that a mission is canceled, no personal expenses paid in anticipation of a mission will be reimbursed. However, participation fees for a canceled mission will be reimbursed to the extent they have not already been expended in anticipation of the mission.

If a visa is required to travel on a particular mission, applying for and obtaining such a visa will be the responsibility of the mission participant. Government fees and processing expenses to obtain such a visa are not included in the participation fee. However, the Department of Commerce will provide instructions to each participant on the procedures required to obtain business visas.

Business development mission members participate in missions and undertake mission-related travel at their own risk. The nature of the security situation in a given foreign market at a given time cannot be guaranteed. The

[1] Small Business: Must qualify as a ''small business'' under the Small Business Administration's size standards, which vary by North American Industry Classification System (NAICS) Code.

Medium Business: Must have less than $1B in annual revenue (including affiliates: parent, child, subsidiaries, divisions, etc.) to qualify.

U.S. Government does not make any representations or guarantees as to the safety or security of participants. The U.S. Department of State issues U.S. Government international travel alerts and warnings for U.S. citizens available at *https://travel.state.gov/content/passports/en/alertswarnings.html.* Any question regarding insurance coverage must be resolved by the participant and its insurer of choice.

Travel and in-person activities are contingent upon the safety and health conditions in the United States and the mission countries. Should safety or health conditions not be appropriate for travel and/or in-person activities, the Department will consider postponing the event or offering a virtual program in lieu of an in-person agenda. In the event of a postponement, the Department will notify the public, and applicants previously selected to participate in this mission will need to confirm their availability but need not reapply. Should the decision be made to organize a virtual program, the Department will adjust fees, accordingly, prepare an agenda for virtual activities, and notify the previous selected applicants with the option to opt-in to the new virtual program.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://www.trade.gov/trade-missions*) and other internet websites, press releases to general and trade media, direct mail, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. Recruitment for the mission will begin immediately and conclude no later than April 30, 2025. The U.S. Department of Commerce will review applications and inform applicants of selection decisions on a rolling basis. Applications received after April 30, 2025 will be considered only if space and scheduling constraints permit.

Contacts

Jennifer Woods, Director, International Trade Administration, Boise, Idaho, United States, Tel: +1 208 955 6694, Email: *jennifer.woods@trade.gov*

Daniel Pint, Commercial Officer, U.S. Consulate General, Istanbul, Türkiye, Tel: +90 212 335 9224, Email: *daniel.pint@trade.gov*

James Lindley, Commercial Counselor, U.S. Embassy to Poland, Warsaw, Poland, Tel: +48 538 551 380, Email: *james.lindley@trade.gov*

Katarzyna Szyndel, Commercial Specialist, U.S. Embassy to Poland, Warsaw, Poland, Tel: +48 795 146 261, Email: *Katarzyna.Szyndel@trade.gov*

Yasue Pai, Principal Commercial Officer, U.S. Consulate General, Istanbul, Türkiye, Tel: +90 212 335 9000, Email: *yasue.pai@trade.gov*

Jaron Bass, International Trade Specialist, Office of Transportation and Machinery, Washington, United States, Tel: +1 202 839 2357, Email: *jaron.bass@trade.gov*

Perim Akguner, Commercial Specialist, U.S. Consulate General, Istanbul, Türkiye, Tel: +90 212 335 9197, Email: *perim.akguner@trade.gov*

Ethan Talbott, Deputy Senior Commercial Officer, U.S. Embassy to Poland, Warsaw, Poland, Tel: +48 604 250 114, Email: *ethan.talbott@trade.gov*

Omar Oweiss, Senior International Trade Specialist, Office of Central and Southeast Europe | Bulgaria, Hungary, Kosovo, North Macedonia and Poland Desk, International Trade Administration, Washington, United States, Tel: (202) 495–9334, Email: *omar.oweiss@trade.gov*

Leo Ayala, International Trade Specialist/Türkiye Desk Officer, International Trade Administration, Washington, United States, Tel: +1 202 482 1632, Email: *leo.ayala@trade.gov*

Gemal Brangman,

Director, ITA Events Management Task Force.

[FR Doc. 2024–19784 Filed 9–3–24; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE249]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will hold a series of three Coastal Migratory Pelagics (CMP) Special Engagement Session webinars on September 25, October 28 and November 19, 2024. See below for scheduled times.

DATES: These webinars will convene on Wednesday, September 25, 2024 at 10 a.m., EDT; Monday, October 28, 2024 at 1 p.m., EDT; and Tuesday, November 19, 2024, at 6 p.m., EST.

ADDRESSES: The sessions will all be held virtually, by webinar only.

Council address: Gulf of Mexico Fishery Management Council, 4107 W Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Emily Muehlstein, Public Information Officer, Gulf of Mexico Fishery Management Council; *Emily.muehlstein@gulfcouncil.org,* telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The agenda for the three webinar meetings is as follows:

- Wednesday, September 25, 2024, at 10 a.m. EDT
- Monday, October 28, 2024, at 1 p.m. EDT
- Tuesday, November 19, 2024, at 6 p.m. EST

Council staff will begin with a brief presentation on the purpose of the Special Engagement Sessions, provide a brief overview of information on Cobia, Spanish Mackerel, and King Mackerel, and outline the meeting format and expected outcomes. Staff will ask a series of open-ended questions about Coastal Migratory Pelagic fisheries and fishing and allow for open public comment as time permits. Visit *https://www.gulfcouncil.org* website and click on the ''meetings'' tab for registration information. After registering, you will receive a confirmation email containing information about joining the webinar. Public feedback on *coastal migratory pelagics* will also be gathered online through an online feedback tool located at *https://docs.google.com/forms/d/e/1FAIpQLSf_SBrikl8NAf4gdGZcHQf-v6uOx6FOem6yuXzbmMcwvZcOSg/viewform?usp=sf_link.*

—Meeting Adjourns

The Agenda is subject to change, and the latest version along with other meeting materials will be posted on *https://www.gulfcouncil.org.*

Although other non-emergency issues not on the agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery

Conservation and Management Act, provided the public has been notified of the Council's intent to take-action to address the emergency.

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

Dated: August 29, 2024.

Alyssa Weigers,

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

[FR Doc. 2024–19812 Filed 9–3–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE204]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of web conference.

SUMMARY: The North Pacific Fishery Management Council's (Council) Groundfish Plan Teams will meet September 17, 2024 through September 19, 2024.

DATES: The meetings will be held on Tuesday, September 17, 2024 through Thursday, September 19, 2024, from 9 a.m. to 4 p.m., Alaska Time.

ADDRESSES: The meeting will be a web conference. Join online through the link at *https://meetings.npfmc.org/Meeting/Details/3056.*

Council address: North Pacific Fishery Management Council, 1007 W 3rd Ave., Suite 400, Anchorage, AK 99501–2252; telephone: (907) 271–2809.

Instructions for attending the meeting are given under **SUPPLEMENTARY INFORMATION**, below.

FOR FURTHER INFORMATION CONTACT: Sara Cleaver, Council staff; email: *sara.cleaver@noaa.gov* or Diana Stram, Council staff; email *diana.stram@noaa.gov.* For technical support, please contact our administrative staff; phone: (907) 271–2809; email: *npfmc.admin@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Agenda

Tuesday, September 17, 2024 Through Thursday, September 19, 2024

The Bering Sea and Aleutian Islands (BSAI) and Gulf of Alaska (GOA) Groundfish Plan Teams will meet to review and discuss issues of importance to both Plan Teams, including but not limited to: Economic and Socioeconomic Profile update, Ecosystem Status Report climate update, ecosystem surveys, bottom trawl surveys (BTS), longline survey, updates on model progress for stock assessments to be presented in November, and proposed harvest specifications. The agenda is subject to change, and the latest version will be posted at *https://meetings.npfmc.org/Meeting/Details/3056* prior to the meeting, along with meeting materials.

Connection Information

You can attend the meeting online using a computer, tablet, or smartphone; or by phone only. Connection information will be posted online at: *https://meetings.npfmc.org/Meeting/Details/3056.*

Public Comment

Public comment letters should be submitted electronically via the electronic agenda at *https://meetings.npfmc.org/Meeting/Details/3056.*

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

Dated: August 29, 2024.

Alyssa Weigers,

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

[FR Doc. 2024–19810 Filed 9–3–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE248]

New England Fishery Management Council (NEFMC); Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public informational webinar of its Risk Policy Working Group and all of the Council Advisory Panels to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This webinar will be held on Thursday, September 19, 2024, at 3 p.m.

ADDRESSES: Webinar registration URL information: *https://nefmc-org.zoom.us/webinar/register/WN_konhjA6wT2qn50vi5dXv4Q.*

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Cate O'Keefe, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The New England Fishery Management Council's Advisory Panel members are invited to participate in a webinar to learn more about proposed revisions to the NEFMC's Risk Policy. Advisory Panel members will meet to review the Council's current Risk Policy. They will receive a presentation on a newly developed Risk Policy concept and revised Risk Policy Statement. The Members will also learn about plans to implement the revised Risk Policy (if approved by the Council at the September 24–26, 2024 Council meeting). Other business will be discussed, if necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Cate O'Keefe, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: August 29, 2024.

Alyssa Weigers,

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

[FR Doc. 2024–19811 Filed 9–3–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE250]

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) and its advisory bodies will meet September 18–23, 2024 in Spokane, WA and via webinar. The Council meeting will be live streamed with the opportunity to provide public comment remotely.

DATES: The Pacific Council meeting will begin on Thursday, September 19, 2024, at 9 a.m., Pacific Daylight Time (PDT), reconvening at 8 a.m. on Friday, September 20 through Monday, September 23, 2024. All meetings are open to the public, except for a Closed Session held from 8 a.m. to 9 a.m., Thursday, September 19, 2024, to address litigation and personnel matters. The Pacific Council will meet as late as necessary, each day, to complete its scheduled business.

ADDRESSES:

Meeting address: Meetings of the Pacific Council and its advisory entities will be held at the Doubletree by Hilton Hotel Spokane City Center, 322 N Spokane Falls Court, Spokane, WA; telephone: (509) 455–9600. Specific meeting information, including directions on joining the meeting, connecting to the live stream broadcast, and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *https://www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Merrick Burden, Executive Director, Pacific Council; telephone: (503) 820–2280 or (866) 806–7204 toll-free, or access the Pacific Council website, *https://www.pcouncil.org,* for the proposed agenda and meeting briefing materials.

SUPPLEMENTARY INFORMATION: The September 18–23, 2024 meeting of the Pacific Council will be streamed live on the internet. The broadcasts begin initially at 9 a.m. PDT Thursday, September 19, 2023, and 8 a.m. PDT Friday, September 20 through Monday, September 23, 2024. Broadcasts end when business for the day is complete. Only the audio portion and presentations displayed on the screen at the Pacific Council meeting will be broadcast. The audio portion for the public is listen-only except that an opportunity for oral public comment will be provided prior to Council Action on each agenda item. Additional information and instructions on joining or listening to the meeting can be found on the Pacific Council's website (see *https://www.pcouncil.org*).

The following items are on the Pacific Council agenda, but not necessarily in this order. Agenda items noted as ''Final Action'' refer to actions the Council may take requiring the transmission of a proposed fishery management plan, proposed plan amendment, or proposed regulations to the U.S. Secretary of Commerce, under Sections 304 or 305 of the Magnuson-Stevens Fishery Conservation and Management Act. Additional detail on agenda items, Council action, and advisory entity meeting times, are described in Agenda Item A.4, Proposed Council Meeting Agenda, and will be in the advance September 2024 briefing materials and posted on the Pacific Council website at *https://www.pcouncil.org* no later than Friday, August 30, 2024.

A. Call to Order
1. Opening Remarks
2. New Council Member Appointments
3. Roll Call
4. Agenda
5. Executive Director's Report

B. Open Comment Period
1. Comments on Non-Agenda Items

C. Cross Fishery Management Plan
1. Marine Planning
2. Equity and Environmental Justice (EEJ)—Gap Analysis Framework and Regional Implementation Plan
3. Inflation Reduction Act Projects—Check In

D. Habitat Issues
1. Current Habitat Issues

E. Salmon Management
1. National Marine Fisheries Service Report
2. Methodology Review—Final Topic Selection
3. Queets Spring/Summer Chinook Rebuilding—Range of Alternatives and Preliminary Preferred Alternative

F. Pacific Halibut Management
1. 2025 Catch Sharing Plan and Annual Regulations—Preliminary
2. Commercial Fishery Regulation Changes: Vessel Monitoring Systems, Seabird Avoidance, and Catch Reporting—Range of Alternatives, Preliminary Preferred Alternative

G. Coastal Pelagic Species Management
1. National Marine Fisheries Service Report

H. Ecosystem Matters
1. Fishery Ecosystem Plan Initiative 4: Groundfish and Salmon Risk Tables—Progress Review

I. Groundfish Management
1. National Marine Fisheries Service Report—Including Sablefish Management Strategy Evaluation Update
2. Methodology Review: Preliminary Fishery Impact Model Topics
3. Final Trawl Cost Project Report
4. 2025 and 2027 Stock Assessment Plan and Schedule
5. Stock Definitions for Species Assessed in 2025 & 2027—Preliminary Preferred Alternative
6. Inseason Adjustments for 2024 and Technical Corrections for 2025–2026—Final Action
7. Trawl Catch Share Program and Intersector Allocation Reviews—Scoping
8. Phase 2 Stock Definitions—Scoping

J. Highly Migratory Species Management
1. National Marine Fisheries Service Report
2. International Management Activities
3. 2025–26 Harvest Specifications and Management Measures—Preliminary

K. Administrative Matters
1. Fiscal Matters
2. Approve Council Meeting Record
3. Membership Appointments and Council Operating Procedures—Including Final 2025–27 Advisory Body Composition
4. Future Council Meeting Agenda and Workload Planning

Advisory Body Agendas

Advisory body agendas will include discussions of relevant issues that are on the Pacific Council agenda for this meeting and may also include issues that may be relevant to future Council meetings. Proposed advisory body agendas for this meeting will be available on the Pacific Council website, *www.pcouncil.org,* no later than Friday, August 30, 2024 by the end of the business day.

Schedule of Ancillary Meetings

Day 1—Tuesday, September 17, 2024
Scientific and Statistical Committee 8 a.m.

Day 2—Wednesday, September 18, 2024
Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Salmon Advisory Subpanel (online) 8 a.m.
Scientific and Statistical Committee 8 a.m.
Budget Committee 1 p.m.
Enforcement Consultants 2 p.m.
Day 3—Thursday, September 19, 2024
Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Scientific and Statistical Committee 8 a.m.
Enforcement Consultants As Necessary
Day 4—Friday, September 20, 2024
Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Highly Migratory Species Advisory Subpanel 8 a.m.
Highly Migratory Species Management Team 8 a.m.
Enforcement Consultants As Necessary
Day 5—Saturday, September 21, 2024
Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Highly Migratory Species Advisory Subpanel 8 a.m.
Highly Migratory Species Management Team 8 a.m.
Enforcement Consultants As Necessary
Day 6—Sunday, September 22, 2024
Enforcement Consultants As Necessary
Day 7—Monday, September 23, 2024
Enforcement Consultants As Necessary

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 business days prior to the meeting date.

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

Dated: August 29, 2024.

Alyssa Weigers,

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

[FR Doc. 2024–19813 Filed 9–3–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE177]

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 92 Atlantic Blueline Tilefish Landings Stream Topical Working Group Webinar IV.

SUMMARY: The SEDAR 92 assessment of the Atlantic stock of blueline tilefish will consist of a series of assessment webinars. See **SUPPLEMENTARY INFORMATION.**

DATES: The SEDAR 92 Atlantic Blueline Tilefish Landing Stream Tropical Working Group (LS–TWG) Webinar IV is scheduled for Tuesday, September 24, 2024, from 1 p.m. to 3 p.m., Eastern. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from or completed prior to the time established by this notice.

ADDRESSES: The meeting will be held via webinar. The webinar is open to members of the public. Registration for the webinar is available by contacting the SEDAR coordinator via email at *Julie.Neer@safmc.net.*

SEDAR address: 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405; *https://www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Julie Neer, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4366; email: *Julie.Neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion at the SEDAR 92 Atlantic Blueline Tilefish LS–TWG Webinar IV are as follows: Discuss available data sources, review preliminary analysis, and provide guidance for next steps.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the South Atlantic Fishery Management Council office (see **ADDRESSES**) at least 10 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: August 29, 2024.

Alyssa Weigers,

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

[FR Doc. 2024–19823 Filed 9–3–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 240823–0225]

RIN 0660–XC062

Request for Comments on Bolstering Data Center Growth, Resilience, and Security

AGENCY: National Telecommunications and Information Administration, Department of Commerce.

ACTION: Notice, request for comment.

SUMMARY: The National Telecommunications and Information Administration (NTIA) hereby requests comments on the challenges surrounding data center growth, resilience and security in the United States amidst a surge of computing power demand due to the development of critical and emerging technologies. This request focuses on identifying opportunities for the U.S. government to improve data centers' market development, supply chain resilience, and data security. NTIA will rely on these comments, along with other public engagements on this topic, to draft and issue a public report capturing economic and security policy considerations and policy recommendations for fostering safe, secure, and sustainable data center growth.

DATES: Written comments must be received on or before November 4, 2024.

ADDRESSES: All electronic public comments on this action, identified by *Regulations.gov* docket number NTIA–2024–0002, may be submitted through the Federal e-Rulemaking Portal at *www.regulations.gov*. The docket established for this request for comment can be found at *www.regulations.gov,* NTIA–2024–0002. Click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments. Additional instructions can be found in the ''Instructions'' section below after **SUPPLEMENTARY INFORMATION**.

All comments received are a part of the public record and will generally be posted to *Regulations.gov* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible.

If you would like to submit business confidential information, please clearly identify any business confidential portion of a comment at the time of submission, file a statement justifying nondisclosure and referring to the specific legal authority claimed, and provide a non-confidential version of the submission.

For comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters ''BC.'' Any page containing business confidential information must be clearly marked ''BUSINESS CONFIDENTIAL'' on the top of that page. The corresponding non-confidential version of those comments must be clearly marked ''PUBLIC.'' The file name of the non-confidential version should begin with the character ''P.'' Any submissions with file names that do not begin with either a ''BC'' or a ''P'' will be assumed to be public and will be made publicly available through *https://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Please direct questions regarding this Request for Comment to Travis Hall at *thall@ntia.gov* with ''Bolstering Data Center Resilience and Security Request for Comment'' in the subject line, or if by mail, addressed to Travis Hall, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Room 4725, Washington, DC 20230; telephone: (202) 482–3522. Please direct media inquiries to NTIA's Office of Public Affairs, telephone: (202) 482–7002; email: *press@ntia.gov*.

SUPPLEMENTARY INFORMATION:

Background and Authority

Critical and emerging technologies like artificial intelligence (AI) have accelerated demands for more computing infrastructure. Powering these transformative technologies are data centers—facilities that house computing machines and related hardware components that process, store, and transmit large amounts of data—and the telecommunication infrastructure enabling information processing.[1]

Data centers are important enablers for economic growth and technological development. Their capabilities for data processing, ubiquitous connectivity, secure storage, cost-efficiency, and economy-wide job creation, among others, yield substantial benefits.

There are approximately 5,000 data centers in the United States, and data center demand is projected to grow domestically by roughly nine percent year over year through 2030.[2] [3] Driven primarily by hyperscalers,[4] the total capacity of all data centers, including on-premise and colocation, is expected to rise steadily.[5] The expected growth in computing demand, and resulting demand for data centers, present challenges and opportunities for data center operators in balancing market growth, supply chain resilience, and data security. For example, energy supply, restrictive permitting, skilled workforce shortages, and land unavailability may present localized growth challenges in certain domestic markets.[6] However, the increase in compute demand may also present opportunities to collaborate on public and private sector measures (*e.g.,* infrastructure investments, workforce development programs) to catalyze data center growth, enable innovation, and foster economic development and global market leadership.

The continued growth of the U.S. data center industry hinges on resilient supply chains, access to power, trusted Information and Communications Technology and Services (ICTS) equipment, and a skilled workforce, among other factors. Powering and cooling data centers is energy-intensive: data centers physically located in the United States consumed more than four percent of the country's total electricity in 2022, with projections suggesting the share may increase up to nine [7] percent by 2030.[8] The increase in demand is

[1] 42 U.S.C. 17112(b).

[2] Cloudscene, ''Data Centers in the United States'' (March 2024) *https://cloudscene.com/market/data-centers-in-united-states/all?trk=public_post_comment-text*.

[3] McKinsey, ''Investing in the rising data center economy'' (January 2023). Demand is measured by power consumption to reflect the number of servers a data center can house. Demand includes megawatts for storage, servers, and networks. *https://www.mckinsey.com/industries/technology-media-and-telecommunications/our-insights/investing-in-the-rising-data-center-economy*.

[4] The term ''hyperscale'' data centers refer to data centers facilities comprising of 10,000 square foot/5,000-server facilities to colossal campuses with individual buildings over one million square feet, each containing hundreds of thousands of servers. *See* In-Q-Tel, ''Workshop on Cloud, Data Centers, and Great Power Competition,'' (November 2023). *https://assets.iqt.org/pdfs/Workshop-Report_Data-Centers_Nov-2023.pdf/web/viewer.html*.

[5] Synergy Research Group, ''On Premise Data Center Capacity Being Increasingly Dwarfed by Hyperscalers and Colocation Companies,'' (July 2023). *https://www.srgresearch.com/articles/on-premise-data-center-capacity-being-increasingly-dwarfed-by-hyperscalers-and-colocation-companies*.

[6] Global Data Center Trends 2023. (2023, July 14). *https://www.cbre.com/insights/reports/global-data-center-trends-2023*; CBRE. *https://www.cbre.com/insights/reports/global-data-center-trends-2023*.

[7] SemiAnalysis, ''AI Datacenter Energy Dilemma—Race for AI Datacenter Space,'' (March 2024). *https://www.semianalysis.com/p/ai-datacenter-energy-dilemma-race*.

[8] Aljbour, Jordan, Tom Wilson, and Poorvi Patel. ''Powering Intelligence: Analyzing Artificial Intelligence and Data Center Energy Consumption.''

incentivizing data center developers and utilities to maximize utilization of existing power grid infrastructure and water usage, with some data center operators pursuing alternatives to the grid, such as on-site energy generation and power grid infrastructure.[9] Outfitting new and existing data centers also requires a range of critical information technology (IT) and operational technology (OT) components—semiconductors, chips, fiber optic cables, networking equipment, and more.[10] Lack of access to trusted equipment and skilled workforce shortages could limit both cyber and physical security functions necessary to protecting critical infrastructure operations.[11]

As the adoption of critical and emerging technologies like AI grows, with data centers playing a pivotal role in training and deploying AI models, there may be an amplified need to fortify security measures within these facilities. Heightened safeguards and robust security protocols may be necessary to protect the large volumes of data being processed and analyzed in support of cutting-edge applications.[12] Understanding current data security practices and gaps will be necessary in continuing to promote and maintain an open, inclusive, secure, and resilient digital ecosystem.

As part of the Department of Commerce's mission to create the conditions for economic growth and opportunity, and in line with its statutory role as the President's principal advisor on telecommunication and information policy, the National Telecommunications and Information Administration (NTIA) seeks input on the potential risks, benefits, and implications of the anticipated growth in the data center sector, and the appropriate policy and regulatory approaches to foster sustainable, resilient and secure data center growth. The responses to this request will help inform a report that will address the hurdles and opportunities for this vital industry sector and will provide policy recommendations for actions the federal government can take to help foster the sector's growth in a manner that is safe, sustainable, secure, and in service of the American people.

NTIA is issuing the Request for Comment in coordination with the Department of Energy (DOE), given DOE's mission to ensure American's security and prosperity through addressing energy challenges with science and technology solutions. Given the significant energy needs of data centers, DOE has a strong interest in understanding and supporting growth in the data center sector (See *https://www.energy.gov/policy/articles/clean-energy-resources-meet-data-center-electricity-demand*). DOE may use the responses from the request to inform the development of strategies, programs, and other actions to support deployment of technologies and solutions to address data center energy needs.

Instructions for Commenters

Through this Request for Comment, we hope to gather information on the following questions. These are not exhaustive, and commenters are invited to provide input on relevant questions not asked below. Commenters are not required to respond to all questions. When responding to one or more of the questions below, please note in the text of your response the number of the question to which you are responding. Commenters should include a page number on each page of their submissions. Commenters are welcome to provide specific actionable proposals, rationales, and relevant facts.

Questions

1. What current and future challenges and opportunities do commercially owned or operated data centers in the United States face in supplying computing power required by critical and emerging technologies, such as AI?

2. What are critical market considerations for the data center industry seeking to modernize or expand their footprint?

a. Please describe key considerations such as: access to key markets, customer demand, access to renewable energy, data residency requirements, available high-speed broadband telecommunications infrastructure, access to workforce, government incentives, land or water availability, power grid connectivity, low power costs, or any other key considerations.

b. What role does competition between hyperscalers play in the modernization or expansion of the data center industry? Are there barriers for new hyperscalers entering the marketplace? Can those barriers be reduced to promote competition? What are the barriers for customers to switching data centers service providers?

c. What key regulatory barriers exist at the federal, state, local, tribal, and territorial level?

d. What existing private or public programs, initiatives, or incentives effectively drive data center modernization or investment within the United States?

e. What role or actions, if any, should be taken by the private sector, civil society or the U.S. government to mitigate potential barriers to, or foster opportunities for, data center market entry, growth and modernization?

f. What are the causes of foreign, exogenous forces, if any, pulling data center market opportunity away from the United States?

g. How might data centers' modernization or investment affect other markets and industries?

h. What role or actions, if any, should be taken by the private sector, civil society or the U.S. government to address any inefficiencies due to market externalities or market failures?

3. As demand for computing power and data processing increases, what are the potential societal impacts (*e.g.,* communities, environment, customers)—both positive and negative—of data center modernization or investment?

a. How might rising demand for data centers affect operational costs (*i.e.,* through increases in land, energy, water, and equipment costs)? Is an imbalance between demand and supply expected? How might changes to operational costs disproportionately affect small and medium-sized businesses compared to larger enterprises?

b. How might growth in the U.S. data center industry result in increases in energy demand? How might it impact the environment? How can data center-related greenhouse gas emissions be managed to address concerns related to climate change?

c. How might data centers' modernization or investment affect disadvantaged communities or groups, including rural communities, in their sites of operation?

White Paper. EPRI, May 2024. *https://restservice.epri.com/publicdownload/000000003002028905/0/Product*.

[9] Mondal, S., Fashat, B. F., Rajbongshi, D., Mohammad Masum, K. E., & Islam, M. M. (2023). GEECO: Green data centers for energy optimization and carbon footprint reduction. Sustainability, 15(21), 15249. doi: *https://doi.org/10.3390/su152115249*.

[10] U.S. Department of Commerce and Department of Homeland Security, ''Assessment of the Critical Supply Chains Supporting the U.S. Information and Communications Technology Industry,'' (February 2022). *https://www.dhs.gov/sites/default/files/2022-02/ICT%20Supply%20Chain%20Report_0.pdf*.

[11] U.S. Department of Homeland Security, ''Advisory Memorandum on Ensuring Essential Critical Infrastructure Workers' Ability to Work During the Covid-19 Response,'' (August 2021). *https://www.cisa.gov/sites/default/files/publications/essential_critical_infrastructure_workforce-guidance_v4.1_508.pdf*.

[12] *See* Tim Fist, Michael Depp, and Caleb Withers ''Response to OSTP ''National Priorities for Artificial Intelligence Request for Information.'' *Center for New American Security* (July 20, 2023). *https://www.cnas.org/publications/commentary/ostp-national-priorities-for-artificial-intelligence*.

d. What role or actions, if any, should be taken by the private sector, civil society or the U.S. government to address any outcomes stemming from data center modernization or investment in disadvantaged communities or small and medium-sized businesses?

4. What are the supply chain risks, vulnerabilities, and threats to data center modernization, investment, growth or continuity?

a. What supply chain interdependencies are critical to ensuring availability of the critical IT/OT components within data centers? What IT/OT equipment supply chain shortages, if any, might hinder the development of data centers in the United States?

b. Are data centers experiencing shortages of fiber optic cable, chips, or any other equipment that may hinder data center development in the United States?

c. How are data centers approaching and planning for the transition to modern data center models and architectures (*e.g.,* edge computing, AI-enabled, software-defined infrastructure, or digital coherent optics)?

d. How prevalent is the use of open-source software in critical IT/OT systems in data centers in the United States? What steps or processes are undertaken by data center operators to ensure the quality and security of the open-source software?

e. Who are the major suppliers (both foreign and domestic) of data center hardware, software, and services? What can the U.S. government do to bolster smaller suppliers?

f. Do any suppliers based outside of the United States or with relevant manufacturing operations occurring outside of the United States play systemic roles in providing components utilized in U.S. data centers?

5. What requirements, standards, and supply chain risk management best practices do data centers operators or customers have in place?

a. How do data centers operators or customers ensure that untrusted or counterfeit IT/OT components do not make their way into U.S. data center facilities?

b. What auditing processes for IT/OT equipment are used by data center operators or customers (*i.e.,* software bill of materials)? Are there barriers to performing IT/OT equipment audits?

c. How do data center operators or customers vet IT/OT equipment suppliers, providers or vendors?

d. What controls do data centers operators or customers have in place to monitor vulnerabilities in legacy equipment?

e. How do data centers perform contingency planning to ensure supply chain resiliency in the face of disruption? How do data center operators select diverse geographical areas of operation to ensure business continuity? How do data centers integrate alternative power sources in case of disruption, including backup generators that can power the data center up to 30 days?

6. Are there workforce challenges inhibiting growth in the data center industry? Is the data center industry experiencing a shortage of network engineers, cybersecurity professionals, construction workers, or any other types of professionals?

a. What opportunities exist for partnering or collaborating with the U.S. government, including federally funded research and development centers (FFRDC) and University Affiliated Research Centers (UARCs), to help address data center challenges to accessing skilled workforce?

7. What challenges do data centers face in accessing power for their facilities? What novel solutions are data center operators exploring or implementing to ensure access to power?

a. Can data centers get sufficiently reliable power from utilities? How do data centers decide whether to install backup power, and how do they design and size backup power sources?

b. What initiatives are data centers exploring as alternatives to grid connected power and traditional cooling solutions in their facilities? Are data centers facing obstacles in these efforts?

c. What initiatives are data centers exploring (*e.g.,* net zero efforts) to mitigate greenhouse gas emissions from energy use? Are data centers facing obstacles in these efforts?

d. What are the most effective innovations in data center cooling/reduction in power usage effectiveness (*e.g.,* networking innovations, silicon photonics)?

e. Can data center backup power generation be used to participate in utility demand response programs?

f. Are there opportunities for new tariff structures to help connect large loads to the grid while mitigating the risk of cost shifts to other electricity customers?

8. What voluntary guidelines, domestic regulations, or frameworks are currently in place or should be implemented to help manage data security risks in data centers while also maximizing the benefits of secure data processing and storage?

a. What security controls do data center operators have in place to protect customer data? What governance mechanisms do data centers use to oversee compliance? How could data center operators or customers improve security controls?

b. What are the key obstacles for data center operators to improve security? Are factors like competitive pressure, lack of demand, lack of cybersecurity professionals, or lack of security frameworks or regulations obstacles to improving security?

c. Data center operators and cloud service providers often rely on a shared responsibility model to outline security responsibilities between the customer and the data center or cloud service provider.[13] How could data center operators, cloud service providers or customers improve the shared responsibility model?

d. How do data center operators address cyber incidents and breaches? Are there any cybersecurity incident reporting measures that would help increase data center security? What governmental support would help operators and developers achieve greater security?

e. What tools are data center operators using or experimenting with to ensure next generation data security practices are scalable?

f. What kind of entities should take a leadership role in sharing information about data security risks to data centers and solutions to addressing them? Should the type of entity vary by sector, and, if so, how?

9. What are the security considerations for data centers running or training frontier AI models [14] or integrating AI capabilities within existing infrastructure?

a. Have data centers implemented any novel physical or cybersecurity measures in data centers' running or training frontier AI models that they have not implemented for other data center applications?

b. What cybersecurity requirements, technical controls, or risk assessments should be implemented to ensure adequate data security practices in data centers that run and train frontier AI models? Should these requirements

[13] *See* NIST Special Publication 500–292 ''NIST Cloud Computing Reference Architecture,'' (2011) *https://nvlpubs.nist.gov/nistpubs/Legacy/SP/nistspecialpublication500-292.pdf.*

[14] The term ''frontier AI models'' refers to models that are overall more powerful than any currently released models (*e.g.,* GPT–4, Claude 2, PaLM 2, Titan and, in the case of image generation, DALL–E 2). *See* White House, ''Ensuring Safe Secure and Trustworthy AI,'' (July 2023). *https://www.whitehouse.gov/wp-content/uploads/2023/07/Ensuring-Safe-Secure-and-Trustworthy-AI.pdf.*

scale for less powerful versus more powerful AI models, and if so, how?

c. How economically feasible is it for data center operators to maintain physical separation between infrastructure used for frontier AI training or for inference and other applications? What effects, if any, would this achieve beyond logical separation?

d. Are there any economic or technical reasons not to keep highly sensitive data, or frontier AI model weights, encrypted at rest, in use and in transit? Are there economical or technological barriers that would hinder the deployment of other data security measures that would protect highly sensitive data, such as frontier AI model weights?

e. What data security measures are data centers implementing as they integrate AI applications and capabilities within their existing infrastructure (*e.g.,* power management, energy efficiency)?

10. What training tools and exercises do data centers use to train personnel and validate the efficacy of their data security posture?

a. What forms of on-the-job data security training do data centers provide to their staff?

b. How do data centers evaluate their employees' data security competencies? Describe any industry certifications that data center operators prioritize to indicate competence in data security.

c. Describe how data centers work with third parties in red-teaming efforts to simulate outside attacks. How often do data centers provide third parties' access? What level of access do data centers provide to third parties?

11. What role or actions, if any, should be taken by the Department of Commerce and, more generally, the federal government, to address the challenges to and opportunities for fostering the development of data centers?

Stephanie Weiner,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2024–19524 Filed 9–3–24; 8:45 am]

BILLING CODE 3510–60–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; Applicant Operational and Financial Survey

AGENCY: Corporation for National and Community Service.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Corporation for National and Community Service, operating as AmeriCorps, has submitted a public information collection request (ICR) entitled Applicant Operational and Financial Survey for review and approval in accordance with the Paperwork Reduction Act.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by October 4, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of this ICR, with applicable supporting documentation, may be obtained by calling AmeriCorps, Alex Delaney, at 202–528–2705, or by email at *ADelaney@americorps.gov.*

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 May 9, 2024 at 89 FR 39604. The comment period ended July 8, 2024. No public comments were received from that notice.

Title of Collection: Applicant Operational and Financial Survey.

OMB Control Number: 3045–0102.

Type of Review: Renewal.

Respondents/Affected Public: Businesses and Organizations.

Total Estimated Number of Annual Responses: 1,500.

Total Estimated Number of Annual Burden Hours: 3,000.

Abstract: This information collection consists of the questions applicants answer related to operational and financial management when applying for grant funding for a new project or performance period. It is not required for grant continuation or renewal applicants. Applicants respond to the questions included in these instructions when applying for funding in certain grant competitions. AmeriCorps will use the information collection to support pre-award risk assessment of applicants for grant funding. AmeriCorps also seeks to continue using the currently approved information collection until the revised information collection is approved by OMB. The currently approved information collection is due to expire on September 30, 2024.

Caroline Fernandez,

Acting Director, Office of Monitoring.

[FR Doc. 2024–19841 Filed 9–3–24; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF EDUCATION

Free Application for Federal Student Aid (FAFSA®) Information To Be Verified for the 2025–2026 Award Year

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: For each award year, the Secretary publishes in the **Federal Register** a notice announcing the FAFSA information that an institution and an applicant may be required to verify, as well as the acceptable documentation for verifying FAFSA information. This is the notice for the 2025–2026 award year, Assistance Listing Numbers 84.007, 84.033, 84.063, and 84.268.

FOR FURTHER INFORMATION CONTACT: Vanessa Gomez. Telephone: (202) 453–6708. Email: *Vanessa.Gomez@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION: If the Secretary selects an applicant for verification, the applicant's Institutional Student Information Record (ISIR) includes flags that indicate (1) that the applicant has been selected by the Secretary for verification and (2) the Verification Tracking Group (VTG) in which the applicant has been placed. The VTG indicates which FAFSA information needs to be verified for the applicant and, if appropriate, for the applicant's parent(s) or spouse. The FAFSA Submission Summary indicates that the applicant's FAFSA information has been selected for verification and direct the applicant to contact the institution for further instructions for completing the verification process.

In accordance with the Fostering Undergraduate Talent by Unlocking Resources for Education (FUTURE) Act, much of the applicant's tax return information, including information from their spouse and/or parents, will come directly from the IRS and will not be viewable by the student and other contributors. Such information that is transferred and not edited will essentially be verified and need no further verification. However, for instances where income and tax information cannot be obtained directly from the IRS, the applicant will have to manually enter the necessary information into the FAFSA, and that manual entry may be subject to verification.

The following chart lists, for the 2025–2026 award year, the FAFSA information that an institution and an applicant and, if appropriate, the applicant's parent(s) or spouse may be required to verify under 34 CFR 668.56. The chart also lists the acceptable documentation that must, under § 668.57, be provided to an institution for that information to be verified.

FAFSA information	Acceptable documentation
Income information for tax filers	Items a through h, if transferred directly from the IRS and unchanged, do not need to be verified. When information is not transferred from the IRS, and for item i, the following documentation is sufficient for verification:
(a) Adjusted Gross Income (AGI) (b) Income Earned From Work (c) U.S. Income Tax Paid (d) Untaxed Portions of IRA Distributions (e) Untaxed Portions of Pensions (f) IRA Deductions and Payments (g) Tax Exempt Interest Income (h) Education Credits (i) Foreign Income Exempt from Federal Taxation	(1) A transcript [1] obtained at no cost from the IRS or other relevant tax authority of a U.S. territory (Guam, American Samoa, the U.S. Virgin Islands) or commonwealth (Puerto Rico and the Northern Mariana Islands), or a foreign government, that lists 2023 tax account information of the tax filer; or (2) A copy of the income tax return [1] and the applicable schedules [1] that were filed with the IRS or other relevant tax authority of a U.S. territory, or a foreign government that lists 2023 tax account information of the tax filer. (3) If item d or e contains a rollover, a signed statement confirming the amount of the rollover in the untaxed pension or IRA distribution. Note that even if d or e are transferred as FTI, rollovers still need to be verified as they are manually entered.
Income information for tax filers with special circumstances.	
(a) Adjusted Gross Income (AGI) (b) Income Earned from Work (c) U.S. Income Tax Paid (d) Untaxed Portions of IRA Distributions (e) Untaxed Portions of Pensions (f) IRA Deductions and Payments (g) Tax Exempt Interest Income (h) Education Credits (i) Foreign Income Exempt from Federal Taxation	(1) For a student, or the parent(s) of a dependent student, who filed a 2023 joint income tax return and whose income is used in the calculation of the applicant's student aid index and who at the time the FAFSA was completed was separated, divorced, widowed, or married to someone other than the individual included on the 2023 joint income tax return— (a) A transcript [1] obtained from the IRS or other relevant tax authority that lists 2023 tax account information of the tax filer(s); or (b) A copy of the income tax return [1] and the applicable schedules [1] that were filed with the IRS or other relevant tax authority that lists 2023 tax account information of the tax filer(s); and (c) A copy of IRS Form W–2 [2] for each source of 2023 employment income received or an equivalent document.[2] (2) For an individual who is required to file a 2023 IRS income tax return and has been granted a filing extension by the IRS beyond the automatic six-month extension for tax year 2023— (a) A signed statement listing the sources of any 2023 income and the amount of income from each source; (b) A copy of the IRS's approval of an extension beyond the automatic six-month extension for tax year 2023; [3] (c) A copy of IRS Form W–2 [2] for each source of 2023 employment income received or an equivalent document; [2] and

FAFSA information	Acceptable documentation
	(d) If self-employed, the signed statement must indicate the amount of estimated AGI and U.S. income tax paid for tax year 2023. (3) If d or e contains a rollover, a signed statement confirming the amount of the rollover in the untaxed pension or IRA distribution. Note that even if d or e are transferred as FTI, rollovers still need to be verified as they are manually entered. *Note:* An institution may require that, after the income tax return is filed, an individual granted a filing extension beyond the automatic 6-month extension submit tax information by obtaining a transcript [1] from the IRS, or by submitting a copy of the income tax return [1] and the applicable schedules [1] that were filed with the IRS that lists 2023 tax account information. When an institution receives such information, it must be used to reverify the income and tax information reported on the FAFSA. (4) For an individual who was the victim of IRS tax-related identity theft— • A copy of the signed 2023 income tax return [1] and applicable schedules [1] the individual filed with the IRS; and • An IRS 4674C letter (a letter from the IRS acknowledging the identity theft) or a statement signed and dated by the tax filer indicating that he or she was a victim of IRS tax-related identity theft and the IRS is aware of it. (5) For an individual who filed an amended income tax return with the IRS, a signed copy of the IRS Form 1040X that was filed with the IRS for tax year 2023 or documentation from the IRS that include the change(s) made to the tax filer's 2023 tax information, in addition to one of the following— (a) Income and tax information from the IRS on an ISIR record with all tax information from the original tax return; (b) A transcript obtained from the IRS that lists 2023 tax account information of the tax filer(s); or (c) A signed copy of the 2023 IRS Form 1040 and the applicable schedules that were filed with the IRS.
Income information for non-tax filers	For an individual who has not filed and, under IRS or other relevant tax authority rules (*e.g.*, the Republic of the Marshall Islands, the Republic of Palau, the Federated States of Micronesia, a U.S. territory or commonwealth or a foreign government), is not required to file a 2023 income tax return—
Income Earned from Work	(1) A signed and dated statement certifying— (a) That the individual is not required to file a 2023 income tax return; and (b) The sources and amounts of earnings, other income, and resources that supported the individual(s) for the 2023 tax year; (2) For individuals without a Social Security number (SSN), Individual Taxpayer Identification Number (ITIN), or Employer Identification Number (EIN), a signed and dated statement certifying that they do not have an SSN, ITIN, or EIN; (3) A copy of IRS Form W–2 [2] for each source of 2023 employment income received or an equivalent document; [2] and (4) Except for dependent students, verification of non-filing [4] for individuals who would file a return with a relevant tax authority other than the IRS dated on or after October 1, 2024. *Note:* The collection of documentation to verify income earned from work is also used to determine if the applicant (and the applicable spouse or parent) was required to file a U.S. income tax return for the 2023 tax year.
Family Size	Since family size is based on the number of individuals listed and claimed on the IRS tax return, if transferred directly from the IRS and unchanged, family size does not need to be verified. However, when information is not transferred from the IRS, or if the applicant updated their family size when presented with the opportunity to do so on their FAFSA, the following documentation is sufficient for verification: A statement signed by the applicant and, if the applicant is a dependent student, by one of the applicant's parents, that lists the name and age of each family member for the 2025–2026 award year and the relationship of that family member to the applicant. *Note:* Verification of family size is not required if—

FAFSA information	Acceptable documentation
	• For a dependent student, the family size indicated on the ISIR is two and the parent is single, separated, divorced, or widowed, or the household size indicated on the ISIR is three and the parents are married, remarried or unmarried and living together; or • For an independent student, the family size indicated on the ISIR is one and the applicant is single, separated, divorced, or widowed, or the household size indicated on the ISIR is two and the applicant is married or remarried; or • The applicant manually updated their family size and the number is the same as the family size derived from data transferred directly from the IRS.
Identity/Statement of Educational Purpose	(1) An applicant must appear in person and present the following documentation to an institutionally authorized individual to verify the applicant's identity: (a) An unexpired, valid, government-issued photo identification [5] such as, but not limited to, a driver's license, non-driver's identification card, other State-issued identification, or U.S. passport. The institution must maintain an annotated copy of the unexpired valid government-issued photo identification that includes— i. The date the identification was presented; and ii. The name of the institutionally authorized individual who reviewed the identification; and (b) A signed statement using the exact language as follows, except that the student's identification number is optional if collected elsewhere on the same page as the statement: Statement of Educational Purpose I certify that I ___am (Print Student's Name) the individual signing this Statement of Educational Purpose and that the Federal student financial assistance I may receive will only be used for educational purposes and to pay the cost of attending for 2025–2026. (Name of Postsecondary Educational Institution) (Student's Signature)___ (Date)__ (Student's ID Number) (2) If an institution determines that an applicant is unable to appear in person to present an unexpired valid government-issued photo identification and execute the Statement of Educational Purpose, the applicant must provide the institution with— (a) A copy of an unexpired valid government-issued photo identification,[5] such as, but not limited to, a driver's license, non-driver's identification card, other State-issued identification, or U.S. passport that is acknowledged in a notary statement or that is presented to a notary; and (b) An original notarized statement signed by the applicant using the exact language as follows, except that the student's identification number is optional if collected elsewhere on the same page as the statement: Statement of Educational Purpose I certify that I ___ am (Print Student's Name) the individual signing this Statement of Educational Purpose and that the Federal student financial assistance I may receive will only be used for educational purposes and to pay the cost of attending___for 2025–2026. (Name of Postsecondary Educational Institution) (Student's Signature)___(Date)__ (Student's ID Number)

[1] This footnote is applicable whenever an income tax return, the related schedules, or transcript is mentioned in the above chart.

The copy of the 2023 income tax return must include the signature of the tax filer, or one of the filers of a joint income tax return, or the signed, stamped, typed, or printed name and address of the preparer of the income tax return and the preparer's Social Security number, Employer Identification Number, or Preparer Tax Identification Number.

For a tax filer who filed an income tax return other than an IRS form, such as a foreign or Puerto Rican tax form, the institution must use the income information (converted to U.S. dollars) from the lines of that form that correspond most closely to the income information reported on a U.S. income tax return.

An individual who did not retain a copy of his or her 2023 tax account information, and for whom that information cannot be located by the IRS or other relevant tax authority, must submit to the institution—

a. Copies of all IRS Form W–2s for each source of 2023 employment income or equivalent documents; or

b. If the individual is self-employed or filed an income tax return with a government of a U.S. territory or commonwealth or a foreign government, a signed statement certifying the amount of AGI and income taxes paid for tax year 2023; and

c. Documentation from relevant tax authorities other than the IRS that indicates the individual's 2023 tax account information cannot be located; and

d. A signed statement that indicates that the individual did not retain a copy of his or her 2023 tax account information.

[2] An individual who is required to submit an IRS Form W–2 or an equivalent document but did not maintain a copy should request a duplicate from the employer who issued the original or from the government agency that issued the equivalent document. If the individual is unable to obtain a duplicate W–2 or an equivalent document in a timely manner, the institution may permit that individual to provide a signed statement, in accordance with 34 CFR 668.57(a)(6), that includes—
(a) The amount of income earned from work;
(b) The source of that income; and
(c) The reason why the IRS Form W–2, or an equivalent document, is not available in a timely manner.
[3] For an individual who was called up for active duty or for qualifying National Guard duty during a war or other military operation or national emergency, an institution must accept a statement from the individual certifying that he or she has not filed an income tax return or a request for a filing extension because of that service.
[4] If an individual is unable to obtain verification of non-filing from a relevant tax authority and, based upon the institution's determination, it has no reason to question the student's or family's good-faith effort to obtain the required documentation, the institution may accept a signed statement certifying that the individual attempted to obtain the verification of non-filing from the relevant tax authority and was unable to obtain the required documentation.
[5] An unexpired valid government-issued photo identification is one issued by the U.S. government, any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, a federally recognized American Indian and Alaska Native Tribe, American Samoa, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau.

The individual FAFSA items that an applicant must verify are based upon the Verification Tracking Group to which the applicant is assigned as outlined in the following chart.

Verification tracking flag	Verification tracking group name	FAFSA information required to be verified
V1	Standard Verification Group	*Tax Filers* • Adjusted Gross Income. • Income Earned From Work. • U.S. Income Tax Paid. • Untaxed Portions of IRA Distributions. • Untaxed Portions of Pensions. • IRA Deductions and Payments. • Tax Exempt Interest Income. • Education Tax Credits. • Foreign Income Exempt from Federal Taxation. *Non-Tax Filers* • Income Earned from Work. *Tax Filers and Non-Tax Filers* • Family Size.
V2	Reserved	N/A.
V3	Reserved	N/A.
V4	Custom Verification Group	• Identity/Statement of Educational Purpose.
V5	Aggregate Verification Group	*Tax Filers* • Adjusted Gross Income. • Income Earned From Work. • U.S. Income Tax Paid. • Untaxed Portions of IRA Distributions. • Untaxed Portions of Pensions. • IRA Deductions and Payments. • Tax Exempt Interest Income. • Education Tax Credits. • Foreign Income Exempt from Federal Taxation. *Non-Tax Filers* • Income Earned from Work. *Tax Filers and Non-Tax Filers* • Family Size. • Identity/Statement of Educational Purpose.
V6	Reserved	N/A.

Other Sources for Detailed Information

We provide a more detailed discussion on the verification process in the following resources that will be available on the Knowledge Center web page at *https://fsapartners.ed.gov/knowledge-center:*

• 2025–2026 Application and Verification Guide.

• 2025–2026 FAFSA Specifications Guide: Volume 6—ISIR Guide, Volume 7—Comment Codes.

• 2025–2026 COD Technical Reference.

• Program Integrity Information—Questions and Answers on Verification at *www2.ed.gov/policy/highered/reg/hearulemaking/2009/verification.html.*

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department

published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 1070a, 1070b–1070b-4, 1087a-1087j, and 1087–51 through 1087–58.

Nasser H. Paydar,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 2024–19786 Filed 9–3–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0082]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Rural, Insular, and Native Achievement Programs Progress Update Protocol

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before October 4, 2024.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Marcos Cerdeira, 202–453–5819.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Rural, Insular, and Native Achievement Programs Progress Update Protocol.

OMB Control Number: 1810–0762.

Type of Review: A revision of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 58.

Total Estimated Number of Annual Burden Hours: 58.

Abstract: This submission is a request for a revised information collection. The Rural, Insular, and Native Achievement Programs (RINAP) administers Section 1121 of Title I, Part A of the ESEA; CARES Act Outlying Areas; Title III of CRRSA Outlying Areas, Sections 2005 and 11006(2–3) of the ARP; Title V, Part B of the ESEA (Rural Education Achievement Program), Title VI, Part B of the ESEA (Native Hawaiian Education); Title VI, Part C of the ESEA (Alaska Native Education); and the Supporting Americas School Infrastructure program. Periodic progress updates, phone, virtual, or in-person conversations during a fiscal year with authorized representatives and project directors help ensure grantees are making progress toward meeting program goals and objectives. The information shared with RINAP helps inform the selection and delivery of technical assistance to grantees and aligns structures, processes, and routines so RINAP can monitor the connection between grant administration and intended outcomes. Progress updates also allow RINAP to proactively engage with grantees to identify potential compliance issues ahead of more comprehensive monitoring, decreasing the need for enforcement action and minimizing burden for grantees.

Dated: August 29, 2024.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–19799 Filed 9–3–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Advanced Scientific Computing Advisory Committee

AGENCY: Office of Science, Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the DOE Advanced Scientific Computing Advisory Committee (ASCAC). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, September 26, 2024; 10 a.m. to 5 p.m. EDT.

Friday, September 27, 2024; 10 a.m. to noon (12 p.m.) EDT.

ADDRESSES: Hilton Arlington National Landing, 2399 Richmond Highway, Arlington, VA 22202. Teleconference: Remote attendance of the ASCAC meeting will be possible via Zoom. Instructions will be posted on the ASCAC website at *https://science.energy.gov/ascr/ascac/* prior to the meeting and can also be obtained by contacting Christine Chalk by email at *christine.chalk@science.doe.gov* or by telephone at (301) 903–7486. Advanced registration is required.

FOR FURTHER INFORMATION CONTACT: Christine Chalk, Office of Advanced Scientific Computing Research; SC–ASCR/Germantown Building; U.S. Department of Energy; 1000 Independence Avenue SW, Washington, DC 20585–1290; Telephone (301) 903–7486; email at *christine.chalk@science.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the committee is to provide advice and guidance on a continuing basis to the Office of Science and the Department of Energy on scientific priorities within the field of advanced scientific computing research.

Purpose of the Meeting: This meeting is the semi-annual meeting of the Committee.

Tentative Agenda:

- View from Washington
- View from Germantown
- Update on ASCR Facilities

- Update on ASCR Research
- New Charge to review the Computational Science Graduate Fellowship
- The National Artificial Intelligence Research Resource (NAIRR)
- Critical and Emerging Technologies
- Highlights from the Exascale Science campaigns
- Technical presentations
- Public Comment (10-minute rule)

The meeting agenda includes an update on the budget, accomplishments, and planned activities of the Advanced Scientific Computing Research program; technical presentations from funded researchers and industry collaborations; updates from subcommittees, and there will be an opportunity for comments from the public. The meeting will conclude at noon (12 p.m.) (eastern time) on September 27, 2024. Agenda updates and presentations will be posted on the ASCAC website prior to the meeting: *https://science.osti.gov/ascr/ascac.*

Public Participation: The meeting is open to the public in-person and virtually. Individuals and representatives of organizations who would like to offer comments and suggestions may do so during the meeting. Approximately 30 minutes will be reserved for public comments. The time allotted per speaker will depend on the number who wish to speak but will not exceed ten minutes. If you have any questions or need a reasonable accommodation under the Americans with Disabilities Act for this event, please send your request to Christine Chalk at *christine.chalk@science.doe.gov,* up to two weeks, but no later than 48 hours, prior to the event. Closed captions will be enabled. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Those wishing to speak should submit their request at least five days before the meeting. Those not able to attend the meeting or who have insufficient time to address the committee are invited to send a written statement to Christine Chalk, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, email to *christine.chalk@science.doe.gov.*

Minutes: The minutes of this meeting will be available within 90 days on the Advanced Scientific Computing website at *https://science.osti.gov/ascr/ascac.*

Signing Authority: This document of the Department of Energy was signed on August 28, 2024, by David Borak, Committee Management Officer, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC on August 28, 2024.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2024–19729 Filed 9–3–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Electric Vehicle Working Group

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: The Department of Energy hereby publishes a notice of open meeting of the Electric Vehicle Working Group (EVWG). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, September 30, 2024; 1 to 5 p.m. eastern time. Start and end times may change slightly. Please visit *https://driveelectric.gov/ev-working-group* for the most up to date agenda.

ADDRESSES: This meeting will be held virtually. Members of the public who would like to participate may do so virtually and must register at: *https://driveelectric.gov/ev-working-group.*

FOR FURTHER INFORMATION CONTACT: Dr. Rachael Nealer, Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; email: *evwg@ee.doe.gov;* telephone: (202) 586–3916.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The Electric Vehicle Working Group (EVWG) was formed by the Joint Office of Energy and Transportation to make recommendations to the Secretaries of Energy and Transportation regarding the development, adoption, and integration of light-, medium-, and heavy-duty electric vehicles (EVs) into the U.S. transportation and energy systems.

Tentative Agenda: The meeting will start at 1 p.m. eastern time on Monday, September 30, 2024. The tentative meeting agenda includes: a report out and discussion lead by each of the three subcommittees; medium/heavy-duty adoption, grid integration, charging network. Meeting materials and a link to registration can be found here: *https://driveelectric.gov/ev-working-group.*

Public Participation: This virtual meeting is open to the public. Individuals who would like to attend must register at: *https://driveelectric.gov/ev-working-group.*

Individuals and representatives of organizations who would like to offer comments and suggestions may do so during the public comment portion of the meeting. Approximately 20 minutes will be reserved for public comments at the end of the meeting. Time allotted per speaker will depend on the number who wish to speak but will not exceed three minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Those wishing to speak during the public comment period should indicate so within their registration.

Those not able to attend the meeting or who have insufficient time to address the committee are invited to send a written statement to Dr. Rachael Nealer, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, or email: *evwg@ee.doe.gov.*

Minutes: The minutes of the meeting will be available on *https://driveelectric.gov/ev-working-group* or by contacting Dr. Nealer. She may be reached at the above postal address or email address.

Signing Authority: This document of the Department of Energy was signed on August 29, 2024, by David Borak, Committee Management Officer, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on August 29, 2024.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2024–19845 Filed 9–3–24; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[R01–OW–2024; FRL–12198–01–R1]

Program Requirement Revisions Related to the Public Water System Supervision Program for the State of Vermont

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Vermont is revising its approved Public Water System Supervision (PWSS) program to meet the requirements of the Safe Drinking Water Act (SDWA).

DATES: All interested parties may request a public hearing for any of the above EPA determinations. A request for a public hearing must be submitted by October 4, 2024 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator.

However, if a substantial request for a public hearing is made by this date, a public hearing will be held. If no timely and appropriate request for a hearing is received, and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective October 4, 2024.

Any request for a public hearing shall include the following information: (1) the name, address, and telephone number of the individual organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination; (3) information that the requesting person intends to submit at such hearing; and (4) the signature of the individual making the request, or if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, at the following office(s) below. Please call to arrange a visit.

U.S. Environmental Protection Agency, Water Division, 5 Post Office Square, Suite 100, Boston, MA 02109–3912

For state-specific documents:

Vermont Agency of Natural Resources, Department of Environmental Conservation, Drinking Water & Groundwater Protection Division, Davis Building, 4th Floor, One National Life Drive, Montpelier, Vermont 05620–3521

FOR FURTHER INFORMATION CONTACT: Stafford Madison, U.S. EPA Region 1, Water Division, telephone (617) 918–1622. *Madison.Stafford@epa.gov.*

SUPPLEMENTARY INFORMATION: The State of Vermont has adopted drinking water regulations for the Revised Total Coliform Rule (78 FR 10269) promulgated on February 13, 2013. After review of documentation submitted by the State, the Environmental Protection Agency (EPA) has determined that the State's rule is no less stringent than the corresponding federal regulation. EPA, therefore, intends to approve the state's PWSS program revision for this rule.

Authority: Section 1401 (42 U.S.C. 300f) and Section 1413 (42 U.S.C. 300g–2) of the Safe Drinking Water Act, as amended (1996), and (40 CFR 142.10) of the National Primary Drinking Water Regulations.

Dated: August 27, 2024.

Karen McGuire,

Acting Regional Administrator, EPA Region 1—New England.

[FR Doc. 2024–19749 Filed 9–3–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2023–0606; FRL–11581–05–OCSPP]

Public Engagement Webinars; Pre-Prioritization and Consideration of Existing Chemical Substances for Future Prioritization Under the Toxic Substances Control Act (TSCA); Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: In the **Federal Register** of August 28, 2024, EPA issued a notice to announce the scheduling of two virtual public meetings to provide information regarding existing chemical pre-prioritization and prioritization activities under the Toxic Substances Control Act (TSCA). That notice included an incorrect link in **ADDRESSES** for use in registering for the webinar and an incorrect link in in Unit II.D.3. to use for accessing the webinar website. This document provides the correct links.

DATES:

Webinars: Monday, September 30, 2024, (2 p.m.–4 p.m. ET), and Tuesday, October 1, 2024 (10 a.m. 12 p.m. ET).

Registration: You must register on or before September 25, 2024, to receive the webcast meeting link and audio teleconference information before the meeting, and to make oral comments during the meeting.

Special accommodations: Submit requests for special accommodations on or before September 13, 2024, to allow EPA time to process the request before the meeting.

Oral comments: To provide an oral comment during the webinar, register on or before September 25, 2024.

Written comments: Following the public webinars, written comments may be submitted during a 30-day public comment period that will open following the second public webinar on October 1, 2024, and will end on October 31, 2024.

ADDRESSES:

Webinar: Register online for each webinar as follows:

- For the webinar on Monday, September 30, 2024, register at: *https://usepa.zoomgov.com/meeting/register/vJItduuoqzgvH1QTU561mR9PaHoG91WhfnA;*
- For the webinar on Tuesday, October 1, 2024, register at: *https://usepa.zoomgov.com/meeting/register/vJIsf-CrrzMqHJshuXmH7qTusPv-lURNA4M.*

Special Accommodations: Please submit these requests to the person listed under **FOR FURTHER INFORMATION CONTACT**.

Oral comments: Register with the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written comments: Submit written comments, identified by docket identification (ID) number EPA–HQ–OPPT–2023–0606, online at *https://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. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Sarah Soliman, Office of Pollution Prevention and Toxics (7201M), Office of Chemical Safety and Pollution Prevention (OCSPP), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 748–0251 email address: *soliman.sarah@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA issued a notice in the **Federal Register** of August 28, 2024 (89 FR 68894) (FRL–

11581–04–OCSPP), to announce the scheduling of two virtual public meetings to provide information regarding existing chemical pre-prioritization and prioritization activities under the Toxic Substances Control Act (TSCA). Subsequent to the publication of that notice, EPA identified that two links that were provided in that document are incorrect:

The link provided in **ADDRESSES** for use in registering for the webinar to be held on Tuesday, October 1, 2024, is corrected to read: *https://usepa.zoomgov.com/meeting/register/vJIsf-CrrzMqHJshuXmH7qTusPv-lURNA4M.*

The link provided in Unit II.D.3., for use to access the webinar information website is corrected to read: *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/us-epa-webinar-next-round-chemical-substances-being.*

Authority: 15 U.S.C. 2601 *et seq.*

Dated: August 29, 2024.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2024–19853 Filed 9–3–24; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Performance Review Board—Appointment of Members

AGENCY: U.S. Equal Employment Opportunity Commission (EEOC).

ACTION: Notice of performance review board appointments.

SUMMARY: This notice announces the appointment of those individuals who have been selected to serve as members of the Performance Review Board (PRB). The PRB is comprised of a Chairperson and career senior executives that meet annually to review and evaluate performance appraisal documents. The PRB provides a written recommendation to the appointing authority for final approval of each SES and SL performance rating, performance-based pay adjustment, and performance award. The PRB is advised by the Office of the Chief Human Capital Officer, Office of Legal Counsel, and Office for Civil Rights, Diversity and Inclusion to ensure compliance with laws and regulations. Designated members will serve a 12-month term.

DATES: The board membership is applicable beginning on November 1, 2024.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Pierre, Chief Operating Officer, EEOC, 131 M Street NE, Washington, DC 20507, (202) 921–3260.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the names and position of the EEOC PRB members are set forth below:

Mr. Dexter Brooks, Chair, Associate Director, Office of Federal Sector Programs, EEOC

Mr. Bradley Anderson, Director, Birmingham District, EEOC

Ms. Pierrette McIntire, Chief Information Officer, EEOC

Ms. Anna Park, Regional Attorney, Los Angeles, EEOC

Ms. Nancy Sienko, Director, San Francisco District, EEOC

Mr. Richard Toscano, Director, Equal Employment Opportunity Staff, U.S. Department of Justice

Ms. Faye Williams, Regional Attorney, Memphis, EEOC

Mr. Raymond Peeler, Associate Legal Counsel, EEOC (Alternate)

Ms. Gwendolyn Reams, Associate General Counsel, EEOC (Alternate)

By the direction of the Commission.

Cynthia G. Pierre,

Chief Operating Officer.

[FR Doc. 2024–19737 Filed 9–3–24; 8:45 am]

BILLING CODE 6570–01–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Existing Collection

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of Information Collection—Proposed revision of State and Local Government Information Report (EEO–4).

SUMMARY: In accordance with the Paperwork Reduction Act (PRA), the Equal Employment Opportunity Commission (EEOC or Commission) announces that it intends to submit to the Office of Management and Budget (OMB) a request for a three-year PRA approval of revisions to the currently approved State and Local Government Information Report (EEO–4).

DATES: Written comments on this notice must be submitted on or before November 4, 2024.

ADDRESSES: You may submit comments by any of the following methods—please use only one method:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions on the website for submitting comments.

Mail: Comments may be submitted by mail to Raymond Windmiller, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 131 M Street NE, Washington, DC 20507.

Fax: Comments totaling six or fewer pages can be faxed to (202) 663–4114. Receipt of fax transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 921–2815 (voice) or (800) 669–6820 (TTY).

Instructions: All comments received must include the agency name and docket number. Comments will be posted without change to *http://www.regulations.gov,* including any personal information provided. However, the EEOC reserves the right to refrain from posting libelous or otherwise inappropriate comments, including those that contain obscene, indecent, or profane language; that contain threats or defamatory statements; that contain hate speech directed at race, color, religion, sex, national origin, age, disability, or genetic information; or that promote or endorse services or products.

Copies of comments received in response to this notice are also available for review at the Commission's library by appointment only at 131 M Street NE, Suite 4NW08R, Washington, DC 20507. Members of the public may schedule an appointment by emailing *OEDA@eeoc.gov.*

FOR FURTHER INFORMATION CONTACT: Paul Guerino, Director, Data Development and Information Products Division, Office of Enterprise Data and Analytics (OEDA), Equal Employment Opportunity Commission, 131 M Street NE, Washington, DC 20507; (202) 921–2928 (voice), (800) 669–6820 (TTY) or email at *OEDA@eeoc.gov.* Requests for this notice in an alternative format should be made to the EEOC's Office of Communications and Legislative Affairs at (202) 921–3191 (voice), (800) 669–6820 (TTY), or (844) 234–5122 (ASL Video Phone).

SUPPLEMENTARY INFORMATION: Since 1973, the EEOC has required EEO–4 filers to submit workforce demographic data. All state and local governments that are covered by Title VII of the Civil Rights Act of 1964, as amended (Title VII) [1] and that have 100 or more employees are required to file the workforce demographic data.

Pursuant to the PRA and OMB regulations found at 5 CFR 1320.8(d)(1), the Commission solicits public comment on its intent to seek a three-year approval of revisions to the

[1] 42 U.S.C. 2000e, *et seq.*

currently approved EEO–4 to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's functions, including whether the information will have practical utility; (2) Evaluate the accuracy of the Commission'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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Based on data from the most recent EEO–4 data collection reporting year (*i.e.,* 2023), as well as ongoing updates by the EEOC to the EEO–4 frame (*i.e.,* filer roster or master list), the EEOC anticipates the total number of filers submitting an EEO–4 report may increase to 6,607 per biennial collection. Accordingly, the burden estimates in this Notice are based on this revised estimate of the number of filers.

Overview of Information Collection

Collection Title: State and Local Government Information Report (EEO–4).

OMB Number: 3046–0008.

Frequency of Report: Biennial.

Type of Respondent: State and local governments that have 100 or more employees and meet certain criteria.

Description of Affected Public: State and local governments that have 100 or more employees and meet certain criteria.

Reporting Hours: 18,094 hours per biennial collection.

Respondent Burden Hour Cost: $563,868.27 per biennial collection.

Federal Cost: $327,440.12 per biennial collection.

Number of Filers: 6,607 per biennial collection.[2]

Number of Responses: 6,607 per biennial collection.

Number of Forms: 1.

Form Number: EEOC Form 164.

Abstract: Section 709(c) of Title VII requires employers to make and keep records relevant to the determination of whether unlawful employment practices have been or are being committed, to preserve such records, and to produce reports as the Commission prescribes by regulation or order.[3] Pursuant to this statutory authority, the EEOC issued regulations prescribing the reporting and related record retention requirements for state and local governments.[4] The regulations require state and local governments to make or keep all records necessary for completion of an EEO–4 submission and retain those records for three years, and also require EEO–4 filers to retain a copy of each filed EEO–4 report for three years. These recordkeeping requirements are part of standard administrative practices, and as a result, the EEOC believes that any impact on burden would be negligible and nearly impossible to quantify. Additionally, the regulations require state and local governments to file executed copies of the EEO–4 in conformity with the directions set forth in the form and accompanying instructions. Under this authority, state and local governments with 100 or more employees are required to report biennially[5] the number of individuals they employ by job category and by sex, salary band, and race or ethnicity.

Please note that on March 28, 2024, OMB published revisions, the first since 1997, to its *Statistical Policy Directive No. 15: Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity.*'' *See https://spd15revision.gov/.* The revisions include, for example, using a single combined race and ethnicity question and adding Middle Eastern or North African (MENA) as a new minimum reporting category. Federal agencies, including the EEOC, are required to bring their data collections into compliance with these standards by March 28, 2029. Because the EEOC's current EEO–4 PRA clearance expires January 31, 2025, the agency is not proposing updates to its collection of race and ethnicity data under this Notice in order to provide filers with sufficient notice of the revised standards and to give the EEOC sufficient time to implement the revisions across its EEO collections.

The EEOC currently collects EEO–4 data electronically through a web-based data collection application (*i.e.,* portal) referred to as the *EEO–4 Online Filing System* (*OFS*).[6] Filers must submit their data electronically to the web-based portal by either manual entry or by uploading a data file. The individual EEO–4 reports are confidential.[7] The EEOC uses EEO–4 data to investigate charges of employment discrimination against state and local governments and to publish periodic reports on workforce demographics.[8]

Burden Statement: The EEOC's Office of Enterprise Data and Analytics (OEDA) administers the agency's data collections, including the EEO–4. Since OEDA's creation in 2018, the EEOC has undertaken several efforts to modernize the agency's data collections and improve the quality of data collected. OEDA has also streamlined functions, such as providing additional self-service options, resource materials, and an online support message center.

As part of these ongoing modernization efforts, OEDA has undertaken measures to enhance the agency's existing EEO–4 data frame of potentially eligible filers and make the EEO–4 filing process more user-friendly and less burdensome. By comparing the EEOC's 2023 EEO–4 frame to the U.S. Census Bureau's Census of

[2] This figure is based on the expanded frame of potentially eligible respondents and the response rate for the most recently completed EEO–4 data collection (2023 EEO–4 data collection).

[3] 42 U.S.C. 2000e–8(c).

[4] The regulatory sections covered by this notice are 29 CFR 1602.30 and 1602.32 through 1602.37. The EEOC is responsible for obtaining OMB's PRA approval for the EEO–4 report.

[5] Beginning in 1993, the EEO–4 report has been collected biennially in odd-numbered years. Prior to 1993, the EEO–4 report was collected annually.

[6] EEO–4 filers may access the *EEO–4 Online Filing System* through the EEOC's dedicated EEO–4 website at *www.eeocdata.org/eeo4.*

[7] All reports and any information from individual reports are subject to the confidentiality provisions of section 709(e) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e–8(e), as amended (Title VII), and may not be made public by the EEOC prior to the institution of any proceeding under Title VII involving the EEO–4 data. Any EEOC employee who violates this prohibition may be found guilty of a criminal misdemeanor and could be fined or imprisoned. The confidentiality requirements allow the EEOC to publish only aggregated data, and only in a manner that does not identify any particular filer or reveal any individual employee's personal information. With respect to other federal agencies with a legitimate law enforcement purpose, the EEOC gives access to information collected under Title VII only if the agencies agree in writing to comply with the confidentiality provisions of Title VII. In addition, section 709(d) (42 U.S.C. 2000e–8(d)) provides that the EEOC shall furnish upon request and without cost to state or local civil rights agencies information about employers in their jurisdiction on the condition that they not make it public prior to starting a proceeding under state or local law involving such information. The EEOC shares EEO–4 data with Fair Employment Practices Agencies (FEPAs) pursuant to Worksharing Agreements that impose obligations on the contracted FEPA with respect to confidentiality, privacy, and data security. On a case-by-case basis, the EEOC may share EEO–4 data with a FEPA that does not have a Worksharing Agreement, but only if that FEPA agrees to comply with confidentiality, privacy, and data security obligations similar to those imposed on FEPAs with Worksharing Agreements.

[8] Any reports the EEOC publishes based on EEO–4 data include only aggregated data that protect the confidentiality of each employer's information, as well as the privacy of each employee's personal information.

Governments,[9] OEDA identified approximately 1,220 additional state and local governments that may be eligible to file during the next biennial data collection. With the addition of these filers to the EEO–4 frame and considering response rates during the 2023 EEO–4 data collection, OEDA now estimates 6,607 potential respondents to the agency's next EEO–4 data collection.[10]

Additionally, the EEOC proposes to update the salary bands in the next biennial EEO–4 data collection to keep pace with inflation and account for an increasing portion of employees falling into the highest salary bands. The EEOC reviewed several other federal data collections involving salaries and wages and determined that the Bureau of Labor Statistics' Occupational Employment and Wage Statistics (OEWS)[11] program most closely aligns with the EEO–4. Therefore, the EEOC proposes adopting the OEWS salary bands and will periodically update them as appropriate. The EEOC recognizes there may be a one-time increase in burden as filers need to update their systems to produce reports in the new categories, but this increase is expected to be negligible. The proposed pay bands for the next biennial data collection are listed in the table below.

TABLE 1—UPDATED SALARY BANDS FOR EEO–4

Interval	Wages	
	Annual	Hourly
Range A	Under $19,240	Under $9.25
Range B	$19,240 to $24,959	$9.25 to $11.99
Range C	$24,960 to $32,239	$12.00 to $15.49
Range D	$32,240 to $41,079	$15.50 to $19.74
Range E	$41,080 to $53,039	$19.75 to $25.49
Range F	$53,040 to $68,119	$25.50 to $32.74
Range G	$68,120 to $87,359	$32.75 to $41.99
Range H	$87,360 to $112,319	$42.00 to $53.99
Range I	$112,320 to $144,559	$54.00 to $69.49
Range J	$144,560 to $186,159	$69.50 to $89.49
Range K	$186,160 to $239,199	$89.5 to $114.99
Range L	$239,200 and over	$115.00 and over

The EEOC has also updated its methodology for calculating the biennial burden of the EEO–4 to better reflect the types of personnel responsible for preparing and filing these reports on behalf of their employers. Based upon job titles provided during the 2023 EEO–4 data collection by individuals completing the report within the *EEO–4 OFS,* the EEOC has identified six specific job categories which account for the largest amount of time spent biennially on EEO–4 reporting. These job categories include: (1) Human Resource Specialists; (2) Executive-Level Staff; (3) Secretaries and Administrative Assistants; (4) Bookkeeping, Accounting, and Auditing Clerks; (5) Administrative Services and Facilities Managers; and (6) Database Administrators and Architects.[12]

Additionally, the *EEO–4 OFS* captures detailed information on when each filer starts and certifies its report. The EEOC used this information from the most recent EEO–4 data collection to calculate more precise burden hour estimates.[13] In Table 2 below, the estimated average hour burden per report is 2.7 hours. The total estimated biennial respondent burden for all filers is 18,094 hours. The estimated average burden hour cost per report is $85.34, and the estimated total burden hour cost for all filers per biennial collection is $563,868.27.

TABLE 2—PROJECTED BURDEN FOR EACH EEO–4 BIENNIAL REPORTING YEAR (N = 6,607)

Staff job category	Percent in job category	Median hourly wage rate	Hours per filer	Total burden hours	Cost per filer	Total burden hour cost
Human Resource Specialists	68.0	$30.88	2.8	12,575	$86.46	$388,309.82
Executive-Level Staff	4.1	48.12	2.6	710	125.11	34,155.58
Secretaries and Administrative Assistants	8.1	21.19	2.4	1,289	50.86	827,309.67
Bookkeeping, Accounting, and Auditing Clerks	8.8	22.05	2.5	1,450	55.13	31,972.50
Administrative Services and Facilities Managers	4.5	48.98	3.4	1,003	166.53	49,126.94
Database Administrators and Architects	0.1	53.91	0.5	3	26.96	134.78
Other[a]	6.3	30.86	2.5	1,065	77.14	32,858.98
AVERAGE			2.7		85.34	

[9] The Census of Governments is a three-phased program that collects state and local government data every five years in years ending in ''2'' and ''7.'' *See https://www.census.gov/newsroom/press-releases/2023/census-of-governments.html.*

[10] This estimate covers state and local governments with 100 or more employees within the 50 United States and the District of Columbia. Please note that 6,607 respondents may ultimately turn out to be an overestimate. Following the initial enhancement of the EEO–4 frame, collection data may yield an unknown number of ineligible filers.

[11] The Occupational Employment and Wage Statistics (OEWS) program produces employment and wage estimates annually for approximately 830 occupations. *See https://www.bls.gov/oes/.*

[12] Hourly wage rates for these six job categories were obtained from the U.S. Department of Labor's Bureau of Labor Statistics (BLS) Occupational Outlook Handbook. *See https://www.bls.gov/ooh/.* Please note that the actual job titles reported during the 2023 EEO–4 data collection were collapsed into these six BLS occupational categories.

[13] The time estimates are based on the average time elapsed among filers who completed their reports during the same calendar day within the *EEO–4 OFS.* This methodology was chosen because a single-session submission would also approximate the completion time over several, multi-day sessions.

TABLE 2—PROJECTED BURDEN FOR EACH EEO–4 BIENNIAL REPORTING YEAR (N = 6,607)—Continued

Staff job category	Percent in job category	Median hourly wage rate	Hours per filer	Total burden hours	Cost per filer	Total burden hour cost
Total [b]	100.0			18,094		563,868.27

[a] The average hourly wage rate for the ''Other'' category was derived by taking the weighted mean average of the hourly wage rates of the six BLS job categories listed in the above table.

[b] These estimates are based upon filers' use of the *EEO–4 OFS* to submit reports electronically because paper submissions are no longer accepted. Electronic filing remains the most efficient, accurate, and secure means of reporting for respondents required to submit the EEO–4 report.

For the Commission.

Charlotte A. Burrows,

Chair.

[FR Doc. 2024–19743 Filed 9–3–24; 8:45 am]

BILLING CODE 6570–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 89 FR 68439.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Thursday, August 29, 2024, at 10:00 a.m.

Hybrid Meeting: 1050 First Street NE, Washington, DC (12th Floor) and Virtual.

CHANGES IN THE MEETING:

The following items were also discussed:

Draft Advisory Opinion 2024–11: Caroline Gleich.

Certification for Payment of Presidential Primary Matching Funds (Mike Pence for President).

Certification for Payment of Presidential Primary Matching Funds (Jill Stein for President 2024).

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

(Authority: Government in the Sunshine Act, 5 U.S.C. 552b)

Laura E. Sinram,

Secretary and Clerk of the Commission.

[FR Doc. 2024–19893 Filed 8–30–24; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than September 19, 2024.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414. Comments can also be sent electronically to *Comments.applications@chi.frb.org:*

1. *Daniel R. Kumley Revocable Trust, Daniel R. Kumley, trustee, both of Mount Vernon, Iowa; and Matthew Kumley Revocable Trust, Matthew Kumley, trustee, both of Monticello, Iowa;* to join the Audrey Savage Control Group, a group acting in concert, to retain voting shares of Herky Hawk Financial Corp., and thereby indirectly retain voting shares of Citizens State Bank, both of Monticello, Iowa.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Associate Secretary of the Board.

[FR Doc. 2024–19820 Filed 9–3–24; 8:45 am]

BILLING CODE P

GENERAL SERVICES ADMINISTRATION

[Notice-Q–2024–05; Docket No. 2024–0002; Sequence No. 40]

Federal Secure Cloud Advisory Committee Notification of Upcoming Meeting; Correction

AGENCY: Federal Acquisition Service (Q), General Services Administration (GSA).

ACTION: Notice of Advisory committee public meeting and request for public comment; correction.

SUMMARY: GSA published a document in the **Federal Register** of August 23, 2024, concerning the public meetings on September 12, 2024, and October 10, 2024, and request for public comments. The October 10th meeting is now being held on October 3rd.

FOR FURTHER INFORMATION CONTACT: Michelle White, Designated Federal Officer (DFO), FSCAC, GSA, 703–489–4160, *fscac@gsa.gov.*

SUPPLEMENTARY INFORMATION:

Corrections

In the **Federal Register** of August 23, 2024 in FR Doc. 2024–0002, on pages 68160 and 68161:

Correct the **DATES** section to read:

The open public meetings will be held virtually on Thursday, September 12, 2024, from 12:00 p.m. to 4:00 p.m., Eastern Time (ET), and Thursday, October 3, 2024, from 12:00 p.m. to 3:00 p.m., Eastern Time (ET).

Correct the **ADDRESSES** section to read:

The meetings will be accessible via webcast. Separate registration is required for each meeting and will be made available prior to the meetings online at *https://gsa.gov/fscac,* by selecting the ''Federal Secure Cloud Advisory Committee meetings'' tab on

the left, and then selecting the ''September 12, 2024—Virtual'' meeting accordion or ''October 3, 2024—Virtual'' meeting accordion in order to view all meeting materials, agendas, and registration information. Registrants will receive the webcast information before the meeting.

Correct the Purpose of the Meeting and Agenda under the **SUPPLEMENTARY INFORMATION** section to read:

The October 3, 2024 public meeting will be dedicated to deliberations in order to develop an initial draft of recommendations to the GSA Administrator on their initial two (2) priority initiatives of (1) identifying and documenting top challenges and proposing solutions around the barrier to entry for Cloud Service Providers (CSPs) with a focus on small businesses, third party assessment organizations (3PAOs), and small & large agencies, and (2) identifying and documenting ways to expedite the authorization process for Cloud Service Offerings (CSOs), such as exploring agile authorizations and other potential cost reductions, both labor and financial, with a focus on small businesses. Members of the public will have the opportunity to provide oral public comments during this meeting, and may also submit public comments in writing prior to this meeting by completing the public comment form on our website, *https://gsa.gov/fscac.* The meeting agenda will be posted on *https://gsa.gov/fscac* prior to the meeting and can be accessed by selecting the ''Federal Secure Cloud Advisory Committee meetings'' tab on the left, and then selecting the ''October 3, 2024—Virtual'' meeting accordion in order to view all meeting materials, agendas, and registration information.

Correct the Meeting Attendance under the **SUPPLEMENTARY INFORMATION** section to read:

Both of these virtual meetings are open to the public. The meeting materials, registration information, and agendas for the meetings will be made available prior to the meetings online at *https://gsa.gov/fscac,* by selecting the ''Federal Secure Cloud Advisory Committee meetings'' tab on the left, and then selecting the ''September 12, 2024—Virtual'' meeting accordion or ''October 3, 2024—Virtual'' meeting accordion. Registration for attending the virtual meeting on Thursday, September 12, 2024, is highly encouraged by 5:00 p.m. EST, on Monday, September 9, 2024. Registration for attending the virtual meeting on Thursday, October 3, 2024, is highly encouraged by 5:00 p.m. EST, on Monday, September 30, 2024. After registration, individuals will receive instructions on how to attend the meeting via email.

And correct the Public Comment under the **SUPPLEMENTARY INFORMATION** section to read:

Members of the public attending will have the opportunity to provide oral public comment during the FSCAC meeting. Written public comments can be submitted at any time by completing the public comment form on our website, *https://gsa.gov/fscac,* located under the ''Get Involved'' section. All written public comments will be provided to FSCAC members in advance of the meeting if received by Wednesday, September 4, 2024, for the Thursday, September 12, 2024 meeting; and by Wednesday, September 25, 2024, for the Thursday, October 3, 2024 meeting, respectively.

Margaret Dugan,

Service-Level Liaison, Federal Acquisition Service, General Services Administration.

[FR Doc. 2024–19822 Filed 9–3–24; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; State Self-Assessment Review and Report (Office of Management and Budget No.: 0970–0223)

AGENCY: Office of Child Support Services, Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF), Office of Child Support Services (OCSS), is requesting the Office of Management and Budget (OMB) to approve the State Self-Assessment Review and Report (SARR) (OMB#: 0970–0223) for an additional three years with revisions to the instrument reflecting the name change from the Office of Child Support Enforcement to the Office of Child Support Services. The information collected in the reports helps state child support agencies and OCSS determine whether the agencies meet federal child support performance requirements. The current OMB approval expires on May 31, 2025.

DATES: *Comments due* November 4, 2024. In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *infocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: State child support agencies are statutorily required to annually assess the performance of their child support programs and to provide a report of the findings to the Secretary of the U.S. Department of Health and Human Services. The information collected in the SARR is used as a management tool to determine whether states are complying with federal mandates and to help states evaluate their programs and assess performances.

Respondents: States and territories administering a child support program under title IV–D of the Social Security Act.

ANNUAL BURDEN ESTIMATES

Information collection	Total number of annual respondents	Total number of annual responses per respondent	Average annual burden hours per response	Annual burden hours
State Self-Assessment Review and Report	54	1	8	432

Comments: The Department specifically requests comments on (a) 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; (b) the accuracy of the agency's estimate of the burden of the proposed collection

of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 42 U.S.C. 654(15)(A); 45 CFR 308.1(e).

Mary C. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2024–19806 Filed 9–3–24; 8:45 am]

BILLING CODE 4184–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for Office of Management and Budget Review; Tribal Maternal, Infant, and Early Childhood Home Visiting Program: Guidance for Submitting an Annual Report to the Secretary (Office of Management and Budget#: 0970–0409)

AGENCY: Early Childhood Development, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF), Early Childhood Development (ECD) is requesting revisions to the Tribal Maternal, Infant, and Early Childhood Home Visiting (MIECHV) Program: Guidance for Submitting Reports (Office of Management and Budget (OMB) #: 0970–0409; expiration 3/31/2026) and a three-year extension of approval.

DATES: *Comments due* October 4, 2024. OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. You can also obtain copies of the proposed collection of information by emailing *infocollection@acf.hhs.gov.* Identify all emailed requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: Section 511(e)(8)(A) of Title V of the Social Security Act requires that grantees under the MIECHV program for states and jurisdictions submit an annual report to the Secretary of Health and Human Services regarding the program and activities carried out under the program, including such data and information as the Secretary shall require. Section 511(h)(2)(A) further states that the requirements for the MIECHV grants to tribes, tribal organizations, and urban Indian organizations are to be consistent, to the greatest extent practicable, with the requirements for grantees under the MIECHV program for states and jurisdictions.

ECD, in collaboration with the Health Resources and Services Administration, Maternal and Child Health Bureau awarded grants for the Tribal MIECHV Program (Tribal Home Visiting) to support cooperative agreements to conduct community needs assessments; plan for and implement high-quality, culturally-relevant, evidence-based home visiting programs in at-risk tribal communities; establish, measure, and report on progress toward meeting performance measures in six legislatively-mandated benchmark areas; and participation in research and evaluation activities to build the knowledge base on home visiting among Native populations.

After the first grant year, Tribal Home Visiting grantees must comply with the requirement to submit an Annual Report to the Secretary that should feature activities carried out under the program during the past reporting period. To assist grantees with meeting these requirements, ACF created guidance for grantees to use when writing their annual reports. The guidance specifies that grantees must address the following:

- Update on the implementation of the Home Visiting Program in targeted community(ies)
- Update on the collection, reporting, and use of data
- Progress toward fidelity monitoring, program management, and improvement
- Update on contribution to MIECHV Learning Agenda through participation in research and evaluation projects
- Dissemination
- Technical Assistance Supports

Previously, the guidance included information about both the annual and the final reports from grantees. This extension request includes updates to the guidance to make it specific to just the annual reports. Guidance specific to the final report may be submitted for review and approval by OMB in the future. A comment period will accompany that request.

Respondents: Tribal Home Visiting Managers (information collection does not include direct interaction with individuals or families that receive the services).

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
Guidance for Submitting Annual Reports	53	1	25	1,325

Authority:

Title V of the Social Security Act, Sections 511(e)(8)(A) & 511(h)(2)(A).

Mary C. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2024–19793 Filed 9–3–24; 8:45 am]

BILLING CODE 4184–77–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–P–2513]

Determination That FLAGYL (Metronidazole) Tablets, 250 Milligrams and 500 Milligrams, Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined that FLAGYL (metronidazole) tablets, 250 milligrams (mg) and 500 mg, were not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to these drug products, and it will allow FDA to continue to approve ANDAs that refer to these products as long as they meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT: Neerja Razdan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6217, Silver Spring, MD 20993–0002, 301–796–3600, *Neerja.Razdan@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Section 505(j) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(j)) allows the submission of an ANDA to market a generic version of a previously approved drug product. To obtain approval, the ANDA applicant must show, among other things, that the generic drug product: (1) has the same active ingredient(s), dosage form, route of administration, strength, conditions of use, and (with certain exceptions) labeling as the listed drug, which is a version of the drug that was previously approved, and (2) is bioequivalent to the listed drug. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

Section 505(j)(7) of the FD&C Act requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

FLAGYL (metronidazole) tablets, 250 mg and 500 mg, are the subject of NDA 012623, held by Pfizer, Inc., and initially approved prior to Jan 1, 1982. FLAGYL is indicated for treatment of symptomatic Trichomoniasis, asymptomatic Trichomoniasis, treatment of asymptomatic sexual partners, Amebiasis, anaerobic bacterial infections among other infections, as listed on the product label, and as clinically indicated for treatment.

FLAGYL (metronidazole) tablets, 250 mg and 500 mg, are currently listed in the ''Discontinued Drug Product List'' section of the Orange Book.

Innogenix LLC submitted a citizen petition dated May 21, 2024 (Docket No. FDA–2024–P–2513), under 21 CFR 10.30, requesting that the Agency determine whether FLAGYL (metronidazole) tablets, 250 mg and 500 mg, were withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that FLAGYL (metronidazole) tablets, 250 mg and 500 mg, were not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that FLAGYL (metronidazole) tablets, 250 mg and 500 mg, were withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of FLAGYL (metronidazole) tablets, 250 milligrams and 500 milligrams, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have reviewed the available evidence and determined that these drug products were not withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list FLAGYL (metronidazole) tablets, 250 mg and 500 mg, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. FDA will not begin procedures to withdraw approval of approved ANDAs that refer to this drug product. Additional ANDAs for these drug products may also be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for these drug products should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: August 28, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–19721 Filed 9–3–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Solicitation of Nominations for Membership To Serve on the Advisory Commission on Childhood Vaccines

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Request for nominations.

SUMMARY: HRSA is seeking nominations of qualified candidates to consider for appointment as members of the Advisory Commission on Childhood Vaccines (ACCV or Commission). ACCV advises the Secretary of HHS (the Secretary) on issues related to the implementation of the National Vaccine Injury Compensation Program (VICP).

DATES: Written nominations for membership on ACCV will be received on a continuous basis.

ADDRESSES: Nomination packages must be submitted to the Director, Division of Injury Compensation Programs, Health Systems Bureau, HRSA, 5600 Fishers Lane, Room 08W–25A, Rockville, Maryland 20857. Electronic nomination packages can be submitted by email to *ACCV@hrsa.gov.*

FOR FURTHER INFORMATION CONTACT: Pita Gomez, Principal Staff Liaison, Division of Injury Compensation Programs, Health Systems Bureau, HRSA, at 1–800–338–2382 or email at *ACCV@hrsa.gov.* A copy of the ACCV charter and list of the current membership may be obtained by accessing the ACCV

website at *https://www.hrsa.gov/advisory-committees/vaccines/index.html.*

SUPPLEMENTARY INFORMATION: ACCV was established by Title XXI of the Public Health Service Act and advises the Secretary on issues related to implementation of the VICP. ACCV meets four times each calendar year, or at the discretion of the Designated Federal Officer in consultation with the Chair.

Nominations: HRSA is requesting nominations for voting members to serve as Special Government Employees (SGEs) on ACCV to fill open positions. The Secretary appoints ACCV members with the expertise needed to fulfill the duties of the Commission. The membership requirements are set forth in section 2119 of the Public Health Service Act.

ACCV consists of nine voting members appointed by the Secretary as follows: (1) three health professionals, who are not employees of the United States government, and who have expertise in the health care of children, the epidemiology, etiology, and prevention of childhood diseases, and the adverse reactions associated with vaccines, of whom at least two shall be pediatricians; (2) three members from the general public, of whom at least two shall be legal representatives (parents or guardians) of children who have suffered a vaccine-related injury or death; and (3) three attorneys, of whom at least one shall be an attorney whose specialty includes representation of persons who have suffered a vaccine-related injury or death, and of whom one shall be an attorney whose specialty includes representation of vaccine manufacturers. In addition, the Director of the National Institutes of Health, the Assistant Secretary for Health, the Director of the Centers for Disease Control and Prevention, and the Commissioner of the Food and Drug Administration (or the designees of such officials) serve as nonvoting ex officio members.

HHS will consider nominations of all qualified individuals to ensure the ACCV includes the areas of subject matter expertise noted above. As indicated, at least two of the three ACCV members from the general public must be legal representatives (parents or guardians) of children who have suffered a vaccine-related injury or death. To be considered for appointment to the ACCV in that category, there must have been a finding (*i.e.,* a decision) by the U.S. Court of Federal Claims or a civil court that a VICP-covered vaccine caused, or was presumed to have caused, the represented child's injury or death. Additionally, based on a recommendation made by ACCV, the Secretary will consider having a health professional with expertise in obstetrics as one of the members from the general public. Interested applicants may self-nominate or be nominated by another individual or organization.

Individuals selected for appointment to the Commission will be invited to serve for up to 3 years. Members appointed as SGEs receive a stipend and reimbursement for per diem and travel expenses incurred for attending ACCV meetings and/or conducting other business on behalf of ACCV, as authorized by 5 U.S.C. 5703, for persons employed intermittently in government service.

The following information must be included in the package of materials submitted for each individual nominated for consideration: (1) a letter of nomination stating the name, affiliation, and contact information for the nominee, the basis for the nomination (*i.e.,* what specific attributes, perspectives, and/or skills does the individual possess that would benefit the workings of ACCV) and the nominee's field(s) of expertise; (2) the name, address, daytime telephone number, and email address at which the nominator can be contacted; and (3) a current copy of the nominee's curriculum vitae or resume. Nomination packages may be submitted directly by the individual being nominated or by the person/organization recommending the candidate. Nomination packages will be collected and retained to create a pool of possible future ACCV voting members. When a vacancy occurs, nomination packages from the appropriate category will be reviewed and nominees may be contacted at that time.

HHS endeavors to ensure that the membership of ACCV is balanced in terms of points of view represented and that individuals from a broad representation of geographic areas, gender, and ethnic and minority groups, as well as individuals with disabilities, are considered for membership. Appointments shall be made without discrimination on the basis of age, disability, race, ethnicity, gender, sexual orientation, national origin, or cultural, religious, or socioeconomic status.

Individuals who are selected to be considered for appointment will be required to provide detailed information regarding their financial holdings, consultancies, and research grants or contracts. Disclosure of this information is required for HRSA ethics officials to determine whether there is a potential conflict of interest between the SGE's public duties as a member of ACCV and their private interests, including an appearance of a loss of impartiality as defined by federal laws and regulations, and to identify any required remedial action needed to address the potential conflict.

Authority: Under the authorities that established the ACCV, the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92–463, as amended) and 42 U.S.C. 300aa–19, section 2119 of the Public Health Services (PHS) Act, HRSA is requesting nominations for voting members of ACCV.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2024–19808 Filed 9–3–24; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Meeting of the Advisory Committee on Infant and Maternal Mortality

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice announces that the Advisory Committee on Infant and Maternal Mortality (ACIMM or Committee) has scheduled a public meeting. Information about ACIMM and the agenda for this meeting can be found on the ACIMM website at *https://www.hrsa.gov/advisory-committees/infant-mortality/index.html.*

DATES:

- October 16, 2024, from 9:30 a.m. to 5:15 p.m. Eastern Time; and
- October 17, 2024, from 9 a.m. to 1 p.m. Eastern Time.

ADDRESSES: This meeting will be held in person at the Hubert H. Humphrey Building, HHS Headquarters, 200 Independence Avenue SW, Conference Room 505A, Washington, DC 20201, and virtually via webinar. The webinar link and log-in information will be available at the ACIMM website before the meeting at *https://www.hrsa.gov/advisory-committees/infant-mortality/index.html.*

FOR FURTHER INFORMATION CONTACT: Vanessa Lee, MPH, Designated Federal Official, Maternal and Child Health Bureau, HRSA, 5600 Fishers Lane,

Rockville, Maryland 20857; 301–443–0543; or *SACIM@hrsa.gov.*

SUPPLEMENTARY INFORMATION: ACIMM is authorized by section 222 of the Public Health Service Act (42 U.S.C. 217a), as amended. The Committee is governed by provisions of the Federal Advisory Committee Act (5 U.S.C. chapter 10), as amended.

ACIMM advises the Secretary of HHS on department activities, partnerships, policies, and programs directed at reducing infant mortality, maternal mortality and severe maternal morbidity, and improving the health status of infants and women before, during, and after pregnancy. The Committee provides advice on how to coordinate federal, state, local, tribal, and territorial governmental efforts designed to improve infant mortality, related adverse birth outcomes, and maternal health, as well as influence similar efforts in the private and voluntary sectors. The Committee provides guidance and recommendations on the policies, programs, and resources required to address the disparities and inequities in infant mortality, related adverse birth outcomes and maternal health outcomes, including maternal mortality and severe maternal morbidity. With its focus on underlying causes of the disparities and inequities seen in birth outcomes for women and infants, the Committee advises the Secretary of HHS on the health, social, economic, and environmental factors contributing to the inequities and proposes structural, policy, and/or systems level changes.

The agenda for the October 16–17, 2024, meeting is being finalized and may include the following topics: federal updates; presentations and Committee discussions on the workgroup topics of rural health care access, social drivers of health, and women's health before/between pregnancies; and discussion of possible recommendations to achieve optimal maternal health and overall birth outcomes for underserved populations, including Black/African American families. Agenda items are subject to change as priorities dictate. Refer to the ACIMM website listed above for any updated information concerning the meeting.

Members of the public will have the opportunity to provide written or oral comments. Public participants may submit written statements in advance of the scheduled meeting by emailing *SACIM@hrsa.gov.* Oral comments will be honored in the order they are requested and may be limited as time allows. Requests to submit a written statement or make oral comments to ACIMM should be sent to Vanessa Lee, Designated Federal Official, using the email address above at least 3 business days prior to the meeting.

Individuals who plan to attend and need special assistance or another reasonable accommodation should notify Vanessa Lee at the contact information listed above at least 10 business days prior to the meeting. Since this meeting occurs in a federal government building, attendees must go through a security check to enter the building. Non-U.S. Citizen attendees must notify HRSA of their planned attendance at least 20 business days prior to the meeting to facilitate their entry into the building. All attendees are required to present government-issued identification prior to entry.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2024–19741 Filed 9–3–24; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 1009 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: Eunice Kennedy Shriver National Institute of Child Health and Human Development Special Emphasis Panel; Centers for Collaborative Research in Fragile X and FMR1-Associated Conditions (P50).

Date: November 20–21, 2024.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6710 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jolanta Maria Topczewska, Ph.D., Scientific Review Branch, *Eunice Kennedy Shriver* National Institute of Child Health and Human Development, NIH 6710B, Rockledge Drive, Rm. 2131B, Bethesda, MD 20892, (301) 451–0000, *jolanta.topczewska@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: August 28, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–19747 Filed 9–3–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 1009 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 of General Medical Sciences Special Emphasis Panel; Review of NIGMS National and Regional Resources and Repositories Grant Applications.

Date: October 30, 2024.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, Maryland 20892 (Virtual Meeting).

Contact Person: Greg Bissonette, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of General Medical Sciences, National Institute of Health, 45 Center Drive, Room Hoteling, Bethesda, Maryland 20892, 301–827–5118, *bissonettegb@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: August 28, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–19815 Filed 9–3–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 1009 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 of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK RC2 Review.

Date: November 19, 2024.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIDDK Democracy II, Suite 7000A, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ann A. Jerkins, Ph.D., Scientific Review Officer, National Institute of Diabetes and Digestive and Kidney, National Institute of Health, 6707 Democracy Boulevard, Rm 7119, Bethesda, MD 20892–5452, 301–594–2242, *jerkinsa@niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: August 28, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–19752 Filed 9–3–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Integrative Health; Notice of Closed Meeting

Pursuant to section 1009 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 Center for Complementary and Integrative Health Special Emphasis Panel; NCCIH Training and Education Review Panel (CT).

Date: October 31–November 1, 2024.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Center for Complementary and Integrative Health, Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892.

Contact Person: Michael E. Authement, Ph.D., Scientific Review Officer, Office of Scientific Review, Division of Extramural Activities, 6707 Democracy Boulevard, Bethesda, MD 20817, *michael.authement@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: August 28, 2024.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–19817 Filed 9–3–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 1009 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 Human Genome Research Institute Special Emphasis Panel; NSF Program—EDGE Research.

Date: September 27, 2024.

Time: 11:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20892 (Video Assisted Meeting).

Contact Person: Rudy O. Pozzatti, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, MSC 6908, Bethesda, MD 20892, (301) 42–8739, *pozzattr@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: August 28, 2024.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–19746 Filed 9–3–24; 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 1009 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 Pathobiology of AD.

Date: October 24, 2024.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, 5601 Fishers Lane Rockville, MD 20892 (Virtual Meeting).

Contact Person: Mariel Jais, PharmD, Scientific Review Officer, National Institute of Aging, National Institute of Health, 5601 Fishers Lane, Room 2E400, Rockville, MD 20852, (301) 594–2614, *mariel.jais@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 28, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–19753 Filed 9–3–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Integrative Health; Notice of Closed Meetings

Pursuant to section 1009 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 Center for Complementary and Integrative Health Special Emphasis Panel; Leveraging Data at Scale to Understand Natural Product Impacts on Whole Person Health (R01 Clinical Trial Not Allowed).

Date: October 24, 2024.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Center for Complementary and Integrative Health, Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892.

Contact Person: Shiyong Huang, Ph.D., Scientific Review Officer, Office of Scientific Review, Division of Extramural Activities, NCCIH/NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20817, *shiyong.huang@nih.gov.*

Name of Committee: National Center for Complementary and Integrative Health Special Emphasis Panel; Limited Competition: Research Resource for Natural Product Nuclear Magnetic Resonance Data (R24 Clinical Trial Not Allowed).

Date: October 24, 2024.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Center for Complementary and Integrative Health, Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892.

Contact Person: Shiyong Huang, Ph.D., Scientific Review Officer, Office of Scientific Review, Division of Extramural Activities, NCCIH/NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20817, *shiyong.huang@nih.gov.*

Name of Committee: National Center for Complementary and Integrative Health Special Emphasis Panel; Botanical Dietary Supplements Translational Research Teams (RM1 Clinical Trial Required).

Date: October 24–25, 2024.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Center for Complementary and Integrative Health, Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892.

Contact Person: Shiyong Huang, Ph.D., Scientific Review Officer, Office of Scientific Review, Division of Extramural Activities, NCCIH/NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20817, *shiyong.huang@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: August 28, 2024.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–19814 Filed 9–3–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Center for Advancing Translational Sciences Special Emphasis Panel, from November 6, 2024, 9:30 a.m. to November 7, 2024, 1:00 p.m., National Institutes of Health, 9609 Medical Center Drive, Rockville, MD, 20850 which was published in the **Federal Register** on August 20, 2024, 89 FR 67456.

The meeting dates and times is being changed due to the availability of members with required expertise; start date & time will change from 11/06/24 9:30 a.m. to 10/29/24 10:00 a.m.; end date & time will change from 11/07/24 1:00 p.m. to 10/30/24 2:00 p.m. The meeting is closed to the public.

Dated: August 28, 2024.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–19740 Filed 9–3–24; 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 1009 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; SEP–11: NCI Clinical and Translational Cancer Research.

Date: October 2, 2024.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W608, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Nadeem Khan, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W608, Rockville, Maryland 20850, 240–276–5856, *nadeem.khan@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Integrating Biospecimen Science Approaches.

Date: October 2, 2024.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W526, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Viktoriya Sidorenko, Ph.D., Scientific Review Officer, Program and Review Extramural Staff Training Office, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W526, Rockville, Maryland 20850, 240–276–5073, *viktoriya.sidorenko@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Metastasis Research Network (U01).

Date: October 8, 2024.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Shady Grove 9609 Medical Center Drive, Room 7W266 Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Lei Fang, Ph.D., Scientific Review Officer, Program Coordination and Referral Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W266, Rockville, Maryland 20850, 240–760–6821, *fangl@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Early-Stage Development of Informatics Technologies for Cancer Research and Management.

Date: October 17–18, 2024.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W254, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Susan Lynn Spence, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W254, Rockville, Maryland 20850, 240–620–0819, *susan.spence@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP 13: NCI Clinical and Translational R21 and Omnibus R03 Review.

Date: October 22, 2024.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W542, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Biman Chandra Paria, Ph.D., Scientific Review Officer, Program Coordination and Referral Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W542, Rockville, Maryland 20850, 240–858–3814, *pariab@mail.nih.gov.*

Name of Committee: National Cancer Institute Initial Review Group; Institutional Training and Education Study Section (F).

Date: October 23–24, 2024.

Time: 4:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, Maryland 20852 (In-Person Meeting).

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, Rockville, Maryland 20850, 240–276–6368, *Stoicaa2@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Pathway to Independence Award for Outstanding Early-Stage Postdoctoral Researchers (K99/R00) and Mentored Research Scientist Development Award (K01).

Date: October 30–31, 2024.

Time: 10:00 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W238, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Byeong-Chel Lee, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W238, Rockville, Maryland 20850, 240–276–7755, *byeong-chel.lee@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–2: NCI Clinical and Translational Cancer Research.

Date: October 31, 2024.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W242, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Zhiqiang Zou, M.D., Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W242, Rockville, Maryland 20850, 240–276–6372, *zouzhiq@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Cancer Epidemiology Cohorts Special Emphasis Panel.

Date: November 1, 2024.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W236, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Shuli Xia, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W236, Rockville, Maryland 20850, 240–276–5256, *shuli.xia@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: August 28, 2024.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–19742 Filed 9–3–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing to achieve expeditious commercialization of results of federally-funded research for the benefit of the public health.

FOR FURTHER INFORMATION CONTACT: Licensing information may be obtained by emailing the indicated licensing contact Michael Shmilovich, Esq, MS, CLP; 301–435–5019; *michael.shmilovich@nih.gov* at the National Heart, Lung, and Blood, Office of Technology Transfer and Development, 31 Center Drive Room 4A25, MSC2479, Bethesda, MD 20892–2479; *NHLBI_TechTransfer@mail.nih.gov.* A signed Confidential Disclosure Agreement may be required to receive any unpublished information.

SUPPLEMENTARY INFORMATION: This notice is in accordance with 35 U.S.C. 209 and 37 CFR part 404. Technology description follows.

PET Imaging Agents for Fungal Infections

Available for licensing and commercial development are patent rights covering PET imaging agents, methods of their synthesis, and their uses in imaging specific fungal infections. Fungal infections remain a global health problem resulting in over 1.5 million annual deaths. Immunocompromised patients, especially those undergoing cancer treatments or transplantation, are particularly vulnerable and the fungus, *Aspergillus fumigatus,* is of particular concern. To date, no fungal-*specific* imaging agents are available—existing imaging agents cannot discern fungal pathogens from bacteria or viruses and generally cannot differentiate between infection and inflammation. One naturally-occurring disaccharide, cellobiose, is selectively hydrolyzed by *Aspergillus fumigatus* and not by bacteria or human cells. The fluorinated version of the disaccharide, ^{18}F-Fluorodeoxycellobiose ([18F]-FCB), has been synthesized and tested. [18F]-FCB is particularly useful as it is not metabolized by human enzymes and hydrolyzed only by fungal beta-

glucosidases. Both in vitro and in vivo testing in animal models (see publications below) of different infections and inflammation confirmed radioactivity accumulation only in live pathogenic fungi. Imaging with [18F]-FCB in mice infected with Aspergillus, for example, showed that the imaging agent can detect whether there has been a response to antifungal therapy. One major advantage is that synthesis of [18F]-FCB is simple and efficient using readily commercially available reagents. The radiolabeled agent can then be administered intravenously, and imaging performed 90–120 minutes after injection. A radiosynthesis kit has also been developed and can be used at ambient temperature to produce [18F]-FCB from a commercially acquired kit in less than two hours without the need for a cyclotron.

Potential Commercial Applications

- Imaging of live infections.

Development Stage

- *In vitro data*
- Preclinical *in vivo data (mouse models)*

Related Publications

- Zhang X, Basuli F, Shi Z–D, Shah S, Shi J, Mitchell A, Lai J, Wang Z, Hammoud DA, Swenson RE. Synthesis and Evaluation of Fluorine-18-Labeled L-Rhamnose Derivatives. Molecules. 2023; 28(9):3773. *https://doi.org/10.3390/molecules28093773.*
- Shah, S., Lai, J., Basuli, F., Martinez-Orengo, N., Patel, R., Turner, M.L., Wang, B., Shi, Z.D., Sourabh, S., Peiravi, M., Lyndaker, A., Liu, S., Seyedmousavi, S., Williamson, P.R., Swenson, R.E., & Hammoud, D.A. (2024). Development and preclinical validation of 2-deoxy 2-[18F]fluorocellobiose as an Aspergillus-specific PET tracer. Science translational medicine, 16(760), eadl5934. *https://doi.org/10.1126/scitranslmed.adl5934.*
- Basuli, F., Shi, J., Shah, S., Lai, J., Hammoud, D.A., & Swenson, R.E. (2024). Fully Automated Cassette-Based Synthesis of 2-Deoxy-2-[18F]Fluorocellobiose Using Trasis AllInOne Module. Journal of labelled compounds & radiopharmaceuticals, 67(9), 308–313. *https://doi.org/10.1002/jlcr.4116.*

Intellectual Property

- NIH Reference No. E–163–2019; U.S. Provisional Patent Application 62/882,023 filed August 2, 2019; International Patent Application PCT/US2020/044446 filed July 31, 2020 (published as WIPO publication WO 2021/025984); and national stage patent applications filed in Europe (20757180.3) and the United States (17/631,600).
- NIH Reference No. E–080–2023; U.S. Provisional Patent Application 63/492,302 filed March 27, 2023, and International Patent Application PCT/US2024/021440 filed March 26, 2024.

Dated: August 28, 2024.

Michael A. Shmilovich,

Senior Licensing and Patenting Manager, National Heart, Lung, and Blood Institute, Office of Technology Transfer and Development.

[FR Doc. 2024–19719 Filed 9–3–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Strategic Preparedness and Response

Statement of Organization, Functions, and Delegations of Authority

AGENCY: Administration for Strategic Preparedness and Response, HHS.

ACTION: Notice.

SUMMARY: This notice announces revisions to the organizations within the Administration for Strategic Preparedness and Response (ASPR).

DATES: These revisions were approved by the Administrator and Assistant Secretary of ASPR on July 2, 2024, and became effective on July 2, 2024.

SUPPLEMENTARY INFORMATION: Part A, Office of the Secretary, Statement of Organization, Functions, and Delegations of Authority of the U.S. Department of Health and Human Services (HHS) is being amended at Chapter AN, Office of the Assistant Secretary for Preparedness and Response (ASPR), as last amended at 88 FR 10125 (Feb. 16, 2023), 85 FR 8302 (Feb. 13, 2020), 83 FR 33941 (July 18, 2018), 79 FR 70.535 (Nov. 26, 2014), 78 FR 25277 (April 30, 2013), 78 FR 7784 (Feb. 4, 2013), 75 FR 35.035 (June 21, 2010) to refine the functions within ASPR to more closely align with ASPR's Operating Division status and expansion of mission which includes preparing for and responding to ever-increasing man-made and naturally occurring threats which have the potential to degrade public health, access to healthcare, access to emergency medical services, and national security.

In 2023, ASPR underwent a major reorganization that was designed to recognize the Agency's expanded scope of work as a new Operating Division, simplify the organizational structure, provide greater role clarity, and increase collaboration across teams. These changes were targeted in nature and focused on areas where the mission had recently expanded. Since the implementation of ASPR's 2023 reorganization, the Agency has undergone additional, modest adjustments to its organizational structure to better clarify missions, roles, and responsibilities at the Deputy Assistant Secretary (DAS)-level, Office-level, and Division level. Substantive changes to ASPR organizations are noted below. The changes are as follows:

Global Change: Naming Conventions for ASPR Components

To more closely align with the maturation of ASPR's Operating Division status and mission of the organization, the titles for the ASPR component overseen by an ASPR Deputy Assistant Secretary (DAS) are now called ''Centers'' instead of ''Offices.'' The chart below provides the previous title and the new title.

Previous title	New title
Immediate Office of the ASPR	Immediate Office of the ASPR (no change).
Office of Administration	Center for Administration.
Office of Preparedness	Center for Preparedness.
Office of Response	Center for Response.
Office of Biomedical Advanced Research Development Authority	Center for the Biomedical Advanced Research Development Authority.
Office of HHS Coordination, Operations, and Response Element	Center for the HHS Coordination Operations and Response Element.
Office of Industrial Base Management and Supply Chain	Center for Industrial Base Management and Supply Chain.
Office of the Strategic National Stockpile	Center for the Strategic National Stockpile.

The following organizational updates by Center are modifications from the Agency's 2023 reorganization. All other organizational structure remains as previously noticed in the 2023 **Federal Register** Notice.

Center for Administration

- New Office: *Office of Facilities Management*
- Office Name Change: Update Office of Human Capital to *Office of Human Resources*

Center for Preparedness

- Office Name Change: Update Office of Security and Intelligence to *Office of Security, Vetting, and Protection*
- Office Name Change: Update the Office of Information Management, Data, and Analytics to *Office of Data, Analytics, and Information Advantage*

Center for Industrial Base Management and Supply Chain

- Office Name Change: Update Office of Personal Protective Equipment and Durable Medical Equipment to *Office of Critical Medical Equipment*
- Office Name Change: Update Office of Advanced Manufacturing Technologies to the *Office of Enabling Innovations and Technologies*

Center for the HHS Coordination Operations and Response Element

In 2022, the Secretary of HHS transitioned the DOD–HHS partnership that was formerly called Operation Warp Speed into ASPR as the HHS Coordination and Operations Response Element or H–CORE. Moving H–CORE fully into ASPR provided ASPR with sole responsibility for the development, manufacture, and distribution of the nation's COVID–19 vaccines and therapeutics.

H–CORE reports to the Administrator and Assistant Secretary for Preparedness and Response (the ASPR) and works in partnership with other entities across ASPR, such as the Center for the Biomedical Advanced Research and Development Authority (BARDA), the Center for the Strategic National Stockpile (SNS), and the Center for Industrial Base Management and Supply Chain (IBMSC), to deploy vaccines, therapeutics, and other medical countermeasures products and supplies to the American public during infectious disease outbreaks and other public health emergencies. H–CORE coordinates and accelerates the logistics readiness and operations in response to infectious diseases, public health emergencies, and disasters in support of the ASPR.

H–CORE is headed by a Deputy Assistant Secretary and includes the following components:

- Office Name Change: Update from Office of Analytics to *Office of Analytics, Data, and IT*
- Office Name Change: Update from Office of Plans to *Office of Planning and Operational Coordination*
- Office of Supply, Production, and Distribution
- New Office: *Office of Infectious Disease Response*
- Delete Office: *Office of Security and Assurance*
- Delete Office: *Office of Vaccine Development Coordination*
- Delete Office: *Office of Therapeutics Development Coordination*

I. *Delegations of Authority:* All delegations and redelegations of authority made to officials and employees of affected organizational components will endure pending further redelegation, provided they are consistent with this reorganization.

All updates herein supersede any prior directives pertaining to the establishment of Agency components, including but not limited to directives pertaining to the establishment of H–CORE.

The Administrator and Assistant Secretary for Preparedness and Response of ASPR, Dawn O'Connell, having reviewed and approved this document, authorizes Adam DeVore, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Adam DeVore,

Federal Register Liaison, Administration for Strategic Preparedness and Response.

[FR Doc. 2024–19809 Filed 9–3–24; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2024–0739]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0113

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0113, Crewmember Identification Documents; without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before November 4, 2024.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2024–0739] to the Coast Guard using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public participation and request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–6P), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, fax 202–372–8405, or email *hqs-dg-m-cg-61-pii@uscg.mil* for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.,* chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) the practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents,

including the use of automated collection techniques or other forms of information technology.

In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, USCG–2024–0739, and must be received by November 4, 2024.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. We review all comments received, but we may choose not to post off-topic, inappropriate, or duplicate comments that we receive. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Information Collection Request

Title: Crewmember Identification Documents.

OMB Control Number: 1625–0113.

Summary: This information collection covers the requirement that crewmembers on vessels calling at U.S. ports must carry and present on demand an identification that allows the identity of crewmembers to be authoritatively validated.

Need: 46 U.S.C.70111 mandated that the Coast Guard establish regulation about crewmember identification. The regulations are in 33 CFR part 160 subpart D.

Forms: None.

Respondents: Crewmembers, and operators of certain vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has increased from 32,955 hours to 35,724 hours a year, due to an increase in the estimated annual number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: August 27, 2024.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2024–19838 Filed 9–3–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2024–0733]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0128

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0128, Prospect Questionnaire, Chat Now Questionnaire, and the Officer Program Application; without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before November 4, 2024.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2024–0733] to the Coast Guard using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public participation and request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–6P), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, fax 202–372–8405, or email *hqs-dg-m-cg-61-pii@uscg.mil* for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.,* chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) the practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology.

In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, USCG–2024–0733, and must be received by November 4, 2024.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be

viewed by following that website's instructions. We review all comments received, but we may choose not to post off-topic, inappropriate, or duplicate comments that we receive. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Information Collection Request

Title: Prospect Questionnaire, Chat Now Questionnaire, and the Officer Program Application.

OMB Control Number: 1625–0128.

Summary: This collection contains the recruiting website gocoastguard.com Prospect Questionnaire (CGRC–1130), Chat Now Questionnaire (CGRC–1132), and the Officer Program Application (CGRC–1131) that are used to screen active duty and reserve enlisted and officer applicants.

Need: The information is needed to initiate the recruiting and commissioning of active duty and reserve, enlisted and officer members. 14 U.S.C. 468 authorizes the United States Coast Guard to recruit personnel for military service. The information requested on the gocoastguard.com website is collected in accordance with 10 U.S.C. 503 and may be used to identify and process individuals interested in applying for enlistment or commission into the United States Coast Guard or Coast Guard Reserve.

Forms: Online Application plus hard copy of the Prospect Questionnaire (CGRC–1130), and/or the Officer Program Application (CGRC–1131) if a prospect does not use gocoastguard.com but contacts a recruiter directly.

Respondents: Approximately 50,000 applicants apply annually to initiate the screening process.

Frequency: Applicants may apply more than once, by initially completing the Chat Now Questionnaire (CGRC–1132) to answer questions on eligibility and may apply for both enlisted and officer programs through the Prospect Questionnaire (CGRC–1130) and/or Officer Program Application (CGRC–1131).

Hour Burden Estimate: The estimated burden remains 11,625 hours a year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: August 27, 2024.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2024–19837 Filed 9–3–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2024–0238]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number 1625–0073

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0073, Alteration of Unreasonable Obstructive Bridges; without change. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: You may submit comments to the Coast Guard and OIRA on or before October 4, 2024.

ADDRESSES: Comments to the Coast Guard should be submitted using the Federal eRulemaking Portal at *https://www.regulations.gov.* Search for docket number [USCG–2024–0238]. Written comments and recommendations to OIRA for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.*

Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–6P), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, fax 202–372–8405, or email *hqs-dg-m-cg-61-pii@uscg.mil* for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.,* chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) the practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, USCG–2024–0238, and must be received by October 4, 2024.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. We review all comments received, but we may choose not to post off-topic, inappropriate, or duplicate

comments that we receive. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the Coast Guard in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). For more about privacy and submissions to OIRA in response to this document, see the *https://www.reginfo.gov,* comment-submission web page. OIRA posts its decisions on ICRs online at *https://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0073

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (89 FR 23602, April 4, 2024) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collection.

Information Collection Request

Title: Alteration of Unreasonable Obstructive Bridges.

OMB Control Number: 1625–0073.

Summary: The collection of information is a request to determine if the bridge is unreasonably obstructive.

Need: 33 U.S.C. 494, 502, 511, 513, 514, 515 516, 517, 521, 522, 523 and 524 authorize the Coast Guard to require the removal or alteration of bridges and causeways over the navigable waters of the United States and that the Coast Guard deems to be unreasonably obstructive.

Forms: None.

Respondents: Public and private owners of bridges over navigable waters of the United States.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden remains 160 hours a year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. *et seq.,* chapter 35, as amended.

Dated: August 27, 2024.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2024–19835 Filed 9–3–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2024–0734]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0089

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0089, National Recreational Boating Safety Survey; reinstatement with change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before November 4, 2024.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2024–0734] to the Coast Guard using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public participation and request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–6P), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, fax 202–372–8405, or email *hqs-dg-m-cg-61-pii@uscg.mil* for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.,* chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) the practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology.

In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, USCG–2024–0734, and must be received by November 4, 2024.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. We review all comments received, but we may choose not to post off-topic, inappropriate, or duplicate comments that we receive. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Information Collection Request

Title: National Recreational Boating Safety Survey.

OMB Control Number: 1625–0089.

Summary: The National Recreational Boating Safety Survey collects data on recreational boating participation and exposure. Specifically, the survey focuses on the types of boats used, the demographics of boaters, the types of safety equipment on recreational boats, and the amount of time boaters spend on the water. Boating hours calculated from this survey play an integral part in calculating risk ratios associated with recreational boating. In light of the USCG's safety-oriented mission, we are proposing a name change of this survey to the National Recreational Boating Safety Survey from the National Recreational Boating Survey.

Need: The Federal Boat Safety Act of 1971 determines the framework of the Coast Guard recreational boating safety program. This program as set forth in 46 U.S.C. Chapter 131, requires the Coast Guard to ''encourage greater State participation and uniformity in boating safety efforts, and particularly to permit the States to assume a greater share of boating safety education, assistance, and enforcement activities.'' See 46 U.S.C. 13102. The Coast Guard Office of Auxiliary & Boating Safety, Boating Safety Division achieves these goals by providing timely and relevant information on boating activities that occur in each respective jurisdiction. The boating information provided by the Coast Guard enables each State agency to tailor and implement safety initiatives addressing specific needs of boaters in local jurisdictions. The primary objective of this collection is to provide the Coast Guard with the required information in a format suitable to effectively manage the program.

Forms: None.

Respondents: Recreational boaters and recreational boat owners living in the 50 states and the District of Columbia.

Frequency: The survey takes place every five to eight years and the last survey was conducted in 2018.

Hour Burden Estimate: The survey will take approximately 125,863 respondents a total estimate burden of 15,151 hours.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: August 27, 2024.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2024–19836 Filed 9–3–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2001–11120]

Intent To Request Extension From OMB of One Current Public Collection of Information: Imposition and Collection of Passenger Civil Aviation Security Service Fees

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-Day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0001, abstracted below that we will submit to OMB for an extension in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves air carriers maintaining an accounting system for the passenger civil aviation security service fees collected and reporting this information to TSA on a quarterly basis, as well as retaining the data used for these reports for three fiscal years.

DATES: Send your comments by November 4, 2024.

ADDRESSES: Comments may be emailed to *TSAPRA@tsa.dhs.gov* or delivered to the TSA PRA Officer, Information Technology (IT), TSA–11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh at the above address, or by telephone (571) 227–2062.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be available at *https://www.reginfo.gov* upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652–0001; Imposition and Collection of Passenger Civil Aviation Security Service Fees. In accordance with 49 U.S.C. 44940 and relevant TSA Regulations, *see* 49 CFR part 1510, TSA imposes a Passenger Civil Aviation Security Service Fee (September 11th Security Fee) on passengers of both foreign and domestic air carriers (''air carriers'') on air transportation originating at airports in the United States.

The September 11th Security Fee is collected by air carriers and remitted to TSA, which then transmits the fees to the U.S. Treasury Department to help offset the Federal Government's costs of providing civil aviation security services and other purposes designated by 49 U.S.C. 44940. This information collection requires air carriers to submit to TSA information regarding the amount of September 11th Security Fees an air carrier has imposed, collected, refunded to passengers, and remitted to TSA. The retention of this data is necessary for TSA to ensure the proper imposition, collection, and regulation the September 11th Security Fee. Additionally, TSA collects the information to monitor carrier compliance with the fee requirements and for auditing purposes. Air carriers are required to retain this information for three years. Specifically, information collected during a given fiscal year (FY) (October 1 through September 30) must be retained through three subsequent fiscal years. For example, information collected during fiscal year 2020 must be retained through fiscal year 2023.

TSA's regulations require air carriers to impose and collect the fee on passengers, and to remit the fee to TSA by the final day of the calendar month following the month in which the fee was collected. *See* 49 CFR 1510.13. Air

carriers are further required to submit quarterly reports to TSA, which indicate the amount of fees imposed, collected, and refunded to passengers, and remitted to TSA. *See* 49 CFR 1510.17.

TSA has suspended a requirement for each air carrier that collects security service fees from more than 50,000 passengers annually to submit to TSA an annual independent audit, performed by an independent certified public accountant, of its security service fee activities and accounts. *See* 49 CFR 1510.15. Although the annual independent audit requirements were suspended on January 23, 2003 (*see* 68 FR 3192), TSA conducts its own audits of the air carriers. *See* 49 CFR 1510.11. Notwithstanding the suspension of the audit requirements, air carriers must establish and maintain an accounting system to account for the security service fees imposed, collected, refunded to passengers, and remitted to TSA. *See* 49 CFR 1510.15(a).

TSA is seeking an extension of this collection to require air carriers to continue submitting the quarterly reports to TSA, and to require air carriers to retain the information for three fiscal years after the fiscal year in which the information was collected. This requirement includes retaining the source information for the quarterly reports remitted to TSA as well as the calculations performed to create the reports submitted to TSA. Should the annual audit requirement be reinstated, the requirement would include information and documents reviewed and prepared for the independent audit; the accountant's working papers, notes, worksheets, and other relevant documentation used in the audit; and, if applicable, the specific information leading to the accountant's opinion, including any determination that the accountant could not provide an audit opinion. Although TSA suspended the independent audit requirement, TSA conducts audits of the air carriers, and therefore, requires air carriers to retain and provide the same information as required for the quarterly reports and independent audits.

TSA has incorporated minor adjustments to the figures used to estimate the costs of this ICR. The adjustments consider changes in the number of regulated air carriers and various administrative cost rates since the previous extension. TSA estimates that 188 total respondent air carriers will each spend approximately 1 hour to prepare and submit each quarterly report. TSA estimates that these respondents will incur a total of 752 hours (188 carriers × 4 quarterly reports × 1 hour per report) to satisfy the quarterly reporting requirements annually.

TSA estimates 301 total responses from all respondent air carriers (188 plus 113, should the annual audit requirement be reinstated), with 3,012 burden hours (752 hours for quarterly reports and 2,260 hours for audits) annually to satisfy the quarterly report and audit requirements.

Dated: August 29, 2024.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Information Technology.

[FR Doc. 2024–19825 Filed 9–3–24; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Extension From OMB of One Current Public Collection of Information: Law Enforcement Officer Flying Armed Training

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-Day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0034, abstracted below that we will submit to OMB for an extension in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves the Federal Air Marshal Service maintenance of a database of all Federal, State, and local law enforcement agencies that have received the Law Enforcement Officer (LEO) Flying Armed Training course.

DATES: Send your comments by November 4, 2024.

ADDRESSES: Comments may be emailed to *TSAPRA@tsa.dhs.gov* or delivered to the TSA PRA Officer, Information Technology (IT), TSA–11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh at the above address, or by telephone (571) 227–2062.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be available at *https://www.reginfo.gov* upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652–0034; Law Enforcement Officer Flying Armed Training. TSA is requesting approval for the extension of the collection of this information to comply with 49 CFR 1544.219, which requires Federal LEOs; full-time territorial, tribal, municipal, county, or state LEOs who are direct employees of government agencies; and authorized railroad police officers to complete the LEO Flying Armed Training course in order to fly armed. The course is a non-tactical overview of the conditions under which an officer may fly armed and the required conduct and duties of the LEO while flying armed. This information collection permits TSA to collect identifying information from law enforcement agencies requesting the LEO Flying Armed Training course materials.

The process begins when a representative from a law enforcement agency electronically requests the LEO Flying Armed Training course material via the TSA Flying While Armed website (*https://www.tsa.gov/travel/law-enforcement*). The fillable form, which is submitted to TSA electronically, must contain: full name of the officer, title, phone number, email address, employing department, work address, supervisor's name, supervisor's title, supervisor's contact information, the agency's originating agency identifier, an affirmation that the officer meets the requirements set forth in 49 CFR 1544.219, and a brief narrative detailing the agency's operational need for its officers to fly armed. Once the fillable

form is completed, TSA receives a notification via email. TSA vets the request to ensure that all of the required information has been submitted and that the agency has a current operational need for its officers to fly armed. If TSA determines that the requesting agency's officer meets the standard set forth in 49 CFR 1544.219, TSA will electronically send a non-disclosure agreement (NDA) to the requesting agency for the agency's LEO Flying Armed instructor to sign. Once TSA receives the signed NDA, TSA will electronically send the LEO Flying Armed Training course materials to the requesting agency. TSA keeps an electronic record of each agency that has received LEO Flying Armed Training course materials, including a point of contact for that agency. If an issue arises during the screening and verification process regarding the authenticity of an agency that requests training materials, TSA will not supply training materials until that issue has either been confirmed or resolved, and a record of such determination regarding authenticity is maintained.

Upon completion of the training, a LEO who has been authorized by his or her agency to fly armed presents his or her credentials and other required information at the airport in order to fly armed. A Transportation Security Officer verifies all pertinent information onsite. Based on current data, TSA estimates there are approximately 2,000 respondents on an annual basis. Each agency spends approximately 5 minutes to provide the information TSA needs to confirm the law enforcement agency is eligible to receive the training. This amounts to 2,000 agencies multiplied by 5 minutes, which equals 166.6 hours (2,000 agencies × 5 min = 10,000 min [166.6 hrs.]), for a total annual hour burden of 167 hours.

Dated: August 29, 2024.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Information Technology.

[FR Doc. 2024–19827 Filed 9–3–24; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2009–0018]

Revision of Agency Information Collection Activity Under OMB Review: Certified Cargo Screening Standard Security Program

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-Day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0053, abstracted below to OMB for a revision in compliance with the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. The collection involves: applications from entities to become Certified Cargo Screening Facilities (CCSFs) or Third-Party Canine-Cargo (3PK9–C) Certifiers; security threat assessments; standard security programs, modifications or amendments; or standards or proposed modified standards; recordkeeping requirements; designation of a Security Coordinator; and significant security concerns.

DATES: Send your comments by October 4, 2024. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' and by using the find function.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh, TSA PRA Officer, Information Technology (IT), TSA–11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6011; telephone (571) 227–2062; email *TSAPRA@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION: TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on March 26, 2024, 89 FR 20991.

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be available at *https://www.reginfo.gov* upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Certified Cargo Screening Standard Security Program.

Type of Request: Revision of one currently approved ICR.

OMB Control Number: 1652–0053.

Forms(s): The forms used for this collection of information include Letter of Intent (TSA Form 419A); CCSF Profile Application (TSA Form 419B); CCSF SSI Agreement (TSA Form 419C); CCSF Principal Attestation (TSA Form 419D); CCSF Security Profile (TSA Form 419E); and the Security Threat Assessment Application (TSA Form 419F).

Affected Public: The collections of information that make up this ICR involve entities other than aircraft operators and include facilities upstream in the air cargo supply chain, such as shippers, manufacturers, warehousing entities, distributors, third party logistics companies, indirect air carriers, CCSFs and 3PK9 Certifiers located in the United States. For purposes of this document, CCSFs refers to both facility-based CCSFs and CCSF–K9s.

Abstract: TSA is seeking continued approval from OMB for the collection of information contained in the ICR. Section 1602 of the Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110–53 (121 Stat. 266, Aug. 3, 2007) (9/11 Act) required the development of a system to screen 100 percent of such cargo no later than August 2010. TSA currently requires 100 percent screening of all cargo transported on passenger aircraft.[1] The screening of air cargo must be in a manner approved by TSA and be commensurate with the level of security for the screening of passenger checked baggage.[2]

TSA's regulations for the Certified Cargo Screening Program (CCSP) in 49

[1] *See* 49 CFR 1544.205(g) and 1546.205(g)(1).

[2] *Id. See also* 49 U.S.C. 44901(g)(2).

CFR part 1549 support the 9/11 Act mandate by providing an alternative means of compliance with the 100 percent screening requirement. To comply with the statutory mandate, the CCSP allows shippers, indirect air carriers, and other entities to voluntarily participate in a program through which TSA certifies entities to screen air cargo off-airport before it is tendered to air carriers for transport on passenger aircraft. CCSFs may screen cargo off-airport and must implement measures to ensure a secure chain of custody from the point of screening to the point at which the cargo is tendered to the aircraft operator. In addition, TSA developed a program to certify 3PK9–C Teams to screen air cargo. [3] TSA incorporated this capability under the framework of the CCSP, providing an opportunity for canine team providers to choose to be regulated as CCSFs under 49 CFR part 1549 and approved to use Certified 3PK9–C Teams to screen cargo for TSA regulated entities.

TSA's three primary programs issued under 49 CFR part 1549 provides standards for compliance for those entities subject to the program's requirements: (1) the Certified Cargo Screening Security Program, applicable to facilities-based CCSFs; (2) the Certified Cargo Security Program-K9, applicable to canine team providers; and (3) the 3PK9–C Certifier Order, applicable to third-party certifiers.

The following are required to maintain availability of the CCSP: CCSF applications, 3PK9–C certifier applications, security threat assessment applications, criminal history records check, recordkeeping requirements, security program information, 3PK9–C Certifier Order information, reports of significant security concerns, and security coordinator information.

TSA is revising this collection to update the following TSA Forms: 419A, 419B, 419C, 419D and 419E, updating title and removing duplicative data elements. TSA is also making minor changes by updating instructions and removing information no longer required by the applicable security program.

Total Estimated Number of Respondent: 8,052.

Total Estimated Annual Burden Hours: 17,662 hours annually.[4]

[3] *See* sec. 1941 of the FAA Reauthorization Act of 2019, Division K, Title I (Pub. L. 115–254; 132 Stat. 3186; Oct. 5, 2018).

[4] Since the publication of the 60-day notice, TSA adjusted the annual respondents from 933 to 8,052 and the annual burden hours from 18,043 to 17,662.

Dated: August 29, 2024.

Christina A. Walsh,

Paperwork Reduction Act Officer, Information Technology.

[FR Doc. 2024–19826 Filed 9–3–24; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7080–N–41]

30-Day Notice of Proposed Information Collection: Relocation Options Study OMB Control No.: 2528–NEW

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date: October 4, 2024.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Interested persons are also invited to submit comments regarding this proposal and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Anna Guido, Clearance Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; email *PaperworkReductionActOffice@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410; email: *PaperworkReductionActOffice@hud.gov.* telephone (202)–402–5535. This is not a toll-free number, HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on March 28, 2024 at 89 FR 21537.

A. Overview of Information Collection

Title of Information Collection: Relocation Options Study.

OMB Approval Number: 2528–0297.

Type of Request: New collection.

Form Number: N/A.

Description of the need for the information and proposed use: The Office of Policy Development and Research (PD&R), at the U.S. Department of Housing and Urban Development (HUD), is proposing the collection of information for the Relocation Options study.

Increasing threats of natural hazards due to climate change may necessitate the movement of households or entire communities to mitigate risk to people and properties. This research will conduct analysis of the efficacy of buyouts, relocation, and resettlement in mitigating hazard risk exposure; assess the potential adverse outcomes, inequities, and opportunity of such programs; and determine the needed capacity and coordination of Federal, state, and local levels to enable successful buyout, relocation, and resettlement initiatives. The goal of this research is to improve equity in how disaster recovery and mitigation funds are used for households that participate in buyout programs in communities that have received Community Development Block Grant-Disaster Recovery (CDBG–DR) grants or Community Development Block Grant Mitigation (CDBG–MIT) grants. Results from this research shall be interpretable to inform a framework for a pilot program and evaluation structure to inform the ongoing federal approach to hazard-related relocation. Currently, a ''buyout'' for CDBG–DR and CDBG–MIT grants means the acquisition of a property located in a floodway, floodplain, or other grantee-designated high-risk area, that is intended to reduce risk from future hazards.

This **Federal Register** Notice provides an opportunity to comment on the information collection for this study titled Relocation Options. The

information collection is designed to support the Relocation Options study to better understand outcomes of households and communities that have participated in homeowner buyout programs using CDBG–DR or CDBG–MIT funds. This work will include a qualitative component and generate principles for equitable and responsible buyouts, relocation, and resettlement strategies. The study includes interviews of CDBG–DR grantees and program administrators, other relevant community stakeholders, and homeowners that have gone through a CDBG–DR or CDBG–MIT funded buyout process.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Cost
Interviews with government stakeholders	27	1	27	1	27	$59.90	$1,617.30
Interviews with community stakeholders	27	1	27	1	27	43.93	1,186.11
Interviews with program participants	15	1	15	1	15	43.93	658.95
Interview Total	69				69		3,462.36
Informed consent to participate in the study—Government Stakeholders	27	1	27	0.17	4.59	59.90	274.94
Informed consent to participate in the study—Community Stakeholders	27	1	27	0.17	4.59	49.93	229.18
Informed consent to participate in the study—Program Participants	15	1	15	0.17	2.55	49.93	127.32
Informed Consent Total	69				11.73		631.44
Grand Total	69				80.73		4,093.80

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) 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) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comments in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Anna P. Guido,

Department Reports Management Office, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2024–19738 Filed 9–3–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[256A2100DD/AAKC001030/A0A501010.999900; OMB Control Number 1076–0131]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Indian Child Welfare Quarterly and Annual Report

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Indian Affairs (BIA) are proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before October 4, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection request (ICR) should be sent within 30 days of publication of this notice to the Office of Information and Regulatory Affairs (OIRA) through *https://www.reginfo.gov/public/do/PRA/icrPublicCommentRequest?ref_nbr=202405-1076-008* or by visiting *https://www.reginfo.gov/public/do/PRAMain* and selecting ''Currently under Review—Open for Public Comments'' and then scrolling down to the ''Department of the Interior.''

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Steven Mullen, Information Collection Clearance Officer, Office of Regulatory Affairs and Collaborative Action—Indian Affairs, U.S. Department of the Interior, 1001 Indian School Road NW, Suite 229, Albuquerque, New Mexico 87104; *comments@bia.gov;* (202) 924–2650. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. You may also view the ICR at *https://www.reginfo.gov/public/Forward?SearchTarget=PRA&textfield=1076-0131.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), 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.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on June 21, 2024 (89 FR 52076). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the

agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency 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 submission of response.

Comments that you submit in response to this notice are a matter of public record. 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: The BIA is seeking to revise the information collection conducted under 25 CFR 23, related to the Indian Child Welfare Act (ICWA). The BIA uses the information to determine the extent of service needs in local Indian communities, assess ICWA program effectiveness, and provide date for the annual program budget justification. The aggregated report is not considered confidential. The form must be completed by Federally recognized Tribes that operate child protection programs. Submission of this information by Federally recognized Tribes allows the BIA to consolidate and review selected data on Indian child welfare cases. The data is useful on a local level, to the Tribes and Tribal entities that collect it, for case management purposes. The data are useful on a nationwide basis for planning and budget purposes. We are proposing to revise the consolidated caseload form into two forms respectfully—Part A form, and Part B form—to facilitate the appropriate Tribal officials filling out each. In addition, we have attempted to make the forms more user-friendly by making the following changes:

- Improving the form language and instructions.
- Utilizing Plain English standards and limiting the use of technical terms and/or jargoon.
- Provide annual narrative guidance by adding 10 questions to the form.
- Clearly label State and Tribal data in the instructions and titles.
- Clearly define the difference between ICWA cases and Child Protection.
- Clearly define form submission dates, signatures, and certification roles of preparer and BIA Regional Social Worker.

Title of Collection: Indian Child Welfare Quarterly and Annual Report.

OMB Control Number: 1076–0131.

Form Number: Part A, Part B.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Federally recognized Tribes or Tribal entities that are operating programs for Tribes.

Total Estimated Number of Annual Respondents: 565 per year, on average.

Total Estimated Number of Annual Responses: 2,260 per year, on average.

Estimated Completion Time per Response: Approximately 30 minutes for Part A—ICWA Data; approximately 30 minutes for Part B—Tribal Child Abuse and Neglect Data.

Total Estimated Number of Annual Burden Hours: 1,130 per year on average.

Respondent's Obligation: A response is required to obtain a benefit.

Frequency of Collection: Four times per year for the Part A—ICWA Data; if applicable, four times per year for Part B—Tribal Child Abuse Neglect Data.

Total Estimated Annual Nonhour Burden Cost: $0.

Authority

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.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Steven Mullen,

Information Collection Clearance Officer, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2024–19755 Filed 9–3–24; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000 245S180110; S2D2S SS08011000 SX064A000 24XS501520]

Notice of Availability of the Draft Environmental Impact Statement for Navajo Transitional Energy Company's Federal Mining Plan Modification for Federal Lease MTM 94378; Spring Creek Mining Plan Modification EIS

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice of availability of the draft environmental impact statement.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) is publishing this notice to announce that it has prepared a Draft Environmental Impact Statement (DEIS) for Navajo Transitional Energy Company's (NTEC) Lease by Application (LBA) 1 Federal Mining Plan Modification for Federal Lease MTM–94378 (the Project). With this notice, OSMRE also announces that it will hold a public meeting and 45-day public comment period to receive comments on the DEIS. Spring Creek Mine (SCM) is located in Big Horn County, Montana, approximately 32 miles from Sheridan, Wyoming. SCM started operation in 1974. The proposed Project would allow 162.5 acres of additional surface disturbance and recovery of an additional 39.9 million tons (Mt) of Federal coal.

DATES: OSMRE requests comments concerning the analyses in the DEIS. All comments must be received by October 22, 2024. The public meeting will be held at the Big Horn County Courthouse, Hardin, MT from 5—8 p.m. MST on September 24, 2024.

ADDRESSES:

You may submit comments related to the Project by any of the following methods:

- *Email: SCM_LBA1_EIS@wwcengineering.com*
- *Mail:* ATTN: Spring Creek Mining Plan Modification EIS, C/O: Marcelo Calle, OSMRE Western Regions 5, 7–11, P.O. Box 25065, Lakewood, CO 80225–0065

FOR FURTHER INFORMATION CONTACT: Marcelo Calle, Program Support Division Manager; telephone (303) 236–2929; email: *mcalle@osmre.gov* or at the address and email provided in the **ADDRESSES** section.

Individuals who use telecommunication devices for the deaf

(TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: OSMRE has prepared a DEIS for SCM's LBA 1 Mining Plan Modification for inclusion in its decision document recommending approval, disapproval, or conditional approval of the mining plan to the Secretary. 30 CFR 746.13. In accordance with the Mineral Leasing Act of 1920 (MLA), the Assistant Secretary for Land and Minerals Management (ASLM) at the Department of the Interior must approve, disapprove, or approve the project with conditions because the project contains lands with leased Federal coal associated with MTM–94378.

OSMRE initially published an environmental assessment (EA) for LBA 1 on October 3, 2016. This EA was challenged, and the United States District Court for the District of Montana held in *WildEarth Guardians* v. *Haaland,* No. CV 17–80–BLG–SPW (D. Mont. 2021), that the EA failed to take a hard look at indirect and cumulative effects of diesel emissions, noise, vibrations, and coal dust emissions; indirect effects of non-greenhouse gas from downstream combustion emissions; and effects related to the social costs of greenhouse gases. This DEIS updates and expands on the environmental analysis in the 2016 EA and provides the additional impacts analysis identified as deficient by the district court.

The SCM is operated by NTEC under Permit SMP C1979012, issued by the Montana Department of Environmental Quality (MDEQ), in accordance with its state mine permit. As proposed, the Project would allow 162.5 acres of additional surface disturbance and recovery of an additional 39.9 Mt of Federal coal. The final environmental impact statement is scheduled for release in December 2024 with the Record of Decision expected to be completed in January 2025.

Purpose and Need for the Proposed Action:

OSMRE's purpose in preparing this DEIS is to fully analyze the environmental impacts from the Federal mining plan modification, with particular attention to addressing the deficiencies identified by the district court, so that OSMRE can make a recommendation to the ASLM to approve, disapprove, or conditionally approve the proposed Federal mining plan modification for LBA 1. NTEC, the current operator, will not be able to access or recover the remaining Federal coal in the LBA 1 tracts unless OSMRE completes its NEPA analysis and the ASLM approves the Federal mining plan modification.

Proposed Project

The proposed Project would allow 162.5 acres of additional surface disturbance and the recovery of an additional 39.9 Mt of Federal coal in the LBA1 tracts.

Summary of Expected Impacts

Reasonably foreseeable effects of mining Federal coal have been evaluated for the following resources in the DEIS:

- Air Quality (measured as concentration of criteria air pollutants regulated under the National Ambient Air Quality Standards, Hazardous Air Pollutants, and Air Quality Related Values such as visibility (haze) and atmospheric deposition)
- Emissions of greenhouse gases as they relate to climate change, measured in terms of carbon dioxide equivalent for both 20-year and 100-year global warming potentials
- Surface water and groundwater quality and quantity
- Socio-economic effects, including changes to state and local taxes, royalties, fees, lease bids and bonuses, as well as payroll benefits as well as effects to Environmental Justice populations
- Federally listed threatened/endangered species
- Geology
- Soils
- Cultural Resources
- Visual Resources
- Wildlife

Anticipated Permits and Authorizations

None at this time.

Schedule for the Decision-Making Process

The Department plans to have the Record of Decision signed in January 2025.

Public Comment Period

This notice of availability initiates the comment period, which allows the agency to gather input on the analyses included in the DEIS. In addition to this notice and the project web page on OSMRE's website at *https://www.osmre.gov/lrg/projects/SpringCreek.shtm,* interested stakeholders, agencies, and Tribes will be notified of the 45-day comment period via mailed letters.

All public comments must be submitted by email or by hard copy mail to the addresses listed under **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 public at any time. While you may request in your comment to withhold your personal identifying information from public review, OSMRE cannot guarantee that this will occur.

The project page will include the description of the Project as submitted by NTEC, a map of the proposed mine plan, and information about how to submit public comment on issues or concerns related to the Project that are analyzed in the NEPA document.

OSMRE will review public comments and prepare formal responses to all substantive comments. OSMRE will make revisions as needed based on input from the public while preparing the final EIS.

Lead and Cooperating Agencies

OSMRE is the lead agency for this EIS. No agencies indicated an interest in being a cooperating agency on the OSMRE EIS.

Decision Maker

Assistant Secretary of Land and Minerals Management

Nature of Decision To Be Made

Informed by the NEPA analysis, OSMRE will make a recommendation to the ASLM about the Federal mining plan modification associated with development of the LBA 1 Federal coal tracts. The ASLM will use OSMRE's recommendation to decide whether the new mining plan modification is approved, disapproved, or approved with conditions. OSMRE's recommendation to the ASLM is based, at a minimum, on the documentation specified at 30 CFR 746.13.

Marcelo Calle,

Acting OSMRE Regional Director, Regions 5, 7–11.

[FR Doc. 2024–19844 Filed 9–3–24; 8:45 am]

BILLING CODE 4310–05–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1632, 1634, 1635, and 1639 (Final)]

Mattresses From India, Kosovo, Mexico, and Spain; Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that an industry in the United States is materially injured by reason of imports of mattresses from India, Kosovo, Mexico, and Spain, provided for in subheadings 9404.21.00, 9404.29.10, and 9404.29.90 of the Harmonized Tariff Schedule of the United States, that have been found by the U.S. Department of Commerce (''Commerce'') to be sold in the United States at less than fair value (''LTFV'').[2]

Background

The Commission instituted these investigations effective July 28, 2023, following receipt of petitions filed with the Commission and Commerce by Brooklyn Bedding LLC, Phoenix, Arizona; Carpenter Company, Richmond, Virginia; Corsicana Mattress Company, Dallas, Texas; Future Foam, Inc., Council Bluffs, Iowa; FXI, Inc., Radnor, Pennsylvania; Kolcraft Enterprises, Inc., Chicago, Illinois; Leggett & Platt, Incorporated, Carthage, Missouri; Serta Simmons Bedding, Inc., Doraville, Georgia; Southerland Inc., Antioch, Tennessee; Tempur Sealy International, Inc., Lexington, Kentucky; the International Brotherhood of Teamsters, Washington, DC; and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, Washington, DC. The Commission scheduled the final phase of the investigations following notification of preliminary determinations by Commerce that imports of mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Italy, Kosovo, Mexico, Philippines, Poland, Slovenia, Spain, and Taiwan were being sold at LTFV within the meaning of § 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of March 6, 2024 (89 FR 16026). The Commission conducted its hearing on May 9, 2024. All persons who requested the opportunity were permitted to participate.

Although the antidumping duty petitions for mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Italy, Kosovo, Mexico, Philippines, Poland, Slovenia, Spain, and Taiwan were filed on the same day, July 28, 2023, the investigation schedules became staggered when Commerce did not align its investigations concerning Bosnia and Herzegovina, Bulgaria, Burma, Italy, Philippines, Poland, Slovenia, and Taiwan with its investigations concerning India, Kosovo, Mexico, and Spain. On June 28, 2024, the Commission issued final affirmative determinations in its antidumping duty investigations of mattresses from Bosnia and Herzegovina, Bulgaria, Burma, Italy, Philippines, Poland, Slovenia, and Taiwan (89 FR 55657, July 5, 2024). Following notification of final determinations by Commerce that imports of mattresses from India, Kosovo, Mexico, and Spain were being sold at LTFV within the meaning of section 735(a) of the Act (19 U.S.C. 1673d(a)), notice of the supplemental scheduling of the final phase of the Commission's antidumping duty investigations concerning India, Kosovo, Mexico, and Spain was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** (89 FR 60658, July 26, 2024).[3]

The Commission made these determinations pursuant to § 735(b) of the Act (19 U.S.C. 1673d(b)). It completed and filed its determinations in these investigations on August 28, 2024. The views of the Commission are contained in USITC Publication 5539 (August 2024), entitled *Mattresses from India, Kosovo, Mexico, and Spain: Investigation Nos. 731–TA–1632, 1634, 1635, and 1639 (Final).*

By order of the Commission.

Issued: August 28, 2024.

Sharon Bellamy,

Supervisory Hearings and Information Officer.

[FR Doc. 2024–19781 Filed 9–3–24; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 89 FR 59047 (India), 89 FR 59043 (Kosovo), 89 FR 59062 (Mexico), and 89 FR 59059 (Spain), July 22, 2024.

[3] A countervailing duty petition on mattresses from Indonesia was also filed on the same day as the antidumping duty petitions concerning mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Italy, Kosovo, Mexico, Philippines, Poland, Slovenia, Spain, and Taiwan. However, Commerce published a final negative countervailing duty determination with respect to mattresses from Indonesia on July 22, 2024 (89 FR 59050). The Commission therefore terminated its countervailing duty investigation on mattresses from Indonesia (89 FR 60661, July 26, 2024).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1412]

Importer of Controlled Substances Application: Chattem Chemicals

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Chattem Chemicals has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants, therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before October 4, 2024. Such persons may also file a written request for a hearing on the application on or before October 4, 2024.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on July 19, 2024, Chattem Chemicals, 3801 Saint Elmo Avenue, Chattanooga, Tennessee 37409–1237, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Methamphetamine	1105	II
4-Anilino-N-phenethyl-4-piperidine (ANPP)	8333	II
Phenylacetone	8501	II
Cocaine	9041	II
Poppy Straw Concentrate	9670	II
Tapentadol	9780	II

The company plans to import the listed controlled substances to manufacture bulk controlled substances for sale to its customers. The company plans to import an intermediate of Tapentadol (9780), to bulk manufacture Tapentadol for distribution to its customers. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Marsha L. Ikner,

Acting Deputy Assistant Administrator.

[FR Doc. 2024–19789 Filed 9–3–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1415]

Bulk Manufacturer of Controlled Substances Application: Bright Green Corporation

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Bright Green Corporation has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before November 4, 2024. Such persons may also file a written request for a hearing on the application on or before November 4, 2024.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on July 22, 2024, Bright Green Corporation, 1033 George Hanosh Boulevard, Grants, New Mexico 87020, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Marihuana Extract	7350	I
Marihuana	7360	I
Tetrahydrocannabinols	7370	I

The company plans to bulk manufacture the listed controlled substances for research purposes. No other activities for these drug codes are authorized for this registration.

Marsha L. Ikner,

Acting Deputy Assistant Administrator.

[FR Doc. 2024–19777 Filed 9–3–24; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1401]

Bulk Manufacturer of Controlled Substances Application: Continuus Pharmaceuticals

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Continuus Pharmaceuticals has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants, therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before November 4, 2024. Such persons may also file a written request for a hearing on the application on or before November 4, 2024.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow

the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on July 16, 2024, 256 West Cummings Park, Woburn, Massachusetts 01801, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Fentanyl	9801	II

The company plans to bulk manufacture the listed controlled substances for research and development purposes only. No other activity for this drug code is authorized for this registration.

Marsha L. Ikner,

Acting Deputy Assistant Administrator.

[FR Doc. 2024–19756 Filed 9–3–24; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1414]

Importer of Controlled Substances Application: Catalent CTS, LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Catalent CTS, LLC has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants, therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before October 4, 2024. Such persons may also file a written request for a hearing on the application on or before October 4, 2024.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on June 27, 2024, Catalent CTS, LLC, 10245 Hickman Mills Drive, Kansas City, Missouri 64137–1418, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Gamma Hydroxybutyric Acid	2010	I
Marihuana Extract	7350	I
Marihuana	7360	I
Tetrahydrocannabinols	7370	I

The company plans to import the listed controlled substances as dosage unit products for clinical trials and distribution. In reference to drug codes 7370 Tetrahydrocannabinols, the company plans to import a synthetic tetrahydrocannabinol. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Marsha L. Ikner,

Acting Deputy Assistant Administrator.

[FR Doc. 2024–19776 Filed 9–3–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1408]

Bulk Manufacturer of Controlled Substances Application: Benuvia Operations, LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Benuvia Operations, LLC has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants, therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before November 4, 2024. Such persons may also file a written request for a hearing on the application on or before November 4, 2024.

ADDRESSES: The Drug Enforcement Administration requires that all

comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on June 7, 2024, Benuvia Operations, LLC, 3950 North Mays Street, Round Rock, Texas 78665, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Ibogaine	7260	I
Marihuana Extract	7350	I
Tetrahydrocannabinols	7370	I
Mescaline	7381	I
3,4-Methylenedioxyamphetamine	7400	I
3,4-Methylenedioxymethamphetamine	7405	I
5-Methoxy-N-N-dimethyltryptamine	7431	I
Dimethyltryptamine	7435	I
Psilocybin	7437	I
Psilocyn	7438	I
5-Methoxy-N,N-diisopropyltryptamine	7439	I

The company plans to bulk manufacture the listed controlled substances for internal research and dosage formulation development. No other activities for these drug codes are authorized for this registration.

Marsha L. Ikner,

Acting Deputy Assistant Administrator.

[FR Doc. 2024–19795 Filed 9–3–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1392]

Importer of Controlled Substances Application: Indivior Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Indivior Inc. has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants, therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before October 4, 2024. Such persons may also file a written request for a hearing on the application on or before October 4, 2024.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on June 17, 2024, Indivior Inc., 2607 Midpoint Drive, Fort Collins, Colorado 80525–4427, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Thebaine	9333	II

The company plans to import the listed controlled substance in limited quantity for research, clinical trials, analytical purposes, and for the manufacturing process development of the dosage form. No other activity for this drug code is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Marsha L. Ikner,

Acting Deputy Assistant Administrator.

[FR Doc. 2024–19754 Filed 9–3–24; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1409]

Importer of Controlled Substances Application: Amneal Complex Products Research LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Amneal Complex Products Research LLC has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants, therefore, may submit electronic comments on or objections to

the issuance of the proposed registration on or before October 4, 2024. Such persons may also file a written request for a hearing on the application on or before October 4, 2024.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on July 3, 2024, Amneal Complex Products Research LLC, 995 US Highway 202/206, Bridgewater, New Jersey 08807–1291, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Methylphenidate	1724	II
Thebaine	9333	II

The company plans to import the listed controlled substances for internal analytical testing purposes. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Marsha L. Ikner,

Acting Deputy Assistant Administrator.

[FR Doc. 2024–19787 Filed 9–3–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1417]

Bulk Manufacturer of Controlled Substances Application: Chattem Chemicals, Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Chattem Chemicals, Inc., has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants, therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before November 4, 2024. Such persons may also file a written request for a hearing on the application on or before November 4, 2024.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on July 19, 2024, Chattem Chemicals, Inc. 3801 Saint Elmo Avenue, Chattanooga, Tennessee 37409–1237, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Gamma Hydroxybutyric Acid	2010	I
Marihuana	7360	I
Tetrahydrocannabinols	7370	I
4-Methoxyamphetamine	7411	I
Dihydromorphine	9145	I
Amphetamine	1100	II
Methamphetamine	1105	II
Lisdexamfetamine	1205	II
Methylphenidate	1724	II
Cocaine	9041	II
Codeine	9050	II
Dihydrocodeine	9120	II
Oxycodone	9143	II
Hydromorphone	9150	II
Ecgonine	9180	II

Controlled substance	Drug code	Schedule
Hydrocodone	9193	II
Levorphanol	9220	II
Methadone	9250	II
Methadone intermediate	9254	II
Morphine	9300	II
Oripavine	9330	II
Thebaine	9333	II
Oxymorphone	9652	II
Noroxymorphone	9668	II
Alfentanil	9737	II
Remifentanil	9739	II
Sufentanil	9740	II
Tapentadol	9780	II
Fentanyl	9801	II

The company plans to bulk manufacture the listed controlled substances in bulk for distribution and sale to its customers. In reference to drug codes 7360 (Marihuana) and 7370 (Tetrahydrocannabinols), the company plans to bulk manufacture these drugs as a synthetic. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the manufacturing of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Marsha L. Ikner,

Acting Deputy Assistant Administrator.

[FR Doc. 2024–19779 Filed 9–3–24; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1418]

Bulk Manufacturer of Controlled Substances Application: Biopharmaceutical Research Company

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Biopharmaceutical Research Company has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants, therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before November 4, 2024. Such persons may also file a written request for a hearing on the application on or before November 4, 2024.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on July 17, 2024, Biopharmaceutical Research Company, 11045 Commercial Parkway, Castroville, California 95012–3209, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Marihuana Extract	7350	I
Marihuana	7360	I
Tetrahydrocannabinols	7370	I

The company plans to bulk manufacture the listed controlled substances to provided Pharmaceutical-grade marihuana in order to facilitate research in a manner that complies with local, state, and federal regulations. No other activities for these drug codes are authorized for this registration.

Marsha L. Ikner,

Acting Deputy Assistant Administrator.

[FR Doc. 2024–19783 Filed 9–3–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1411]

Bulk Manufacturer of Controlled Substances Application: Cambridge Isotope Laboratories, Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Cambridge Isotope Laboratories, Inc has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants, therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before November 4, 2024. Such persons may also file a written request for a hearing on the application on or before November 4, 2024.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on July 24, 2024, Cambridge Isotope Laboratories, Inc., 50 Frontage Road, Andover, Massachusetts 01810–5413, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Tetrahydrocannabinols	7370	I

The company plans to synthetically bulk manufacture the controlled substance Tetrahydrocannabinols to produce analytical standards for distribution to its customers. No other activity for this drug code is authorized for this registration.

Marsha L. Ikner,

Acting Deputy Assistant Administrator.

[FR Doc. 2024–19788 Filed 9–3–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1422]

Importer of Controlled Substances Application: Fisher Clinical Services, Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Fisher Clinical Services, Inc. has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants, therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before October 4, 2024. Such persons may also file a written request for a hearing on the application on or before October 4, 2024.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on July 10, 2024, Fisher Clinical Services, Inc., 700A–C Nestle Way, Breinigsville, Pennsylvania 18031–1522, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Marihuana Extract	7350	I
Dimethyltryptamine	7435	I
Psilocybin	7437	I
Methylphenidate	1724	II
Levorphanol	9220	II
Noroxymorphone	9668	II
Tapentadol	9780	II

The company plans to import the listed controlled substances for use in clinical trials only. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Marsha L. Ikner,

Acting Deputy Assistant Administrator.

[FR Doc. 2024–19791 Filed 9–3–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 23–15]

Samirkumar Shah, M.D.; Decision and Order

On November 28, 2022, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Samirkumar Shah, M.D., (Applicant) of Pittsburgh, Pennsylvania.

OSC, at 1, 3. The OSC proposed the denial of Applicant's application for a DEA Certificate of Registration, Control No. W21057811C, alleging that Applicant has been excluded from participation in Medicare, Medicaid, and all federal health care programs pursuant to 42 U.S.C. 1320a–7(a). *Id.* at 1 (citing 21 U.S.C. 824(a)(5)).[1]

A hearing was held before DEA Chief Administrative Law Judge John J. Mulrooney, II (the Chief ALJ), who, on November 16, 2023, issued his Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision (Recommended Decision or RD), which recommended denial of Applicant's application. RD, at 19. Following the issuance of the RD, Applicant filed Exceptions.[2] Having reviewed the entire record, the Agency adopts and hereby incorporates by reference the entirety of the Chief ALJ's rulings, credibility findings,[3] findings of fact, conclusions of law, sanctions analysis, and recommended sanction as found in the RD.

[1] In its OSC, the Government relies upon 21 U.S.C. 824(a), grounds which Congress provided to support revocation or suspension, not denial of an application. Prior Agency decisions have repeatedly determined that it is appropriate to consider a provision of 21 U.S.C. 824(a) when determining whether to grant a practitioner registration application. *Robert Wayne Locklear, M.D.,* 86 FR 33,738, 33,744–33,745 (2021) (collecting cases); *see also Dinorah Drug Store, Inc.,* 61 FR 15,972, 15,973–15,974 (1996).

[2] In Applicant's Exceptions document, dated November 22, 2023, Applicant does not put forward any particular arguments contesting the Chief ALJ's Recommended Decision, but simply requests an appeal of the Decision. Applicant's Exceptions, at 1–2.

[3] The Agency adopts the Chief ALJ's summary of each of the witnesses' testimonies as well as the Chief ALJ's assessment of each of the witnesses' credibility. *See* RD, at 3–10. The Agency agrees with the Chief ALJ that the testimony from the DEA Diversion Investigator (DI), which was primarily focused on the non-controversial introduction of documentary evidence and the DI's contact with the case, was sufficiently detailed, plausible, and internally consistent without indication of any motive to fabricate or exaggerate and thus warranted full credibility. *Id.* at 4. The Agency also agrees with the Chief ALJ that the testimony from Applicant, which was focused on Applicant's criminal conviction, the underlying facts of Applicant's criminal conviction, and the mandatory exclusion resulting from Applicant's criminal conviction, was ''ubiquitously inconsistent, frequently lacking in detail, and commonly bereft of even a modest level of basic plausibility.'' *Id.* at 9. The Chief ALJ also noted, and the Agency agrees, that Applicant was ''unwilling to acknowledge his own misconduct on any level.'' *Id.* Based on these factors, the Chief ALJ found, and the Agency agrees, that Applicant's testimony was lacking in credibility and warranted reduced weight. *Id.* at 9–10.

I. Findings of Fact

1. Applicant's Criminal Conviction and Exclusion

In 2021, Applicant was convicted of two felony counts of healthcare fraud in violation of 18 U.S.C. 1347. RD, at 4; Government Exhibit (GX) 3. As a result of Applicant's conviction, the U.S. Department of Health and Human Services, Office of Inspector General (HHS/OIG) excluded Applicant, effective July 20, 2022, from participation in Medicare, Medicaid, and all federal health care programs pursuant to 42 U.S.C. 1320a–7(a) for a period of twenty-seven years. RD, at 4; GX 4; Tr. 26–28.

2. Applicant's Argument

Regarding the allegations underlying his criminal conviction, Applicant testified that he started implementing in his practice a cardiovascular therapy called ''external counter pulsation therapy'' (ECP) designed to help patients with heart failure. Tr. 59. Applicant testified that he offered this therapy with 25 certified physicians in Pennsylvania. *Id.* According to Applicant, ''[t]he mistake was the billing of this therapy.'' RD; at 7; Tr. 59–60. Applicant testified that he is ''not trained as a biller'' and he ''had a private company who prepared all the codes and billing forms.'' RD, at 7; Tr. at 60. Applicant asserted that he ''did not realize that the billing was not done correctly,'' but also that he ''did everything by the book and the law.'' RD, at 7; Tr. 60, 90. Nonetheless, Applicant stated, ''the biller is responsible for what happened . . . my name was used, but he's liable.'' RD, at 7; Tr. 104.

Notably, when Applicant appealed his criminal conviction, the United States Court of Appeals for the Third Circuit (Court of Appeals) found that the ECP therapy that Applicant was prescribing and billing for was unnecessary. RD, at 7 (citing *United States* v. *Shah,* 43 F.4th 356, 366–367 (3d Cir. 2022)). Even so, Applicant testified that every patient to whom he prescribed ECP therapy needed it. RD, at 7; Tr. 77, 85–86. The Court of Appeals also found that Applicant had advertised his ECP therapy to accomplish unrealistic goals, such as that it would make patients ''younger and smarter'' and could help with a plethora of conditions including obesity, erectile disfunction, restless leg syndrome, and blood pressure issues. RD, at 7 (citing *United States* v. *Shah,* 43 F.4th at 361). According to Applicant, ''[t]hose comments were made by a couple of [his] office employees without [his] knowledge.'' RD, at 7; Tr. 89. As for the finding by the Court of Appeals that Applicant was often not present to supervise the ECP treatments, *see United States* v. *Shah,* 43 F.4th at 361, Applicant testified that this finding was ''bogus'' because other physicians were present. RD, at 7; Tr. 89–90.

As highlighted by the Chief ALJ, Applicant also repeatedly emphasized that he had ''hired a very awful attorney in Western Pennsylvania as [his] attorney to defend [his] case.'' RD, at 7–8; Tr. 60. Specifically, Applicant took issue with his attorney's legal strategy (which led to the attorney firing Applicant as a client) as well as the fact that the attorney went on to accept an appointment as a federal prosecutor, which Applicant characterized as creating a conflict of interest regarding his case. RD, at 8; Tr. 61. As noted by the Chief ALJ, Applicant's latter complaint was raised with the Court of Appeals and found to be without merit. RD, at 8 (citing *United States* v. *Shah,* 43 F.4th at 363–365). Furthermore, Applicant claimed he was forced to go to trial without access to relevant medical files and also was unable to have these files reviewed by a potential expert witness. RD, at 8; Tr. 77, 81–82, 84. Again, the Court of Appeals found this contention to be without merit. RD, at 8 (citing *United States* v. *Shah,* 43 F.4th at 364–365). Finally, Applicant made claims as to the Court of Appeals itself. Specifically, Applicant claimed incorrectly that the panel of the Court of Appeals that affirmed his conviction was split. RD, at 8 (citing *United States* v. *Shah,* 43 F.4th at 360); Tr. 83. Applicant also claimed that his request for an *en banc* reconsideration of his case was denied ''because they're busy, they're on vacations and everything, they denied my ten-judge panel appeal.'' RD, at 8; Tr. 83. Overall, Applicant characterized his conviction as a ''complete miscarriage of justice.'' RD, at 8; Tr. 88. Regarding the findings of HHS/OIG, Applicant testified that HHS/OIG ''just had a summary judgment'' without providing Applicant with a trial or hearing. RD, at 9; Tr. 93.

Applicant testified that the criminal court had ordered $1.2 million in restitution and that he was paying $300 per month. RD, at 9; Tr. 70. As for any potential remedial measures, Applicant testified that when he restarts his practice, he will not need Medicare patients and he plans to focus on weight loss and cosmetic procedures for ''cash-paying patients.'' RD, at 9; Tr. 70–71.

II. Discussion

1. The Five Public Interest Factors

Pursuant to Section 303(g)(1) of the Controlled Substances Act (CSA), ''[t]he Attorney General shall register practitioners . . . to dispense . . . controlled substances . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(g)(1). Section 303(g)(1) further provides that an application for a practitioner's registration may be denied upon a determination that ''the issuance of such registration . . . would be inconsistent with the public interest.'' *Id.* In making the public interest determination, the CSA requires consideration of the following factors:

(A) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(B) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(C) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(D) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(E) Such other conduct which may threaten the public health and safety.

21 U.S.C. 823(g)(1).

In the current matter, it is undisputed that Applicant holds a valid state medical license and is authorized to dispense controlled substances in the Commonwealth of Pennsylvania where he practices. Moreover, because the Government has not alleged that Applicant's registration is inconsistent with the public interest under section 823, and although the Agency has considered section 823, the Agency will not analyze Applicant's application under the public interest factors. Therefore, in accordance with prior agency decisions, the Agency will move to assess whether the Government has proven by substantial evidence that a ground for suspension exists under 21 U.S.C. 824(a). *See supra* n.1.

2. Mandatory Exclusion From Federal Health Care Programs

Under Section 824(a) of the CSA, a registration ''may be suspended or revoked'' upon a finding of one or more of five grounds. 21 U.S.C. 824(a). The ground in 21 U.S.C. 824(a)(5) requires that the registrant ''has been excluded (or directed to be excluded) from participation in a program pursuant to section 1320a–7(a) of Title 42.'' *Id.* at § 824(a)(5). Here, there is no dispute in the record that Applicant is mandatorily excluded from federal health care programs under 42 U.S.C. 1320a–7(a). The Government has presented substantial evidence of Applicant's exclusion and the underlying criminal conviction that led to that exclusion, and Applicant has admitted to the same. GX 2–8; Applicant's Post-Hearing Brief, at 4–5. Accordingly, the Agency will sustain the Government's allegation that Applicant has been excluded from participation in a program pursuant to section 1320a–7(a) of Title 42 and find that the Government has established that a ground exists upon which a registration could be revoked pursuant to 21 U.S.C. 824(a)(5).

Further, although the language of 21 U.S.C. 824(a)(5) discusses suspension and revocation of a registration, for the reasons discussed above, *see supra* n.1, it may also serve as the basis for the denial of a DEA registration application. *Dinorah Drug Store, Inc.,* 61 FR at 15,973. Applicant's exclusion from participation in a program under 42 U.S.C. 1320a–7(a), therefore, serves as an independent basis for denying his application for DEA registration. 21 U.S.C. 824(a)(5).[4]

III. Sanction

Where, as here, the Government has established sufficient grounds for revocation or denial, the burden shifts to the registrant to show why he can be entrusted with the responsibility carried by a registration. *Garret Howard Smith, M.D.,* 83 FR 18,882, 18,910 (2018). To establish that he can be entrusted with registration, a registrant must both accept responsibility and demonstrate that he has undertaken corrective measures. *Holiday CVS, L.L.C., dba CVS Pharmacy Nos 219 and 5195,* 77 FR 62,316, 62,339 (2012) (internal quotations omitted). Trust is necessarily a fact-dependent determination based on individual circumstances; therefore, the Agency looks at factors such as the acceptance of responsibility, the credibility of that acceptance as it relates to the probability of repeat violations or behavior, the nature of the misconduct that forms the basis for sanction, and the Agency's interest in deterring similar acts. *See, e.g., Robert Wayne Locklear, M.D.,* 86 FR 33,738, 33,746 (2021).

Here, and as noted by the ALJ, ''[Applicant's] consistent minimization and flat out denial of his wrongdoing supports the proposition that he has not credibly and unequivocally accepted responsibility for his actions.'' RD, at 14. Further, Applicant repeatedly placed the blame on others, including his practice's third-party billers, his office employees, his attorney, the Court of Appeals, and HHS/OIG itself. *Id.* at 14–15. Ultimately, the ALJ concluded, and the Agency agrees, that Applicant has not demonstrated unequivocal acceptance of responsibility for his actions. *Id.* at 16.[5]

In addition to acceptance of responsibility, the Agency considers both specific and general deterrence when determining an appropriate sanction. *Daniel A. Glick, D.D.S.,* 80 FR at 74,810. In this case, the Agency agrees with the ALJ that, regarding specific deterrence, ''[w]ithout understanding the nature of his misconduct and his own culpability in it, there is no rational reason [to] believe that [Applicant] would make different choices in the face of the same circumstances in the future.'' RD, at 17. Further, the Agency agrees with the ALJ that the interests of general deterrence also support revocation, as a lack of sanction in the current matter would send a message to the registrant community that a registrant can commit similar misconduct without consequences. *Id.* at 18. The Agency also agrees with the ALJ that Applicant's actions were egregious, as '''defrauding federal health care programs is egregious.'' RD, at 18 (quoting *Gilbert Y. Kim, D.D.S.,* 87 FR 21,139, 21,145 (2022)). As noted by the ALJ, Applicant was convicted of two felony counts of healthcare fraud, with the Court of Appeals itself highlighting that Applicant ''billed insurers for millions of dollars in ECP treatments where they were either not medical necessary for the patient or delivered without the required physician supervision or both.'' RD, at 18 (quoting *United States* v. *Shah,* 43 F.4th at 367).

In sum, Applicant has not offered any credible evidence on the record to rebut the Government's case for denial of his

[4] The underlying conviction forming the basis for a registrant's mandatory exclusion from participation in federal health care programs need not involve controlled substances to provide the grounds for revocation or denial pursuant to section 824(a)(5). *Jeffrey Stein, M.D.,* 84 FR 46,968, 46,971–46,972 (2019); *see also Narciso Reyes, M.D.,* 83 FR 61,678, 61,681 (2018); *KK Pharmacy,* 64 FR 49,507, 49,510 (1999) (collecting cases); *Melvin N. Seglin, M.D.,* 63 FR 70,431, 70,433 (1998); *Stanley Dubin, D.D.S.,* 61 FR 60,727, 60,728 (1996).

[5] When a registrant fails to make the threshold showing of acceptance of responsibility, the Agency need not address the registrant's remedial measures. *Ajay S. Ahuja, M.D.,* 84 FR 5,479, 5,498 n.33 (2019) (citing *Jones Total Health Care Pharmacy, L.L.C. & SND Health Care, L.L.C.,* 81 FR 79,188, 79,202–03 (2016)); *Daniel A. Glick, D.D.S.,* 80 FR 74,800, 74,801, 74,810 (2015). Even so, in the current matter, the Agency has considered Applicant's testimony that when he restarts his practice, he intends to avoid Medicare patients and instead focus on weight loss and cosmetic procedures for ''cash-paying patients.'' Tr. 70–71.

application and Applicant has not demonstrated that he can be entrusted with the responsibility of registration. *Id.* at 19. Accordingly, the Agency will order that Applicant's application be denied.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823, I hereby deny the pending application for a DEA Certificate of Registration, Control No. W21057811C, submitted by Samirkumar Shah, M.D., as well as any other pending application of Samirkumar Shah, M.D., for additional registration in Pennsylvania. This Order is effective October 4, 2024.

Signing Authority

This document of the Drug Enforcement Administration was signed on August 19, 2024, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2024–19731 Filed 9–3–24; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1419]

Importer of Controlled Substances Application: Caligor Coghlan Pharma Services

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Caligor Coghlan Pharma Services has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants, therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before October 4, 2024. Such persons may also file a written request for a hearing on the application on or before October 4, 2024.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on July 19, 2024, Caligor Coghlan Pharma Services, 1500 Business Park Drive, Unit B, Bastrop, Texas 78602, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Lysergic acid diethylamide	7315	I
5-Methoxy-N-N-dimethyltryptamine	7431	I
Dimethyltryptamine	7435	I
Psilocyn	7438	I

The company plans to import the listed controlled substances as finished dosage units for use in clinical trials. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Marsha L. Ikner,

Acting Deputy Assistant Administrator.

[FR Doc. 2024–19785 Filed 9–3–24; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1421]

Bulk Manufacturer of Controlled Substances Application: Cambrex High Point, Inc

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Cambrex High Point, Inc has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants, therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before November 4, 2024. Such persons may also file a written request for a hearing on the application on or before November 4, 2024.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission

of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on July 23, 2024, Cambrex High Point, Inc., 4180 Mendenhall Oaks Parkway, High Point, North Carolina 27265–8017, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Oxymorphone	9652	II
Noroxymorphone	9668	II

The company plans to manufacture the above listed controlled substances in bulk for use as an internal intermediates and distribution to its customers. No other activities for these drug codes are authorized for this registration.

Marsha L. Ikner,

Acting Deputy Assistant Administrator.

[FR Doc. 2024–19790 Filed 9–3–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Agency Information Collection Activities; Comment Request; Request for Earnings Information

ACTION: Notice.

AGENCY: Division of Federal Employees', Longshore and Harbor Workers' Compensation, Office of Workers' Compensation Programs.

SUMMARY: The Department of Labor (DOL) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Request for Earnings Information''. This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by October 31, 2024.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained for free by contacting Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

Submit written comments about this ICR by mail or courier to the U.S. Department of Labor, Office of Workers' Compensation Programs, Room S3323, 200 Constitution Avenue NW, Washington, DC 20210; or by email at *suggs.anjanette@dol.gov.* Please note that comments submitted after the comment period will not be considered.

FOR FURTHER INFORMATION CONTACT: Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

SUPPLEMENTARY INFORMATION: The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

The Office of Workers' Compensation Programs administers the Longshore and Harbor Workers' Compensation Act (LHWCA). The Act provides benefits to workers injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel. In addition, several acts extend the Longshore Act's coverage to certain other employees.

Pursuant to the LHWCA, injured employees shall receive compensation in an amount equal to 66–2/3 per centum of their average weekly wage. Form LS–426, Request for Earnings Information, is used by district offices to collect wage information from injured workers to assure payment of compensation benefits to injured workers at the proper rate. This information is needed for determination of compensation benefits in accordance with section 10 of the LHWCA. This information collection is currently approved for use through February 28, 2025.

Legal authority for this information collection is found at 33 U.S.C. 910.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB under the PRA approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Written comments will receive consideration, and summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB No. 1240–0025.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The DOL is particularly interested in comments that:

- 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.
- 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.
- Enhance the quality, utility, and clarity of the information to be collected; and
- 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 submission of responses.

Agency: DOL-Office of Workers' Compensation Programs, DFELHWC.

Type of Review: Extension of currently approved collection.

Title of Collection: Longshore and Harbor Workers' Compensation Act Request for Earnings Information.

Form: LS–426, Request for Earnings Information.

OMB Control Number: 1240–0025.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 100.

Frequency: On occasion.

Total Estimated Annual Responses: 100.

Estimated Average Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 25 hours.

Total Estimated Annual Other Cost Burden: $3.00.

(Authority: 44 U.S.C. 3506(c)(2)(A)).

Anjanette Suggs,

Agency Clearance Officer.

[FR Doc. 2024–19748 Filed 9–3–24; 8:45 am]

BILLING CODE 4510–CF–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–24–0019; NARA–2024–054]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice of certain Federal agency requests for records disposition authority (records schedules). We publish notice in the **Federal Register** and on *regulations.gov* for records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on such records schedules.

DATES: We must receive responses on the schedules listed in this notice by October 21, 2024.

ADDRESSES: To view a records schedule in this notice, or submit a comment on one, use the following address: *https://www.regulations.gov/docket/NARA-24-0019/document.* This is a direct link to the schedules posted in the docket for this notice on *regulations.gov*. You may submit comments by the following method:

- *Federal eRulemaking Portal: https://www.regulations.gov.* On the website, enter either of the numbers cited at the top of this notice into the search field. This will bring you to the docket for this notice, in which we have posted the records schedules open for comment. Each schedule has a 'comment' button so you can comment on that specific schedule. For more information on *regulations.gov* and on submitting comments, see their FAQs at *https://www.regulations.gov/faq.*

If you are unable to comment via *regulations.gov*, you may email us at *request.schedule@nara.gov* for instructions on submitting your comment. You must cite the control number of the schedule you wish to comment on. You can find the control number for each schedule in parentheses at the end of each schedule's entry in the list at the end of this notice.

FOR FURTHER INFORMATION CONTACT: Eddie Germino, Strategy and Performance Division, by email at *regulation_comments@nara.gov* or at 301–837–3758. For information about records schedules, contact Records Management Operations by email at *request.schedule@nara.gov* or by phone at 301–837–1799.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

We are publishing notice of records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on these records schedules, as required by 44 U.S.C. 3303a(a), and list the schedules at the end of this notice by agency and subdivision requesting disposition authority.

In addition, this notice lists the organizational unit(s) accumulating the records or states that the schedule has agency-wide applicability. It also provides the control number assigned to each schedule, which you will need if you submit comments on that schedule.

We have uploaded the records schedules and accompanying appraisal memoranda to the *regulations.gov* docket for this notice as ''other'' documents. Each records schedule contains a full description of the records at the file unit level as well as their proposed disposition. The appraisal memorandum for the schedule includes information about the records.

We will post comments, including any personal information and attachments, to the public docket unchanged. Because comments are public, you are responsible for ensuring that you do not include any confidential or other information that you or a third party may not wish to be publicly posted. If you want to submit a comment with confidential information or cannot otherwise use the *regulations.gov* portal, you may contact *request.schedule@nara.gov* for instructions on submitting your comment.

We will consider all comments submitted by the posted deadline and consult as needed with the Federal agency seeking the disposition authority. After considering comments, we may or may not make changes to the proposed records schedule. The schedule is then sent for final approval by the Archivist of the United States. After the schedule is approved, we will post on *regulations.gov* a ''Consolidated Reply'' summarizing the comments, responding to them, and noting any changes we made to the proposed schedule. You may elect at *regulations.gov* to receive updates on the docket, including an alert when we post the Consolidated Reply, whether or not you submit a comment. If you have a question, you can submit it as a comment, and can also submit any concerns or comments you would have to a possible response to the question. We will address these items in consolidated replies along with any other comments submitted on that schedule.

We will post schedules on our website in the Records Control Schedule (RCS) Repository, at *https://www.archives.gov/records-mgmt/rcs,* after the Archivist approves them. The RCS contains all schedules approved since 1973.

Background

Each year, Federal agencies create billions of records. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives or to destroy, after a specified period, records lacking continuing administrative, legal, research, or other value. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or

program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after thorough consideration of the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value. Public review and comment on these records schedules is part of the Archivist's consideration process.

Schedules Pending

1. Department of Defense, Department of the Army, Montgomery GI Bill (MGIB), Army College Fund (ACF), Veterans' Educational Assistance Program (VEAP), and Post 911 (DAA–AU–2024–0005).

2. Department of Justice, Office of the Pardon Attorney, Clemency Correspondence (DAA–0204–2024–0003).

3. Department of Veterans Affairs, Veterans Health Administration, Veterans Crisis Line (DAA–0015–2023–0002).

4. Federal Energy Regulatory Commission, Agency-wide, FC Docket, Foreign Utility Company Request (DAA–0138–2024–0011).

5. Library of Congress, Agency-wide, Grant Management [was Property and Procurement]—2024 updates (DAA–0297–2024–0005).

6. Library of Congress, Agency-wide, Information Technology—2024 updates (DAA–0297–2024–0007).

William P. Fischer,

Acting Chief Records Officer for the U.S. Government.

[FR Doc. 2024–19803 Filed 9–3–24; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Notice of Proposed Information Collection Requests: Museum Assessment Program Application Forms and Surveys

AGENCY: Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

ACTION: Notice, request for comments, collection of information.

SUMMARY: The Institute of Museum and Library Services (IMLS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act. This pre-clearance consultation program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The purpose of this Notice is to solicit comments concerning the three-year approval of application forms and surveys to support the implementation of the Museum Assessment Program. A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before November 02, 2024.

ADDRESSES: Send comments to Julie Balutis, Director of Grants Policy and Management, Office of Grants Policy and Management, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Ms. Balutis can be reached by telephone: 202–653–4645, or by email at *jbalutis@imls.gov.* Office hours are from 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except federal holidays.

Persons who are deaf or hard of hearing (TTY users) can contact IMLS at 202–207–7858 via 711 for TTY-Based Telecommunications Relay Service.

FOR FURTHER INFORMATION CONTACT: Mark Isaksen, Supervisory Grants Management Specialist, Office of Museum Services, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Mr. Isaksen can be reached by telephone at 202–653–4667, or by email at *misaksen@imls.gov.* Persons who are deaf or hard of hearing (TTY users) can contact IMLS at 202–207–7858 via 711 for TTY-Based Telecommunications Relay Service.

SUPPLEMENTARY INFORMATION: IMLS is particularly interested in public comments that help the agency to:

- 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;
- 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;
- Enhance the quality, utility, and clarity of the information to be collected; and
- 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.

I. Background

IMLS is the primary source of Federal support for the nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. To learn more, visit *www.imls.gov.*

II. Current Actions

The Museum Assessment Program (MAP) offers museums an opportunity to strengthen operations and plan for the future through a process of self-assessment, institutional activities, and consultative peer review. MAP is supported through a cooperative agreement between IMLS and the American Alliance of Museums. Program participants choose from among four assessments: Collections Stewardship, Community and Audience Engagement, Education and Interpretation, and Organizational. Those who complete the assessment receive a report with prioritized recommendations reflecting the assessment type chosen. The forms submitted for public review will include the MAP Application, the MAP Follow-Up Visit Request, the Implementation Stipend Request, and five online customer satisfaction surveys for MAP participants and peer reviewers.

Agency: Institute of Museum and Library Services.

Title: Museum Assessment Program Application Forms and Surveys.

OMB Control Number: 3137–0101.

Agency Number: 3137.

Respondents/Affected Public: Museum staff and peer reviewers.

Total Estimated Number of Annual Respondents: 415.

Frequency of Response: Once per request.

Estimated Average Burden (Hours) per Response: 13.30.

Total Estimated Number of Annual Burden Hours: 811.25.

Total Annual Cost Burden: $23,898.

Total Annual Federal Costs: $3,527.

Public Comments Invited: Comments submitted in response to this Notice will be summarized and/or included in the request for OMB's clearance of this information collection.

Dated: August 29, 2024.

Suzanne Mbollo,

Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2024–19821 Filed 9–3–24; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; National Survey of College Graduates

AGENCY: National Science Foundation, National Center for Science and Engineering Statistics.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to renew this collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting Office of Management and Budget (OMB) clearance of this collection for no longer than 3 years.

DATES: Written comments on this notice must be received by November 4, 2024 to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to the address below.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite E6300, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

SUPPLEMENTARY INFORMATION:

Title of Collection: 2023 National Survey of College Graduates.

OMB Control Number: 3145–0141.

Expiration Date of Current Approval: April 30, 2025.

Type of Request: Intent to seek approval to extend an information collection for three years.

Abstract: Established within NSF by the America COMPETES Reauthorization Act of 2010 § 505, codified in the National Science Foundation Act of 1950, as amended, the National Center for Science and Engineering Statistics (NCSES) serves as a central Federal clearinghouse for the collection, interpretation, analysis, and dissemination of objective data on science, engineering, technology, and research and development for use by practitioners, researchers, policymakers, and the public.

The National Survey of College Graduates (NSCG) is designed to comply with these mandates by providing information on the supply and utilization of the nation's scientists and engineers. The purpose of the NSCG is to collect data that will be used to provide national estimates on the size, composition such as demographics, fields of degree and veteran's status, and activities such as work activities, work-related training, professional conference attendance of the science and engineering workforce and changes in their employment, education, and demographic characteristics (for example, race and ethnicity, citizenship, gender, age, disability status, place of birth). The NSCG has been conducted biennially since the 1970s. The 2025 NSCG sample will be selected from the 2023 American Community Survey (ACS) and the 2023 NSCG. By selecting the sample from these two sources, the 2025 NSCG will provide coverage of the college graduate population residing in the United States.

The U.S. Census Bureau, as the agency responsible for the ACS, will serve as the NSCG data collection contractor for NCSES. The survey data collection is expected to begin in March 2025 and continue for approximately six months. Data will be collected using web and mail questionnaires. The individual's response to the survey is voluntary. The survey will be conducted in conformance with Census Bureau statistical quality standards and, as such, the NSCG data will be afforded confidentiality protection under the applicable Census Bureau confidentiality statutes.

Use of the Information: NSF uses the information from the NSCG to prepare congressionally mandated reports such as *Diversity and STEM: Women, Minorities and Persons with Disabilities* (*https://www.nsf.gov/statistics/women/*) and *Science and Engineering Indicators* (*https://ncses.nsf.gov/indicators*), both of which are available online. A public release file of collected data, designed to protect respondent confidentiality, will be made available on the internet and will be accessible through an online data tool (*https://ncsesdata.nsf.gov/ids/*).

Expected Respondents: A statistical sample of approximately 161,000 individuals (103,000 returning sample members and 58,000 new sample members) will be contacted in 2025, using the ACS as the sampling frame in the rotating panel design. Under the rotating panel design, the 2025 NSCG production sample will include 161,000 sample cases which comprises:

1. Returning sample from the 2023 NSCG (originally selected from the 2017 ACS);
2. Returning sample from the 2023 NSCG (originally selected from the 2019 ACS);
3. Returning sample from the 2023 NSCG (originally selected from the 2021 ACS); and
4. New sample selected from the 2023 ACS

Based on recent survey cycles, NCSES expects the overall response rate to be 60–65 percent.

Estimate of Burden: The amount of time to complete the questionnaire may vary depending on an individual's educational history, employment status, and past response to the NSCG. The time to complete the 2023 NSCG web survey ranged from 19.6 minutes on average for the returning sample members to 26.3 minutes on average for the new members, and approximately 91% of respondents completed the survey by using the web mode. Among respondents who completed the survey using Computer Assisted Telephone Interviewing (CATI) and Telephone Questionnaire Assistance (TQA) modes, in which sample members contacted Census's call center and took the survey over the phone, their interview times ranged from 33.6 minutes for returning sample members to 44.3 minutes for new sample members, and less than 2% of respondents completed the NSCG questionnaire by using the telephone mode. It was estimated that all forms of the 2023 NSCG paper questionnaire took 30 minutes to complete, and about 7% of respondents completed the paper form. Although the 2023 NSCG include a CATI mode, this mode is proposed to be discontinued in the 2025 NSCG due to increasing costs, reduced budget and low response in the 2023 cycle. TQA staff will take incoming interviews.

Based on the 2023 cycle's survey completion times, it is estimated that it will take approximately 23 minutes, on average, to complete the 2025 NSCG questionnaire. This takes into account the proposed removal of CATI and the continuation of TQA. This estimate also takes into account the continuation of

web and paper modes. The estimated response burden has been adjusted by proportionally allocating the number of CATI cases in the previous year to mail, web, and TQA cases in the previous year. NSF estimates that the average annual burden for the 2025 survey cycle over the course of the three-year OMB clearance period will be no more than 13,372 hours [(161,000 individuals × 65% response rate × 23 minutes)/3 years].

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the NSF, including whether the information shall have practical utility; (b) the accuracy of the NSF's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, use, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) 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.

Dated: August 29, 2024.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2024–19850 Filed 9–3–24; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302; NRC–2023–0174]

Accelerated Decommissioning Partners Crystal River Unit 3, LLC; Crystal River Unit 3 Nuclear Generating Plant; License Amendment Application; Withdrawal by Applicant

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has granted the request of Accelerated Decommissioning Partners Crystal River Unit 3, LLC (ADP CR3, the licensee) to withdraw its application dated December 12, 2022, for a proposed amendment to Facility Operating License No. DPR–72. The proposed amendment would have added a license condition to include the License Termination Plan for the Crystal River Unit 3 Nuclear Generating Plant.

DATES: September 4, 2024.

ADDRESSES: Please refer to Docket ID NRC–2023–0174 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0174. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@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 *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, 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, at 301–415–4737, or by email to *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.

FOR FURTHER INFORMATION CONTACT: Chris Allen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–6877; email: *William.Allen@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC has granted the request of ADP CR3 (the licensee) to withdraw its December 12, 2022 (ADAMS Accession No. ML22355A441), application for proposed amendment to Facility Operating License No. DPR–72 for the Crystal River Unit 3 Nuclear Generating Plant, located in Citrus County, Florida. The proposed amendment would have added a license condition to include the License Termination Plan. On November 8, 2023, the NRC published in the **Federal Register** a notice of application receipt and public meeting notice (88 FR 77111).

By letter dated August 12, 2024 (ADAMS Accession No. ML24225A207), ADP CR3 withdrew the license amendment request. By letter dated August 27, 2024 (ADAMS Accession No. ML24226B239), the NRC accepted ADP CR3's request to withdraw the license amendment.

Dated: August 29, 2024.

For the Nuclear Regulatory Commission.

Nicole Warnek,

Acting Chief, Reactor Decommissioning Branch, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2024–19800 Filed 9–3–24; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings

	Docket No.
Competitive Product Prices: Priority Mail Express, Priority Mail & USPS. Ground Advantage Contracts. Priority Mail Express, Priority Mail & USPS. Ground Advantage Contract 252.	MC2024–557
Competitive Product Prices: Priority Mail Express, Priority Mail & USPS. Ground Advantage Contract 252 (MC2024–557). Negotiated Service Agreements.	CP2024–565
Competitive Product Prices: Priority Mail Express, Priority Mail & USPS. Ground Advantage Contracts. Priority Mail Express, Priority Mail & USPS. Ground Advantage Contract 253.	MC2024–558
Competitive Product Prices: Priority Mail Express, Priority Mail & USPS. Ground Advantage Contract 253 (MC2024–558). Negotiated Service Agreements.	CP2024–566
Competitive Product Prices: Priority Mail & USPS Ground Advantage Contracts. Priority Mail & USPS Ground Advantage Contract 312.	MC2024–559
Competitive Product Prices: Priority Mail & USPS Ground Advantage Contract 312 (MC2024–559). Negotiated Service Agreements.	CP2024–567
Competitive Product Prices: Priority Mail & USPS Ground Advantage Contracts. Priority Mail & USPS Ground Advantage Contract 317.	MC2024–560

	Docket No.
Competitive Product Prices: Priority Mail & USPS Ground Advantage Contract 317 (MC2024–560). Negotiated Service Agreements.	CP2024–568
Competitive Product Prices: Priority Mail Express, Priority Mail & USPS. Ground Advantage Contracts. Priority Mail Express, Priority Mail & USPS. Ground Advantage Contract 260.	MC2024–567
Competitive Product Prices: Priority Mail Express, Priority Mail & USPS. Ground Advantage Contract 260 (MC2024–567). Negotiated Service Agreements.	CP2024–575
Competitive Product Prices: Priority Mail Express, Priority Mail & USPS. Ground Advantage Contracts. Priority Mail Express, Priority Mail & USPS. Ground Advantage Contract 259.	MC2024–568
Competitive Product Prices: Priority Mail Express, Priority Mail & USPS. Ground Advantage Contract 259 (MC2024–568). Negotiated Service Agreements.	CP2024–576
Competitive Product Prices: Priority Mail Express, Priority Mail & USPS. Ground Advantage Contracts. Priority Mail Express, Priority Mail & USPS. Ground Advantage Contract 261.	MC2024–569
Competitive Product Prices: Priority Mail Express, Priority Mail & USPS. Ground Advantage Contract 261 (MC2024–569). Negotiated Service Agreements.	CP2024–577
Competitive Product Prices: Priority Mail & USPS Ground Advantage Contracts. Priority Mail & USPS Ground Advantage Contract 319.	MC2024–570
Competitive Product Prices: Priority Mail & USPS Ground Advantage Contract 319 (MC2024–570). Negotiated Service Agreements.	CP2024–578
Competitive Product Prices: Priority Mail Express, Priority Mail & USPS. Ground Advantage Contracts. Priority Mail Express, Priority Mail & USPS. Ground Advantage Contract 262.	MC2024–571
Competitive Product Prices: Priority Mail Express, Priority Mail & USPS. Ground Advantage Contract 262 (MC2024–571). Negotiated Service Agreements.	CP2024–579
Competitive Product Prices: Priority Mail Express, Priority Mail & USPS. Ground Advantage Contracts. Priority Mail Express, Priority Mail & USPS. Ground Advantage Contract 263.	MC2024–572
Competitive Product Prices: Priority Mail Express, Priority Mail & USPS. Ground Advantage Contract 263 (MC2024–572). Negotiated Service Agreements.	CP2024–580
Competitive Product Prices: Priority Mail Express, Priority Mail & USPS. Ground Advantage Contracts. Priority Mail Express, Priority Mail & USPS. Ground Advantage Contract 264.	MC2024–573
Competitive Product Prices: Priority Mail Express, Priority Mail & USPS. Ground Advantage Contract 264 (MC2024–573). Negotiated Service Agreements.	CP2024–581

(Issued August 28, 2024)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2024–557 and CP2024–565; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 252 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 27, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Alain Brou; *Comments Due:* September 5, 2024.

2. *Docket No(s).:* MC2024–558 and CP2024–566; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 253 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 27, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Alain Brou; *Comments Due:* September 5, 2024.

3. *Docket No(s).:* MC2024–559 and CP2024–567; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 312 to Competitive Product List and Notice of Filing

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

Materials Under Seal; *Filing Acceptance Date:* August 27, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* September 5, 2024.

4. *Docket No(s).:* MC2024–560 and CP2024–568; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 317 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 27, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* September 5, 2024.

5. *Docket No(s).:* MC2024–567 and CP2024–575; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 260 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 27, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* September 5, 2024.

6. *Docket No(s).:* MC2024–568 and CP2024–576; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 259 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 27, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* September 5, 2024.

7. *Docket No(s).:* MC2024–569 and CP2024–577; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 261 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 27, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* September 5, 2024.

8. *Docket No(s).:* MC2024–570 and CP2024–578; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 319 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 27, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* September 5, 2024.

9. *Docket No(s).:* MC2024–571 and CP2024–579; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 262 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 27, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* September 5, 2024.

10. *Docket No(s).:* MC2024–572 and CP2024–580; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 263 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 27, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Almaroof Agoro; *Comments Due:* September 5, 2024.

11. *Docket No(s).:* MC2024–573 and CP2024–581; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 264 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 27, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Alain Brou; *Comments Due:* September 5, 2024.

This Notice will be published in the **Federal Register**.

Media Inquiries: Gail Adams, *gail.adams@prc.gov*.

Erica A. Barker,

Secretary.

[FR Doc. 2024–19739 Filed 9–3–24; 8:45 am]

BILLING CODE P

RAILROAD RETIREMENT BOARD

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., September 10, 2024.

PLACE: Members of the public wishing to attend the meeting must submit a written request at least 24 hours prior to the meeting to receive dial-in information. All requests must be sent to *SecretarytotheBoard@rrb.gov.*

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: Budget Report, Office of Legislative Affairs Briefing.

CONTACT PERSON FOR MORE INFORMATION: Stephanie Hillyard, Secretary to the Board, (312) 751–4920.

(Authority: 5 U.S.C. 552b)

Dated: August 29, 2024.

Stephanie Hillyard,

Secretary to the Board.

[FR Doc. 2024–19888 Filed 8–30–24; 11:15 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act (Pub. L. 94–409), that the Securities and Exchange Commission will hold an Open Meeting on Monday, September 9, 2024, at 10:00 a.m. (ET).

PLACE: The meeting will be webcast on the Commission's website at *www.sec.gov.*

STATUS: This meeting will begin at 10:00 a.m. (ET) and will be open to the public via webcast on the Commission's website at *www.sec.gov.*

MATTERS TO BE CONSIDERED: 1. The Commission will consider whether to approve a new quality control standard, QC 1000, A Firm's System of Quality Control, and related amendments, as adopted by the Public Company Accounting Oversight Board.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

(Authority: 5 U.S.C. 552b)

Dated: August 30, 2024.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024–19928 Filed 8–30–24; 4:15 pm]

BILLING CODE 8001–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100855; File No. SR–EMERALD–2024–25]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Describe the Access Methods to the Exchange's Testing Systems Environment and Discontinue One Access Method

August 28, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

notice is hereby given that on August 22, 2024, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a 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 is filing a proposal to describe the two methods to access the Exchange's optional testing systems environment, establish a third method to access the testing systems environment, and establish the timeline and process by which one of the three access methods would be discontinued.

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-options/all-options-exchanges/rule-filings,* at MIAX Emerald'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

The Exchange submits this filing to describe the two methods to access the Exchange's optional testing systems environment, establish a third method to access the testing systems environment, and establish the timeline and process by which the 1 Gigabit (''Gb'') or 10Gb ultra-low latency (''ULL'') production (*i.e.,* live trading) connection access method described below would be discontinued.

The testing systems environment is a virtual trading system environment for Members [3] and non-Members to test (i) upcoming Exchange software and code releases, (ii) product enhancements, and (iii) firm-developed software, prior to implementation in the Exchange's production (*e.g.,* live trading) environment. Further, the testing systems environment allows unlimited testing of existing functionality, such as order types, order entry, order management, order throughput, acknowledgements, risk settings, mass cancelations, and purge requests. The testing systems environment is built to closely approximate the production environment to enable users the ability to test their systems and mimics the real life trading environment.[4]

Existing Two Access Methods

There are two methods by which Members and non-Members may access the Exchange's testing systems environment. One, Members and non-Members may access the Exchange's testing systems environment via a virtual private network (''VPN'') that operates over the internet and provides site-to-site access. VPN access is provided for free to all Members and non-Members. Two, access is also provided through the production connections for each 1Gb [5] or 10Gb ULL connection for the applicable fee [6] for such connection and no additional charge. These 1Gb and 10Gb ULL connections provide access to the Exchange's production environment (*i.e.,* live trading) and allow the receipt of proprietary real-time market data.

Members and non-Members that utilize a VPN or 1Gb production connection to access the testing systems environment of the Exchange are also able to access the testing systems environments of each of the Exchange's affiliated options markets—MIAX Sapphire, LLC (''MIAX Sapphire''), MIAX PEARL, LLC [7] (''MIAX Pearl Options''), and Miami International Securities Exchange, LLC (''MIAX''). Also, unlike VPN and 1Gb, 10Gb ULL connections only provide access the Exchange's testing systems environment and not those of its affiliated options markets. This is because of the nature of those connections, which are utilized to access the Exchange only, not just for testing, but for other Exchange specific items, such as access the Exchange's production environment and for the receipt of proprietary Exchange market data.

Proposed Third Access Method

The Exchange proposes to establish a third method by which Members and non-Members may access the options testing systems environment. This third method is via a dedicated cross connection that will allow Members and non-Members to access the testing systems environment and would be available as either a 1Gb or 10Gb connection.[8] Like access via a VPN and a 1Gb production connection, the dedicated cross connection would also provide access to the testing systems environment of the Exchange's affiliated options markets—MIAX Sapphire, MIAX PEARL, LLC, and MIAX. The proposed dedicated cross connect to the testing systems environment would not, however, provide access to any of the production environments (*i.e.,* live trading) of the Exchange or its affiliates, or allow the receipt of proprietary real-time market data for which each Member or non-Member may subscribe.

* * * * *

Members and non-Members that access the testing systems environment through any one of the available access methods, including the proposed dedicated cross connection, receive functionally the same testing

[3] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[4] Business continuity and disaster recovery testing is performed separately and not within the testing systems environment that is the subject of this filing.

[5] Like VPN access, the 1Gb connection will allow Members and non-Members to reach all testing systems environments of the Exchange's affiliated options markets.

[6] *See* MIAX Emerald Fee Schedule, Sections (5)(a)–(b) for the fees for 1Gb and 10Gb ULL production connectivity.

[7] All references to ''MIAX PEARL'' in this filing are to the options trading facility of MIAX PEARL, LLC, referred to herein as ''MIAX Pearl Options.'' Members and non-Members that choose to utilize the testing systems environment of MIAX Pearl Equities, the equities trading facility of MIAX PEARL, LLC, must utilize a separate dedicated cross connect as MIAX Pearl Equities' testing systems environment operates on a separate network from the affiliated options markets.

[8] The Exchange notes that other exchange families offer a similar dedicated connection to their testing environment for their members and non-members. *See, e.g.,* Nasdaq Options Test Facility (NTF) Abstract, Version 1.4.4 (March 2024), *available at https://www.nasdaq.com/Nasdaq_Test_Facility_NTF_Guide* (last visited July 16, 2024) (''. . . the Nasdaq Test Facility . . . where market participants can test their trading applications with the INET trading system. The NTF environment allows members to test sending and executing quotes and orders offered by our six options exchanges. . . .''); *see also* Securities Exchange Act Release No. 100442 (June 27, 2024), 89 FR 55296 (July 3, 2024) (SR-CboeBZX–2024–058) (''. . . the Exchange also offers corresponding ports which provide Members and non-Members access to the Exchange's certification environment to test proprietary systems and applications . . . The certification environment facilitates testing using replicas of the Exchange's production environment process configurations which provide for a robust and realistic testing experience. . . .'').

experience. Each Member or non-Member is free to decide how to access the testing systems environment based on their own needs and trading architecture. Again, use of the testing systems environment is entirely optional and no Member or non-Member is required by rule or regulation to make use of the testing systems environment.[9] Regardless of access method, all Members and non-Members are provided the same testing systems environment experience and are able to perform all of the same functions.

Phased Out of Production Connections

The Exchange will phase out the ability to connect to the testing systems environment via the existing 1Gb and 10Gb ULL production connections over the next 6 to 12 months. The Exchange will issue an alert notifying market participants of the anticipated timeline by which it will phase out access to the testing systems environment via 1Gb and 10Gb ULL production connections. During this phase out period, Members and non-Members that use a 1Gb or 10Gb ULL production connection to access the testing systems environment would continue to be able to do so. At the end of this period, Members and non-Members that currently elect to access the Exchange's testing systems environment via a 1Gb or 10Gb ULL connection that seek to continue to access the Exchange's testing systems environment would be required to transfer their access to one of the two remaining access methods, a VPN for free or by subscribing to a dedicated cross connection for an amount that is expected to be less than the current fee for a 1Gb or 10Gb ULL production connection.[10]

2. Statutory Basis

The Exchange believes the proposed change is consistent with the requirements of Section 6(b) of the Act,[11] in general, and Section 6(b)(5),[12] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system.

This filing describes the two existing methods to access the Exchange's optional testing systems environment, proposes to establish a third access method, and describes the process by which one access method would be discontinued. Doing so provides clarity to market participants and seeks to avoid potential investor confusion.

Access to the Exchange's testing systems environment is completely voluntary.[13] The testing systems environment is a useful tool for Members and non-Members to test (i) upcoming Exchange software and code releases, (ii) product enhancements, and (iii) firm-developed software, prior to implementation in the Exchange's production environment. In addition, the testing systems environment allows unlimited firm-level testing of order types, order entry, order management, order throughput, acknowledgements, risk settings, mass cancelations, and purge requests.

This filing also proposes to establish a third access method, a dedicated cross connect, to the Exchange's optional testing systems environment. The Exchange believes the proposed dedicated cross connect access to the test environment is being proposed purely for convenience and, again, would be entirely optional. Access to the test environment via a dedicated cross connect would enable Members and non-Members to connect their software to the test environment allowing their applications to communicate directly with the test environment. Members and non-Members that choose to access the test environment via a dedicated cross connect are also provided access to the test environments of the Exchange's affiliate options markets via a single connection, and would not be required to subscribe to multiple cross connects to test in those environments.

There is no functional difference between the two existing and proposed third access alternative. It is simply a technical decision of each Member or non-Member regarding how to access the testing systems environment. The testing systems environment, whether accessed via the proposed dedicated cross connection or otherwise, provides Members and non-Members the same scope of abilities to test their systems and software in the Exchange's testing systems environment, which replicates the Exchange's anticipated production trading environment. The testing systems environment serves to improve live trading on the Exchange and the national market system by permitting Members and non-Members the ability to accurately test software and code changes prior to implementing them in their systems in the live trading environment. This should, in turn, reduce the likelihood of a potentially disruptive issues in the live trading environment, which has the potential to affect all market participants.

Therefore, for the above reasons, the Exchange believes the proposed rule change is consistent with 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. There would be no competitive advantage for Members and non-Members that access the testing systems environment via one access method versus another. All modes of access allow Members and non-Members to perform the same testing functions in the same manner. As such, the Exchange does not believe that the proposed change will impose any burden on intermarket competition not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes the proposed rule change may have a positive impact on or intramarket competition. Among other things, the proposed rule change is intended to keep pace with technological changes in the industry and evolving customer needs and demands, and believes the dedicated cross connection to the testing systems environment will contribute to robust competition among national securities exchanges. As noted above, several exchanges already offer similar testing environments to their members and non-members.[14] As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

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.

[9] *See supra* note 4.

[10] The Exchange will submit a separate proposed rule change for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act (15 U.S.C. 78s(b)(3)(A)) and Rule 19b–4(f)(2) (17 CFR 240.19b–4(f)(2)) thereunder to establish a fee for the dedicated cross connect to the testing systems environment. The Exchange anticipates to waive such proposed fee for a period of time and that any potential fees at the end of the waiver will be less than the fees for a 1Gb and 10Gb ULL connection to the production environment.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] As noted above, business continuity and disaster recovery testing is performed separately and not within the testing systems environment that is the subject of this filing.

[14] *See supra* note 8.

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

Because the foregoing 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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6) [16] thereunder.

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 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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–EMERALD–2024–25 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–EMERALD–2024–25. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–EMERALD–2024–25 and should be submitted on or before September 25, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–19765 Filed 9–3–24; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100867; File No. SR–CboeBZX–2024–055]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change, as Modified by Amendment No. 1, To Exempt Closed-End Management Investment Companies Registered Under the Investment Company Act of 1940 From the Annual Meeting of Shareholders Requirement Set Forth in Exchange Rule 14.10(f)

August 28, 2024.

On June 25, 2024, Cboe BZX Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to exempt closed-end management investment companies registered under the Investment Company Act of 1940 from the annual meeting of shareholders requirement set forth in Exchange Rule 14.10(f). On July 2, 2024, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change in its entirety. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on July 15, 2024.[3]

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is August 29, 2024. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change, as modified by Amendment No. 1, so that it has sufficient time to consider the proposed rule change and the comments received. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates October 13, 2024, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change, as modified by Amendment No. 1 (File No. SR–CboeBZX–2024–055).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–19775 Filed 9–3–24; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 100473 (Jul. 9, 2024), 89 FR 57491. Comments on the proposed rule change are available at: *https://www.sec.gov/comments/sr-cboebzx-2024-055/srcboebzx2024055.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100863; File No. SR–NYSEAMER–2024–49]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing of Proposed Rule Change To Amend Rule 915 to Permit the Listing and Trading of Options on Bitcoin ETFs

August 28, 2024.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on August 15, 2024, NYSE American LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Rule 915 regarding the criteria for underlying securities. The proposed rule change is available on the Exchange's website at *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

The Exchange proposes to amend Rule 915 (Criteria for Underlying Securities). Specifically, the Exchange proposes to amend Rule 915, Commentary .10 to allow the Exchange to list and trade options on the following Exchange-Traded Fund Shares (''ETFs'') [4]: the Fidelity Wise Origin Bitcoin Fund (the ''Fidelity Fund''), the ARK21Shares Bitcoin ETF (the ''ARK 21Shares Fund''), the Invesco Galaxy Bitcoin ETF (the ''Invesco Fund''), the Franklin Bitcoin ETF (the ''Franklin Fund''), the VanEck Bitcoin Trust (the ''VanEck Fund''), and the WisdomTree Bitcoin Fund (the ''WisdomTree Fund''), the Grayscale Bitcoin Trust BTC (the ''Grayscale Fund''), the Grayscale Bitcoin Mini Trust (the ''Grayscale Mini Fund''), the Bitwise Bitcoin ETF (the ''Bitwise Fund''), the iShares Bitcoin Trust ETF (the ''iShares Fund''), and the Valkyrie Bitcoin Fund (the ''Valkyrie Fund'' and, collectively, the ''Bitcoin Funds'').

The Exchange notes that this is a competitive filing as at least one other options exchange has filed similar a rule proposal that is currently pending with the Commission to allow the listing and trading of options on Bitcoin Funds.[5]

Commentary .06 to Rule 915 (hereinafter ''Commentary .06'') provides that, subject to certain other criteria set forth in Rule 915, securities deemed appropriate for options trading include ETFs that represent certain types of interests,[6] including interests in certain specific trusts that hold financial instruments, money market instruments, or precious metals (which are deemed commodities).

The Bitcoin Funds are Bitcoin-backed commodity ETFs structured as trusts. Like any ETF currently deemed appropriate for options trading under Commentary .06, the investment objective of each Bitcoin Fund trust is for its shares to reflect the performance of Bitcoin (less the expenses of the trust's operations), offering investors an opportunity to gain exposure to Bitcoin without the complexities of Bitcoin delivery. As is the case for ETFs currently deemed appropriate for options trading, a Bitcoin Fund's shares represent units of fractional undivided beneficial interest in the trust, the assets of which consist principally of Bitcoin and are designed to track Bitcoin or the performance of the price of Bitcoin and offer access to the Bitcoin market.[7] The Bitcoin Funds provide investors with cost-efficient alternatives that allow a level of participation in the Bitcoin market through the securities market. The primary substantive difference between Bitcoin Funds and ETFs currently deemed appropriate for options trading are that ETFs may hold securities, certain financial instruments, and specified precious metals (which are deemed commodities), while Bitcoin Funds hold bitcoin (which is also deemed a commodity).

The Exchange believes the Bitcoin Funds satisfy the Exchange's initial listing standards for ETFs on which the Exchange may list options. Specifically, the Bitcoin Funds satisfy the initial listing standards set forth in

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Rule 900.2NYP defines the term ''Exchange-Traded Fund Share'' as Exchange-listed securities representing interests in open-end unit investment trusts or open-end management investment companies that hold securities (including fixed income securities) based on an index or a portfolio of securities.

[5] *See* SR–CBOE–2024–035, filed on August 8, 2024, by Cboe Exchange, Inc. (''Cboe''). Unlike Cboe, the Exchange proposes to include as a Bitcoin Fund the Grayscale Bitcoin Mini Trust, which was listed on NYSE Arca, Inc. on July 31,2024.

[6] *See* Commentary .06, which permits options trading on ETFs that are traded on a national securities exchange and are defined as an ''NMS stock'' in Rule 600(b)(55) of Regulation NMS, that represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that hold portfolios of securities and/or financial instruments including, but not limited to, stock index futures contracts, options on futures, options on securities and indexes, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse purchase agreements (the ''Financial Instruments''), and money market instruments, including, but not limited to, U.S. government securities and repurchase agreements (the ''Money Market Instruments'') comprising or otherwise based on or representing investments in indexes or portfolios of securities and/or Financial Instruments and Money Market Instruments (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities and/or Financial Instruments and Money Market Instruments); interests in a trust or similar entity that holds a specified non-U.S. currency deposited with the trust or similar entity when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency and pays the beneficial owner interest and other distributions on deposited non-U.S. currency, if any, declared and paid by the trust (''Currency Trust Shares''); commodity pool interests principally engaged, directly or indirectly, in holding and/or managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or non-U.S. currency (''Commodity Pool Units''); or represents an interest in a registered investment company (''Investment Company'') organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies, which is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value (''NAV''), and when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined NAV (''Managed Fund Share''); provided that all of the conditions listed in Rules 915 and 916 are met.

[7] The trust may include minimal cash.

Commentary .06, as is the case for other ETFs on which the Exchange lists options (including trusts that hold commodities). Commentary .06 requires that ETFs must either (1) meet the criteria and standards set forth in Commentary .01 to Rule 915,[8] or (2) the ETFs are available for creation and redemption each business day as set forth in Commentary .06(a)(ii).[9] The Bitcoin Funds satisfy Commentary .06(a)(ii), as they are all subject to this creation and redemption process.

While not required by the Rules for purposes of options listings, the majority of the Bitcoin Funds satisfy the criteria and guidelines set forth in Rule 915(a). Pursuant to Rule 915(a), a security (which includes ETFs) on which options may be listed and traded on the Exchange must be duly registered (with the Commission) and be an NMS stock (as defined in Rule 600 of Regulation NMS under the Act) and be characterized by a substantial number of outstanding shares that are widely held and actively traded.[10] Each of the Bitcoin Funds is an NMS Stock as defined in Rule 600 of Regulation NMS under the Act.[11] The Exchange believes each Bitcoin Fund is characterized by a substantial number of outstanding shares that are widely held and actively traded.

As of August 7, 2024, the Bitcoin Funds had the following number of shares outstanding:

Bitcoin fund	Shares outstanding
Fidelity Fund	201,100,100
ARK 21Shares Fund	45,495,000
Invesco Fund	7,965,000
Franklin Fund	11,100,000
VanEck Fund	9,600,000
WisdomTree Fund	1,420,000
Grayscale Fund	296,930,100
Grayscale Mini Fund	353,580,100
Bitwise Fund	69,910,000
iShares Fund	606,120,000
Valkyrie Fund	31,335,000

All but one Bitcoin Fund had more than 7,000,000 shares outstanding, which is the minimum number of shares of a corporate stock that the Exchange generally requires to list options on that stock pursuant to Commentary .01(1) to Rule 915. However, the Exchange believes shares outstanding (*i.e.,* free float [12]), while commonly used to determine investable capacities of corporate stocks, the figure has little utility with respect to ETFs due to the market structure of ETFs. Proofing of ETF baskets, in addition to the efficiency of creation/redemption mechanisms, decouple concepts of ''floating'' ETF shares against the impacts of ETF liquidity to the liquidity of ETF constituents. While ETF Market Makers may often limit the amount of floating ETF shares, primary market mechanisms enable virtually limitless capacity to create and redeem ETF shares on a daily basis.[13] As evidenced during their time in market since beginning trading in January of 2024, the gross value of daily shares created or redeemed for each Bitcoin Fund exceeds the assets under management (''AUM'') of each fund as of August 7, 2024, which was as follows:

Bitcoin fund	AUM
Fidelity Fund	10,240,420,000
ARK 21Shares Fund	2,887,759,000
Invesco Fund	405,628,500
Franklin Fund	339,882,800
VanEck Fund	617,779,500
WisdomTree Fund	81,690,950
Grayscale Fund	20,117,590,000
Grayscale Mini Fund	1,908,524,806
Bitwise Fund	2,266,633,000
iShares Fund	18,274,490,000
Valkyrie Fund	527,831,700

[8] Commentary .01 to Rule 915 provides for guidelines to be by the Exchange when evaluating potential underlying securities for Exchange option transactions.

[9] Commentary .06(a)(ii) requires that ETFs must be available for creation or redemption each business day from or through the issuer in cash or in kind at a price related to net asset value, and the issuer must be obligated to issue ETFs in a specified aggregate number even if some or all of the investment assets required to be deposited have not been received by the issuer, subject to the condition that the person obligated to deposit the investments has undertaken to deliver the investment assets as soon as possible and such undertaking is secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the issuer, as provided in the respective prospectus.

[10] The criteria and guidelines for a security to be considered widely held and actively traded are set forth in Commentary .01 to Rule 915, subject to exceptions.

[11] An ''NMS stock'' means any NMS security other than an option, and an ''NMS security'' means any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan (or an effective national market system plan for reporting transaction in listed options). *See* 17 CFR 242.600(b)(64) (definition of ''NMS security'') and (65) (definition of ''NMS stock'').

[12] All outstanding ETF shares are considered free float, as there are no restricted ETF shares or shares held by insiders, as is the case with respect to corporate stocks.

[13] This is the primary reasoning for why the Exchange may list options on ETFs as long as they are subject to the creation and redemption process and generally do not need to satisfy the criteria set forth in Commentary .01 to Rule 915.

As a result, the Exchange believes this demonstrates that each Bitcoin Fund is characterized by a substantial number of outstanding shares.

Further, the below table contains information regarding the number of beneficial holders of certain Bitcoin Funds as of the specified dates:

Bitcoin fund	Beneficial holders	Date
Fidelity Fund	279,656	6/27/2024
ARK 21Shares Fund	69,425	6/26/2024
Invesco Fund	13,420	6/25/2024
Franklin Fund	12,224	6/27/2024
VanEck Fund	19,061	6/28/2024
WisdomTree Fund	3,509	7/2/2024

As this table shows, each of these six Bitcoin Funds has more than 2,000 beneficial holders, which is the minimum number of holders the Exchange generally requires for corporate stock in order to list options on that stock pursuant to Commentary .01(2) to Rule 915. Given that the other four Bitcoin Funds have significant trading volumes similar to the trading volumes of the Bitcoin Funds listed in the table above (as discussed below), the Exchange believes it is reasonable to expect that shares of all of the Bitcoin Funds are characterized by a substantial number of outstanding shares that are widely held.

The Exchange also believes each Bitcoin Fund is characterized by a substantial number of outstanding shares that are actively traded. As of August 7, 2024, the total trading volume (by shares and notional) for each fund since they began trading on January 11, 2024, and the average daily volume (''ADV'') over the 30-day period of July 9 through August 7, 2024 for each Bitcoin Fund was as follows:

Bitcoin fund	Trading volume (shares)	Trading volume (notional $)	ADV (shares)
Fidelity Fund	1,490,261,825	78,936,647,100.20	6,014,335.50
ARK 21Shares Fund	413,159,977	24,787,148,013.81	1,893,335.00
Invesco Fund	78,609,595	4,578,462,838.89	299,372.94
Franklin Fund	58,954,975	2,063,321,834.88	338,901.56
VanEck Fund	59,991,039	4,195,401,686.66	265,605.84
WisdomTree Fund	39,977,866	2,546,889,570.58	209,501.33
Grayscale Fund	2,074,101,826	95,371,791,353.17	4,794,193.00
Bitwise Fund	455,817,104	14,926,192,896.43	2,250,989.25
iShares Fund	5,209,443,211	185,451,676,432.50	28,406,964.00
Valkyrie Fund	100,580,329	1,762,278,782.37	349,587.41

* * * * *

As demonstrated above, despite the Bitcoin Funds have been trading for approximately seven months, the trading volume for each is substantially higher than 2,400,000 shares (between 16 and 620 times that amount), which is the minimum 12-month volume the Exchange generally requires for a security in order to list options on that security as set forth in Commentary .01 to Rule 915. Additionally, as of August 7, 2024, the six-month ADV for each Bitcoin Fund is in the top 20% of all ETFs that are currently trading. The Exchange believes this data demonstrates each Bitcoin Fund is characterized by a substantial number of outstanding shares that are actively traded.

Like all ETFs deemed appropriate for options trading, options on Bitcoin Funds will be subject to the Exchange's continued listing standards as set forth in Commentary .07 to Rule 916. Pursuant to Commentary .07 to Rule 916, the Exchange will not open for trading any additional series of option contracts covering an ETF if such ETF ceases to be an ''NMS stock'' as provided for Commentary .01(5) to Rule 915 or the ETF is halted from trading on its primary market.[14] Additionally, options on ETFs may be subject to the suspension of opening transactions as follows: (1) the ETFs no longer meets the terms of Commentary .01 to Rule 916; (2) following the initial twelve-month period beginning upon the commencement of trading of the ETFs, there are fewer than 50 record and/or beneficial holders of the ETFs for 30 or more consecutive trading days; (3) the value of the underlying commodity is no longer calculated or available; or (4) such other event occurs or condition exists that in the opinion of the Exchange makes further dealing on the Exchange inadvisable.

Options on each Bitcoin Fund will be physically settled contracts with American-style exercise.[15] Consistent with Rule 903, which governs the opening of options series on a specific underlying security (including ETFs), the Exchange will open at least one expiration month for options on each Bitcoin Fund [16] at the commencement of

[14] *See* Commentary .07 to Rule 916. For avoidance of doubt and consistent with this proposal, the Exchange proposes to amend Rule 916 to include in the Bitcoin Funds in the list of ETFs subject to the continued listing standards. *See* proposed Commentary .11 to Rule 916.

[15] *See* Rule 902 (Rights and Obligations of Holders and Writers), which provides that the rights and obligations of holders and writers of option contracts of any class of options dealt in on the Exchange shall be as set forth in the Rules of the Clearing Corporation. *See also* OCC Rules, Chapter VIII, which governs exercise and assignment, and Chapter IX, which governs the discharge of delivery and payment obligations arising out of the exercise of physically settled stock option contracts. OCC Rules can be located at: *https://www.theocc.com/getmedia/9d3854cd-b782-450f-bcf7-33169b0576ce/occrules.pdf.*

[16] *See* Rule 903(c), Commentary .03. The monthly expirations are subject to certain listing criteria for underlying securities described within Rule 915. Monthly listings expire the third Friday of the month. The term ''expiration date'' (unless separately defined elsewhere in the OCC By-Laws), when used in respect of an option contract (subject to certain exceptions), means the third Friday of the expiration month of such option contract, or if such

Continued

trading on the Exchange and may also list series of options on Bitcoin Funds for trading on a weekly,[17] monthly,[18] or quarterly [19] basis. The Exchange may also list long-term equity option series (''LEAPS'') [20] that expire from twelve to thirty-nine months from the time they are listed.

Pursuant to Rule 903, Commentary .05(a), which governs strike prices of series of options on ETFs, the interval between strike prices of series of options on Bitcoin Funds will be $1 or greater when the strike price is $200 or less and $5 or greater where the strike price is over $200.[21] Additionally, the Exchange may list series of options pursuant to the $1 Strike Price sup [sic].

Bitcoin Fund options will trade in the same manner as any other ETF options on the Exchange. The Exchange Rules that currently apply to the listing and trading of all ETF options on the Exchange, including, for example, Rules that govern listing criteria, expiration and exercise prices, minimum increments, position and exercise limits, margin requirements, customer accounts and trading halt procedures will apply to the listing and trading of Bitcoin Funds on the Exchange in the same manner as they apply to other options on all other ETF that are listed and traded on the Exchange, including the precious-metal backed commodity ETF already deemed appropriate for options trading on the Exchange pursuant to current Commentary .10 to Rule 915.

Position and exercise limits for options on ETFs, including options on Bitcoin Funds, pursuant to Rules 904 and 905, respectively. Position and exercise limits for ETF options vary according to the number of outstanding shares and the trading volumes of the underlying ETF over the past six months, where the largest in capitalization and the most frequently traded ETFs have an option position and exercise limit of 250,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market; and smaller capitalization ETFs have position and exercise limits of 200,000, 75,000, 50,000 or 25,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market.[22] The Exchange further notes that Rule 462, which governs margin requirements applicable to the trading of all options on the Exchange, including options on ETFs, will also apply to the trading of Bitcoin Fund options.

* * * * *

The Exchange notes that options on Bitcoin Funds would not be available for trading until The Options Clearing Corporation (''OCC'') represents to the Exchange that it is fully able to clear and settle such options. The Exchange has also analyzed its capacity and represents that it and The Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle the additional traffic associated with the listing of options on Bitcoin Funds. The Exchange believes any additional traffic that would be generated from the trading of options on Bitcoin Funds would be manageable. The Exchange represents that Exchange members will not have a capacity issue as a result of this proposed rule change.

The Exchange represents that the same surveillance procedures applicable to all other options on other ETFs currently listed and traded on the Exchange will apply to options on Bitcoin Funds, and that it has the necessary systems capacity to support the new option series. The Exchange's existing surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior which might arise from listing and trading options on ETFs, such as (existing) precious metal-commodity backed ETF options as well as the proposed options on Bitcoin Funds. The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of options on Bitcoin Funds in all trading sessions and to deter and detect violations of Exchange rules. In addition, the Exchange will implement any new surveillance procedures it deems necessary to effectively monitor the trading of options on Bitcoin Funds. Also, the Exchange may obtain trading information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members of the ISG, or from other exchanges with which the Exchange has entered into a comprehensive surveillance sharing agreement (''CSSA''). The Exchange will enter into new CSSAs with other exchanges as necessary to effectively monitor the trading of options on Bitcoin Funds. The Exchange represents that these procedures will be adequate to properly monitor Exchange trading of options on Bitcoin Funds and to deter and detect violations of Exchange rules.

Finally, quotation and last sale information for ETFs is available via the Consolidated Tape Association (''CTA'') high speed line. Quotation and last sale information for such securities is also available from the exchange on which such securities are listed. Quotation and last sale information for options on Bitcoin Funds will be available via OPRA and major market data vendors.

The Exchange believes that offering options on Bitcoin Funds will benefit investors by providing them with an additional, relatively lower cost investing tool to gain exposure to the price of Bitcoin and hedging vehicle to meet their investment needs in connection with Bitcoin-related products and positions. The Exchange expects investors will transact in options on Bitcoin Funds in the unregulated over-the-counter (''OTC'') options market (if the Commission approves Bitcoin Funds for exchange-trading),[23] but may prefer to trade such options in a listed environment to receive the benefits of trading listing options, including (1) enhanced efficiency in initiating and closing out position; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of all listed options. The Exchange believes that listing Bitcoin Fund options may cause investors to bring this liquidity to the Exchange, would increase market transparency and enhance the process of price discovery conducted on the Exchange through increased order flow. The ETFs that hold financial instruments, money market instruments, or precious metal commodities on which the Exchange may already list and trade options are trusts structured in substantially the same manner as

Friday is a day on which the exchange on which such option is listed is not open for business, the preceding day on which such exchange is open for business. *See* OCC By-Laws Article I, Section 1. Pursuant to Rule 903(d), additional series of options of the same class may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying stock moves more than five strike prices from the initial exercise price or prices. New series of options on an individual stock may be added until the beginning of the month in which the options contract will expire. Due to unusual market conditions, the Exchange, in its discretion, may add a new series of options on an individual stock until the close of trading on the business day prior to expiration.

[17] *See* Rule 903(h).

[18] *See* Rule 903, Commentary .11.

[19] *See* Rule 903, Commentary .09.

[20] *See* Rule 903, Commentary .03.

[21] The Exchange notes that for options listed pursuant to the Short Term Option Series Program, the Monthly Options Series Program, and the Quarterly Options Series Program, Rules 903(h) and Commentaries .09 and .03 to Rule 903, specifically set forth intervals between strike prices on Quarterly Options Series, Short Term Option Series, and Monthly Options Series, respectively.

[22] As Bitcoin Funds do not currently trade, options on Bitcoin Funds would be subject to the 25,000 option contract limit.

[23] The Exchange understands from customers that investors have historically transacted in options on ETFs in the OTC options market if such options were not available for trading in a listed environment.

Bitcoin Funds and essentially offer the same objectives and benefits to investors, just with respect to different assets. The Exchange notes that it has not identified any issues with the continued listing and trading of any ETF options, including ETFs that hold commodities (*i.e.,* precious metals) that it currently lists and trades on the Exchange.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act [24] in general and furthers the objectives of Section 6(b)(5) of the Act [25] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

In particular, the Exchange believes that the proposal to list and trade options on Bitcoin Funds will remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors because offering options on Bitcoin Funds will provide investors with an opportunity to realize the benefits of utilizing options on a Bitcoin Fund, including cost efficiencies and increased hedging strategies. The Exchange believes that offering Bitcoin Fund options will benefit investors by providing them with a relatively lower-cost risk management tool, which will allow them to manage their positions and associated risk in their portfolios more easily in connection with exposure to the price of Bitcoin and with Bitcoin-related products and positions. Additionally, the Exchange's offering of Bitcoin Fund options will provide investors with the ability to transact in such options in a listed market environment as opposed to in the unregulated OTC options market, which would increase market transparency and enhance the process of price discovery conducted on the Exchange through increased order flow to the benefit of all investors. The Exchange also notes that it already lists options on other commodity-based ETFs,[26] which, as described above, are trusts structured in substantially the same manner as Bitcoin Funds and essentially offer the same objectives and benefits to investors, just with respect to a different commodity (*i.e.,* Bitcoin rather than precious metals) and for which the Exchange has not identified any issues with the continued listing and trading of commodity-backed ETF options it currently lists for trading.

The Exchange also believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, because it is consistent with current Exchange Rules previously filed with the Commission. Options on Bitcoin Funds satisfy the initial listing standards and continued listing standards currently in the Exchange Rules applicable to options on all ETFs, including ETFs that hold other commodities already deemed appropriate for options trading on the Exchange. Additionally, as demonstrated above, each Bitcoin Fund is characterized by a substantial number of shares that are widely held and actively traded. Bitcoin Fund options will trade in the same manner as any other ETF options — the same Exchange Rules that currently govern the listing and trading of all ETF options, including permissible expirations, strike prices and minimum increments, and applicable position and exercise limits and margin requirements, will govern the listing and trading of options on Bitcoin Funds in the same manner.

The Exchange believes the proposed position and exercise limits for the Bitcoin Fund options are consistent with the Exchange Act, will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, because these position and exercise limits are designed to address potential manipulative schemes and adverse market impacts surrounding the use of options, such as disrupting the market in the security underlying the options. The proposed position and exercise limits are the same limits that apply to other ETF options, including other commodity ETF options. The Exchange believes proposed position and exercise limits balance the liquidity provisioning in the market against the prevention of manipulation, as they currently do for other equity options (including commodity ETF options). The Exchange believes the available supply in the markets of Bitcoin is not relevant when establishing position limits for options on the Bitcoin Funds, as what is held by an ETF has historically not been a relevant factor considered by the Commission when it has considered rule filings to list options on ETFs, including commodity ETFs. The Commission has previously stated:

Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. In addition, such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.[27]

As the Commission itself notes, the position limits are ''intended to prevent the establishment of options positions that can be used . . . to manipulate or disrupt the *underlying market*'' (emphasis added). When the Commission previously approved Rules to list options on other commodity ETFs, the Commission did not require consideration of whether the available supply of those commodities should be considered when the Exchange established those position limits.[28] The Exchange notes that position limits in the Exchange's Rules at that time were the same as they are today as set forth in Rule 904 (and as proposed to be applicable to options on the Bitcoin Funds).

The Exchange represents that it has the necessary systems capacity to support the new Bitcoin Fund options. The Exchange believes that its existing surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior which might arise from listing and trading ETF options, including Bitcoin Fund options.

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.

Intramarket Competition: The Exchange 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

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(5).

[26] *See* Rule 915, Commentary .10.

[27] *See* Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR–CBOE–1997–11).

[28] *See, e.g.,* Securities Exchange Act Release No. 57894 (May 30, 2008), 73 FR 32061 (June 5, 2008) (SR–CBOE–2005–11) (approval order in which the Commission stated that the ''listing and trading of Gold Trust Options will be subject to the exchanges' rules pertaining to position and exercise limits and margin'').

as Bitcoin Funds would need to satisfy the initial listing standards set forth in the Exchange Rules in the same manner as any other ETF before the Exchange could list options on them. Additionally, Bitcoin Fund options will be equally available to all market participants who wish to trade such options. The Exchange Rules currently applicable to the listing and trading of options on ETFs on the Exchange will apply in the same manner to the listing and trading of all options on Bitcoin Funds. Also, and as stated above, the Exchange already lists options on other commodity-based ETFs.[29]

Intermarket Competition: The Exchange does not believe that the proposal to list and trade options on Bitcoin Funds will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the extent that the advent of Bitcoin Fund options trading on the Exchange may make the Exchange a more attractive marketplace to market participants at other exchanges, such market participants are free to elect to become market participants on the Exchange. As noted herein, this is a competitive filing as at least one other options exchange has filed similar a rule proposal that is currently pending with the Commission to allow the listing and trading of options on Bitcoin Funds.[30] Additionally, other options exchanges are free to amend their listing rules, as applicable, to permit them to list and trade options on Bitcoin Funds. The Exchange notes that listing and trading Bitcoin Fund options on the Exchange will subject such options to transparent exchange-based rules as well as price discovery and liquidity, as opposed to alternatively trading such options in the OTC market.

The Exchange believes that the proposed rule change may relieve any burden on, or otherwise promote, competition as it is designed to increase competition for order flow on the Exchange in a manner that is beneficial to investors by providing them with a lower-cost option to hedge their investment portfolios. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues that offer similar products. Ultimately, the Exchange believes that offering Bitcoin Fund options for trading on the Exchange will promote competition by providing investors with an additional, relatively low-cost means to hedge their portfolios and meet their investment needs in connection with Bitcoin prices and Bitcoin-related products and positions on a listed options exchange.

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

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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEAMER–2024–49 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–NYSEAMER–2024–49. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEAMER–2024–49 and should be submitted on or before September 25, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–19773 Filed 9–3–24; 8:45 am]

BILLING CODE 8011–01–P

[29] *See* Rule 915, Commentary .10.

[30] *See* SR–CBOE–2024–035, filed on August 8, 2024.

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100856; File No. SR–PEARL–2024–38]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Describe the Access Methods to the MIAX Pearl Options Testing Systems Environment and Discontinue One Access Method

August 28, 2024.

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 August 22, 2024, MIAX PEARL, LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

The Exchange is filing a proposal to describe the two methods to access the Exchange's [3] optional testing systems environment, establish a third method to access the testing systems environment, and establish the timeline and process by which one of the three access methods would be discontinued.

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-options/all-options-exchanges/rule-filings,* at MIAX Pearl'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

The Exchange submits this filing to describe the two methods to access the Exchange's optional testing systems environment, establish a third method to access the testing systems environment, and establish the timeline and process by which the 1 Gigabit (''Gb'') or 10Gb ultra-low latency (''ULL'') production (*i.e.,* live trading) connection access method described below would be discontinued.

The testing systems environment is a virtual trading system environment for Members [4] and non-Members to test (i) upcoming Exchange software and code releases, (ii) product enhancements, and (iii) firm-developed software, prior to implementation in the Exchange's production (*e.g.,* live trading) environment. Further, the testing systems environment allows unlimited testing of existing functionality, such as order types, order entry, order management, order throughput, acknowledgements, risk settings, mass cancelations, and purge requests. The testing systems environment is built to closely approximate the production environment to enable users the ability to test their systems and mimics the real life trading environment.[5]

Existing Two Access Methods

There are two methods by which Members and non-Members may access the Exchange's testing systems environment. One, Members and non-Members may access the Exchange's testing systems environment via a virtual private network (''VPN'') that operates over the internet and provides site-to-site access. VPN access is provided for free to all Members and non-Members. Two, access is also provided through the production connections for each 1Gb [6] or 10Gb ULL connection for the applicable fee [7] for such connection and no additional charge. These 1Gb and 10Gb ULL connections provide access to the Exchange's production environment (*i.e.,* live trading) and allow the receipt of proprietary real-time market data.

Members and non-Members that utilize a VPN or 1Gb production connection to access the testing systems environment of the Exchange are also able to access the testing systems environments of each of the Exchange's affiliated options markets—MIAX Sapphire, LLC (''MIAX Sapphire''), Miami International Securities Exchange, LLC (''MIAX''), and MIAX Emerald, LLC (''MIAX Emerald'').[8] Also, unlike VPN and 1Gb, 10Gb ULL connections only provide access the Exchange's testing systems environment and not those of its affiliated options markets. This is because of the nature of those connections, which are utilized to access the Exchange only, not just for testing, but for other Exchange specific items, such as access the Exchange's production environment and for the receipt of proprietary Exchange market data.

Proposed Third Access Method

The Exchange proposes to establish a third method by which Members and non-Members may access the options testing systems environment. This third method is via a dedicated cross connection that will allow Members and non-Members to access the testing systems environment and would be available as either a 1Gb or 10Gb connection.[9] Like access via a VPN and a 1Gb production connection, the dedicated cross connection would also provide access to the testing systems environment of the Exchange's affiliated options markets—MIAX Sapphire, MIAX, and MIAX Emerald. The proposed dedicated cross connect to the testing systems environment would not, however, provide access to any of the production environments (*i.e.,* live trading) of the Exchange or its affiliates, or allow the receipt of proprietary real-time market data for which each Member or non-Member may subscribe.

* * * * *

Members and non-Members that access the testing systems environment through any one of the available access methods, including the proposed dedicated cross connection, receive functionally the same testing experience. Each Member or non-Member is free to decide how to access the testing systems environment based on their own needs and trading architecture. Again, use of the testing systems environment is entirely optional and no Member or non-Member is required by rule or regulation to make use of the testing systems

[3] All references in this filing to ''MIAX Pearl'' or the ''Exchange'' are to the options trading facility of MIAX PEARL, LLC. References to the equities trading facility of MIAX PEARL, LLC will be to ''MIAX Pearl Equities''.

[4] The term ''Member'' means an individual or organization that is registered with the Exchange pursuant to Chapter II of these Rules for purposes of trading on the Exchange as an ''Electronic Exchange Member'' or ''Market Maker.'' Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[5] Business continuity and disaster recovery testing is performed separately and not within the testing systems environment that is the subject of this filing.

[6] Like VPN access, the 1Gb connection will allow Members and non-Members to reach all testing systems environments of the Exchange's affiliated options markets.

[7] *See* MIAX Pearl Fee Schedule, Sections 5)a)–b) for the fees for 1Gb and 10Gb ULL production connectivity.

[8] Members and non-Members that choose to utilize the testing systems environment of MIAX Pearl Equities, the equities trading facility of MIAX PEARL, LLC, must utilize a separate dedicated cross connect as MIAX Pearl Equities' testing systems environment operates on a separate network from the affiliated options markets.

[9] The Exchange notes that other exchange families offer a similar dedicated connection to their testing environment for their members and non-members. *See, e.g.,* Nasdaq Options Test Facility (NTF) Abstract, Version 1.4.4 (March 2024), *available at https://www.nasdaq.com/Nasdaq_Test_Facility_NTF_Guide* (last visited July 16, 2024) (''. . . the Nasdaq Test Facility . . . where market participants can test their trading applications with the INET trading system. The NTF environment allows members to test sending and executing quotes and orders offered by our six options exchanges . . .''); *see also* Securities Exchange Act Release No. 100442 (June 27, 2024), 89 FR 55296 (July 3, 2024) (SR–CboeBZX–2024–058) (''. . . the Exchange also offers corresponding ports which provide Members and non-Members access to the Exchange's certification environment to test proprietary systems and applications. . . The certification environment facilitates testing using replicas of the Exchange's production environment process configurations which provide for a robust and realistic testing experience . . .'').

environment.[10] Regardless of access method, all Members and non-Members are provided the same testing systems environment experience and are able to perform all of the same functions.

Phased Out of Production Connections

The Exchange will phase out the ability to connect to the testing systems environment via the existing 1Gb and 10Gb ULL production connections over the next 6 to 12 months. The Exchange will issue an alert notifying market participants of the anticipated timeline by which it will phase out access to the testing systems environment via 1Gb and 10Gb ULL production connections. During this phase out period, Members and non-Members that use a 1Gb or 10Gb ULL production connection to access the testing systems environment would continue to be able to do so. At the end of this period, Members and non-Members that currently elect to access the Exchange's testing systems environment via a 1Gb or 10Gb ULL connection that seek to continue to access the Exchange's testing systems environment would be required to transfer their access to one of the two remaining access methods, a VPN for free or by subscribing to a dedicated cross connection for an amount that is expected to be less than the current fee for a 1Gb or 10Gb ULL production connection.[11]

2. Statutory Basis

The Exchange believes the proposed change is consistent with the requirements of Section 6(b) of the Act,[12] in general, and Section 6(b)(5),[13] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system.

This filing describes the two existing methods to access the Exchange's optional testing systems environment, proposes to establish a third access method, and describes the process by which one access method would be discontinued. Doing so provides clarity to market participants and seeks to avoid potential investor confusion.

Access to the Exchange's testing systems environment is completely voluntary.[14] The testing systems environment is a useful tool for Members and non-Members to test (i) upcoming Exchange software and code releases, (ii) product enhancements, and (iii) firm-developed software, prior to implementation in the Exchange's production environment. In addition, the testing systems environment allows unlimited firm-level testing of order types, order entry, order management, order throughput, acknowledgements, risk settings, mass cancelations, and purge requests.

This filing also proposes to establish a third access method, a dedicated cross connect, to the Exchange's optional testing systems environment. The Exchange believes the proposed dedicated cross connect access to the test environment is being proposed purely for convenience and, again, would be entirely optional. Access to the test environment via a dedicated cross connect would enable Members and non-Members to connect their software to the test environment allowing their applications to communicate directly with the test environment. Members and non-Members that choose to access the test environment via a dedicated cross connect are also provided access to the test environments of the Exchange's affiliate options markets via a single connection, and would not be required to subscribe to multiple cross connects to test in those environments.

There is no functional difference between the two existing and proposed third access alternative. It is simply a technical decision of each Member or non-Member regarding how to access the testing systems environment. The testing systems environment, whether accessed via the proposed dedicated cross connection or otherwise, provides Members and non-Members the same scope of abilities to test their systems and software in the Exchange's testing systems environment, which replicates the Exchange's anticipated production trading environment. The testing systems environment serves to improve live trading on the Exchange and the national market system by permitting Members and non-Members the ability to accurately test software and code changes prior to implementing them in their systems in the live trading environment. This should, in turn, reduce the likelihood of a potentially disruptive issues in the live trading environment, which has the potential to affect all market participants.

Therefore, for the above reasons, the Exchange believes the proposed rule change is consistent with 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. There would be no competitive advantage for Members and non-Members that access the testing systems environment via one access method versus another. All modes of access allow Members and non-Members to perform the same testing functions in the same manner. As such, the Exchange does not believe that the proposed change will impose any burden on intermarket competition not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes the proposed rule change may have a positive impact on or intramarket competition. Among other things, the proposed rule change is intended to keep pace with technological changes in the industry and evolving customer needs and demands, and believes the dedicated cross connection to the testing systems environment will contribute to robust competition among national securities exchanges. As noted above, several exchanges already offer similar testing environments to their members and non-members.[15] As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

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

Because the foregoing 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

[10] *See supra* note 5.

[11] The Exchange will submit a separate proposed rule change for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act (15 U.S.C. 78s(b)(3)(A)) and Rule 19b–4(f)(2) (17 CFR 240.19b–4(f)(2)) thereunder to establish a fee for the dedicated cross connect to the testing systems environment. The Exchange anticipates to waive such proposed fee for a period of time and that any potential fees at the end of the waiver will be less than the fees for a 1Gb and 10Gb ULL connection to the production environment.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] As noted above, business continuity and disaster recovery testing is performed separately and not within the testing systems environment that is the subject of this filing.

[15] *See supra* note 9.

operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [16] and Rule 19b–4(f)(6) [17] thereunder.

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 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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–PEARL–2024–38 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–PEARL–2024–38. 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 (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–PEARL–2024–38 and should be submitted on or before September 25, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–19766 Filed 9–3–24; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100854; File No. SR–MIAX–2024–35]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Describe the Access Methods to the Exchange's Testing Systems Environment and Discontinue One Access Method

August 28, 2024.

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 August 22, 2024, Miami International Securities Exchange, LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

The Exchange is filing a proposal to describe the two methods to access the Exchange's optional testing systems environment, establish a third method to access the testing systems environment, and establish the timeline and process by which one of the three access methods would be discontinued.

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-options/all-options-exchanges/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

The Exchange submits this filing to describe the two methods to access the Exchange's optional testing systems environment, establish a third method to access the testing systems environment, and establish the timeline and process by which the 1 Gigabit (''Gb'') or 10Gb ultra-low latency (''ULL'') production (*i.e.,* live trading) connection access method described below would be discontinued.

The testing systems environment is a virtual trading system environment for Members [3] and non-Members to test (i) upcoming Exchange software and code releases, (ii) product enhancements, and (iii) firm-developed software, prior to implementation in the Exchange's production (*e.g.,* live trading) environment. Further, the testing systems environment allows unlimited testing of existing functionality, such as

[3] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

order types, order entry, order management, order throughput, acknowledgements, risk settings, mass cancelations, and purge requests. The testing systems environment is built to closely approximate the production environment to enable users the ability to test their systems and mimics the real life trading environment.[4]

Existing Two Access Methods

There are two methods by which Members and non-Members may access the Exchange's testing systems environment. One, Members and non-Members may access the Exchange's testing systems environment via a virtual private network (''VPN'') that operates over the internet and provides site-to-site access. VPN access is provided for free to all Members and non-Members. Two, access is also provided through the production connections for each 1Gb[5] or 10Gb ULL connection for the applicable fee[6] for such connection and no additional charge. These 1Gb and 10Gb ULL connections provide access to the Exchange's production environment (*i.e.,* live trading) and allow the receipt of proprietary real-time market data.

Members and non-Members that utilize a VPN or 1Gb production connection to access the testing systems environment of the Exchange are also able to access the testing systems environments of each of the Exchange's affiliated options markets—MIAX Sapphire, LLC (''MIAX Sapphire''), MIAX PEARL, LLC[7] (''MIAX Pearl Options''), and MIAX Emerald, LLC (''MIAX Emerald''). Also, unlike VPN and 1Gb, 10Gb ULL connections only provide access the Exchange's testing systems environment and not those of its affiliated options markets. This is because of the nature of those connections, which are utilized to access the Exchange only, not just for testing, but for other Exchange specific items, such as access the Exchange's production environment and for the receipt of proprietary Exchange market data.

Proposed Third Access Method

The Exchange proposes to establish a third method by which Members and non-Members may access the options testing systems environment. This third method is via a dedicated cross connection that will allow Members and non-Members to access the testing systems environment and would be available as either a 1Gb or 10Gb connection.[8] Like access via a VPN and a 1Gb production connection, the dedicated cross connection would also provide access to the testing systems environment of the Exchange's affiliated options markets—MIAX Sapphire, MIAX PEARL, LLC, and MIAX Emerald. The proposed dedicated cross connect to the testing systems environment would not, however, provide access to any of the production environments (*i.e.,* live trading) of the Exchange or its affiliates, or allow the receipt of proprietary real-time market data for which each Member or non-Member may subscribe.

* * * * *

Members and non-Members that access the testing systems environment through any one of the available access methods, including the proposed dedicated cross connection, receive functionally the same testing experience. Each Member or non-Member is free to decide how to access the testing systems environment based on their own needs and trading architecture. Again, use of the testing systems environment is entirely optional and no Member or non-Member is required by rule or regulation to make use of the testing systems environment.[9] Regardless of access method, all Members and non-Members are provided the same testing systems environment experience and are able to perform all of the same functions.

Phased Out of Production Connections

The Exchange will phase out the ability to connect to the testing systems environment via the existing 1Gb and 10Gb ULL production connections over the next 6 to 12 months. The Exchange will issue an alert notifying market participants of the anticipated timeline by which it will phase out access to the testing systems environment via 1Gb and 10Gb ULL production connections. During this phase out period, Members and non-Members that use a 1Gb or 10Gb ULL production connection to access the testing systems environment would continue to be able to do so. At the end of this period, Members and non-Members that currently elect to access the Exchange's testing systems environment via a 1Gb or 10Gb ULL connection that seek to continue to access the Exchange's testing systems environment would be required to transfer their access to one of the two remaining access methods, a VPN for free or by subscribing to a dedicated cross connection for an amount that is expected to be less than the current fee for a 1Gb or 10Gb ULL production connection.[10]

2. Statutory Basis

The Exchange believes the proposed change is consistent with the requirements of Section 6(b) of the Act,[11] in general, and Section 6(b)(5),[12] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system.

This filing describes the two existing methods to access the Exchange's optional testing systems environment, proposes to establish a third access method, and describes the process by

[4] Business continuity and disaster recovery testing is performed separately and not within the testing systems environment that is the subject of this filing.

[5] Like VPN access, the 1Gb connection will allow Members and non-Members to reach all testing systems environments of the Exchange's affiliated options markets.

[6] *See* MIAX Fee Schedule, Sections 5(a)–(b) for the fees for 1Gb and 10Gb ULL production connectivity.

[7] All references to ''MIAX PEARL'' in this filing are to the options trading facility of MIAX PEARL, LLC, referred to herein as ''MIAX Pearl Options.'' Members and non-Members that choose to utilize the testing systems environment of MIAX Pearl Equities, the equities trading facility of MIAX PEARL, LLC, must utilize a separate dedicated cross connect as MIAX Pearl Equities' testing systems environment operates on a separate network from the affiliated options markets.

[8] The Exchange notes that other exchange families offer a similar dedicated connection to their testing environment for their members and non-members. *See, e.g.,* Nasdaq Options Test Facility (NTF) Abstract, Version 1.4.4 (March 2024), *available at https://www.nasdaq.com/Nasdaq_Test_Facility_NTF_Guide* (last visited July 16, 2024) (''. . . the Nasdaq Test Facility . . . where market participants can test their trading applications with the INET trading system. The NTF environment allows members to test sending and executing quotes and orders offered by our six options exchanges . . .''); *see also* Securities Exchange Act Release No. 100442 (June 27, 2024), 89 FR 55296 (July 3, 2024) (SR–CboeBZX–2024–058) (''. . . the Exchange also offers corresponding ports which provide Members and non-Members access to the Exchange's certification environment to test proprietary systems and applications . . . The certification environment facilitates testing using replicas of the Exchange's production environment process configurations which provide for a robust and realistic testing experience . . .'').

[9] *See supra* note 4.

[10] The Exchange will submit a separate proposed rule change for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act (15 U.S.C. 78s(b)(3)(A)) and Rule 19b–4(f)(2) (17 CFR 240.19b–4(f)(2)) thereunder to establish a fee for the dedicated cross connect to the testing systems environment. The Exchange anticipates to waive such proposed fee for a period of time and that any potential fees at the end of the waiver will be less than the fees for a 1Gb and 10Gb ULL connection to the production environment.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

which one access method would be discontinued. Doing so provides clarity to market participants and seeks to avoid potential investor confusion.

Access to the Exchange's testing systems environment is completely voluntary.[13] The testing systems environment is a useful tool for Members and non-Members to test (i) upcoming Exchange software and code releases, (ii) product enhancements, and (iii) firm-developed software, prior to implementation in the Exchange's production environment. In addition, the testing systems environment allows unlimited firm-level testing of order types, order entry, order management, order throughput, acknowledgements, risk settings, mass cancelations, and purge requests.

This filing also proposes to establish a third access method, a dedicated cross connect, to the Exchange's optional testing systems environment. The Exchange believes the proposed dedicated cross connect access to the test environment is being proposed purely for convenience and, again, would be entirely optional. Access to the test environment via a dedicated cross connect would enable Members and non-Members to connect their software to the test environment allowing their applications to communicate directly with the test environment. Members and non-Members that choose to access the test environment via a dedicated cross connect are also provided access to the test environments of the Exchange's affiliate options markets via a single connection, and would not be required to subscribe to multiple cross connects to test in those environments.

There is no functional difference between the two existing and proposed third access alternative. It is simply a technical decision of each Member or non-Member regarding how to access the testing systems environment. The testing systems environment, whether accessed via the proposed dedicated cross connection or otherwise, provides Members and non-Members the same scope of abilities to test their systems and software in the Exchange's testing systems environment, which replicates the Exchange's anticipated production trading environment. The testing systems environment serves to improve live trading on the Exchange and the national market system by permitting Members and non-Members the ability to accurately test software and code changes prior to implementing them in their systems in the live trading environment. This should, in turn, reduce the likelihood of a potentially disruptive issues in the live trading environment, which has the potential to affect all market participants.

Therefore, for the above reasons, the Exchange believes the proposed rule change is consistent with 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. There would be no competitive advantage for Members and non-Members that access the testing systems environment via one access method versus another. All modes of access allow Members and non-Members to perform the same testing functions in the same manner. As such, the Exchange does not believe that the proposed change will impose any burden on intermarket competition not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes the proposed rule change may have a positive impact on or intramarket competition. Among other things, the proposed rule change is intended to keep pace with technological changes in the industry and evolving customer needs and demands, and believes the dedicated cross connection to the testing systems environment will contribute to robust competition among national securities exchanges. As noted above, several exchanges already offer similar testing environments to their members and non-members.[14] As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

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

Because the foregoing 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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act[15] and Rule 19b–4(f)(6)[16] thereunder.

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 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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–MIAX–2024–35 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–2024–35. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

[13] As noted above, business continuity and disaster recovery testing is performed separately and not within the testing systems environment that is the subject of this filing.

[14] *See supra* note 8.

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–MIAX–2024–35 and should be submitted on or before September 25, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–19764 Filed 9–3–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100860; File No. SR–NYSEAMER–2024–48]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend Rule 952NYP

August 28, 2024.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 13, 2024, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Rule 952NYP (Auction Process). The proposed rule change is available on the Exchange's website at *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

The Exchange proposes to modify Rule 952NYP (Auction Process) regarding the automated process for opening (and reopening) option series on the Exchange.[4]

Rule 952NYP (the ''Rule'') describes the opening Auction Process.[5] The Exchange has determined that the Auction Process could be incrementally improved by removing the existing requirement that the Exchange disseminate a Rotational Quote before commencing an Auction. The Exchange believes that this proposed modification could enhance the speed and efficiency of its Auction Process without impairing price discovery.

Commencement of the Auction Process

Pursuant to the Rule, for each option series, the Auction Process begins once the Exchange receives the Auction Trigger, and the Exchange sends a Rotational Quote[6] to both OPRA and proprietary data feeds.[7] The Auction Trigger occurs when the Primary Market for the underlying security first disseminates both a two-sided quote and a trade of any size that is at or within the quote.[8] The Auction Trigger signals the opening of trading in an underlying security, which in turn, enables the Exchange to commence the process of opening options on that underlying.

After the Auction Trigger, the Exchange sends a Rotational Quote for each option series on the underlying security. Once a Rotational Quote is disseminated, the Exchange waits a minimum of two milliseconds and then conducts an Auction, provided that ''there is both a Legal Width Quote and, if applicable, Market Maker quotes with a non-zero offer in the series (subject to the Opening MMQ Timer(s) requirements in paragraph (d)(3) of this Rule).''[9]

Proposed Change to Commencement of the Auction Process

The Exchange proposes to remove from the Rule the requirements that the Exchange delay its opening Auction until it disseminates a Rotational Quote and waits at least two additional milliseconds post-dissemination (the ''Rotational Quote Requirement'').[10] The proposed rule will specify that, upon receipt of an Auction Trigger for an underlying security, the Exchange will disseminate a message to market participants indicating the initiation of the opening process and will begin transitioning each option series for that underlying security from a pre-open state to continuous trading.[11] This proposed change does not alter any of the other prerequisites to commencing

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] An ''Auction'' refers to the opening or reopening of a series for trading either with or without a trade. *See* Rule 952NYP(a)(1). For simplicity, the Exchange will simply refer to the ''opening'' of a series herein.

[5] ''Auction Process'' refers to the process that begins when the Exchange receives an Auction Trigger for a series and ends when the Auction is conducted. *See* Rule 952NYP(a)(5).

[6] ''Rotational Quote'' refers to the highest Market Maker bid and lowest Market Maker offer on the Exchange when the Auction Process begins, and such Rotational Quote will be updated (for price and size) during the Auction Process. *See* Rule 952NYP(a)(13).

[7] *See* Rule 952NYP(d)(1).

[8] *See* Rule 952NYP(a)(7). For a Core Open Auction, the Auction Trigger occurs at or after 9:30 a.m. EST and for a Trading Halt Auction, the Auction Trigger occurs at the end of a trading halt. *See* Rule 952NYP(a)(7)(A) and (B), respectively.

[9] *See* Rule 952NYP(d)(2). *See* Rule 952NYP(a)(10)(A)–(C) (describing that a Legal Width Quote is comprised of a Calculated NBBO that may be locked, but not crossed, does not contain a zero offer, and does not exceed the Exchange-determined ''maximum differential''). A Calculated NBBO is ''the highest bid and lowest offer'' among all Market Maker quotes and the ABBO [*i.e.,* Away Market BBO] during the Auction Process. *See* Rule 952NYP(a)(8).

[10] *See* proposed Rule 952NYP(d)(1)–(2). Consistent with this proposed change, the Exchange proposes to eliminate from Rule 952NYP(a)(13) the definition of Rotational Quote. *See* proposed Rule 952NYP(a) (which would no longer include (a)(13)).

[11] *See* proposed Rule 952NYP(d)(1). The proposed rule specifies that a message is disseminated to market participants informing them that the Auction Trigger has been received, the receipt of which enables the Exchange to transition option series in that underlying security from a pre-open state to continuous trading. The Exchange notes that the dissemination of a message indicating receipt of the Auction Trigger is consistent with current functionality except that, with the removal of the Rotational Quote Requirement, this message now signals to market participants that the Exchange may commence its transition of option series in that underlying to continuous trading.

an Auction. Consistent with current functionality, the Auction process will begin opening an option series once there is a Legal Width Quote.[12]

The Exchange believes that this proposed change would result in a more timely and efficient opening process. At a minimum, once the Auction Trigger is received and, absent the Rotational Quote Requirement, each option series would open at least two milliseconds earlier.[13] The Exchange has determined (based on feedback from market participants) that the relative benefit of delaying the Auction Process for the Rotational Quote Requirement is outweighed by the benefit of improving the speed at which each option series opens. The Exchange notes that, notwithstanding the proposal to eliminate the Rotational Quote Requirement, the Exchange would continue to disseminate imbalance messages as early as 8:00 a.m. EST indicating the trading interest available in each option series pre-Auction (*i.e.,* the ''Auction Imbalance Information'').[14] Similarly, the proposed elimination of the Rotational Quote Requirement would likewise not alter the other prerequisites to the Exchange commencing an Auction (*e.g.,* the presence of a Legal Width Quote). Furthermore, the Exchange notes that its Auction Process, as modified herein, would remain consistent with that of at least one other options exchange that likewise does not include a Rotational Quote Requirement as a precondition to opening each option series.[15] The Exchange therefore believes that the proposal to eliminate the Rotational Quote Requirement would benefit market participants because it would allow the Exchange to compete on more equal footing with at least one other options exchange that does not include such a requirement as a precondition to opening each series.

Finally, the Exchange proposes to make a technical change to renumber current Rule 952NYP(a)(5)(i) to Rule 952NYP(a)(5)(A), which would add clarity and internal consistency to Exchange rules.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[16] in general, and furthers the objectives of Section 6(b)(5),[17] in particular, because 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, 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 the proposed changes to its Auction Process would promote a fair and orderly market by improving the speed and efficiency of the Exchange's opening process. The Exchange has determined (based on feedback from market participants) that the relative benefit of delaying the Auction Process for the Rotational Quote Requirement is outweighed by the benefit of improving the speed at which each option series opens. The Exchange notes that, notwithstanding the proposal to eliminate the Rotational Quote Requirement, the Exchange would continue to disseminate the Auction Imbalance Information, which informs market participants about the trading interest available pre-Auction. Moreover, the proposed change would not alter any of the Exchange's other prerequisites to commencing an Auction (*e.g.,* the presence of a Legal Width Quote).

Furthermore, the Exchange believes that the proposed change would promote just and equitable principles of trade because it would allow the Exchange to compete on more equal footing with at least one other options exchange that does not include an analogous Rotational Quote Requirement as a precondition to opening each option series.[18]

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 Exchange believes that the proposed change to the Auction Process would not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because all market participants that participate in the opening process may benefit equally from the proposal, as the rules of the Exchange apply equally to all market participants. With respect to inter-market competition, the Exchange notes that the Exchange's modified Auction Process would remain consistent with that of other options exchanges that likewise do not include a Rotational Quote Requirement as a precondition to opening each option series.[19]

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[20] and Rule 19b–4(f)(6) thereunder.[21] 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)

[12] The Rule addresses how an option series transitions from pre-open state to continuous trading in circumstances where, after a specified time period, the prerequisites to commencing an Auction have not yet been satisfied. *See* Rule 952NYP(d)(4).

[13] *Compare* proposed Rule 952NYP(d)(2) *with* (current) Rule 952NYP(d)(2). The Exchange notes that the required delay of *at least* two milliseconds occurs *after* the Exchange has disseminated a Rotational Quote. Thus, under the current Rule, the time lapse from receipt of Auction Trigger to commencing an Auction is, by necessity, longer than two milliseconds. *See* Rule 952NYP(d)(2).

[14] *See* Rule 952NYP(c)(1). The Auction Imbalance Information includes the Auction Collars, Auction Indicator, Book Clearing Price, Far Clearing Price, Indicative Match Price, Matched Volume, Market Imbalance, and Total Imbalance. *See* Rule 952NYP(a)(3)(A)–(D). For Trading Halt Auctions, the Exchange disseminates the Auction Imbalance Information at the beginning of a trading halt *See* Rule 952NYP(c)(2).

[15] *See, e.g.,* Cboe Options Exchange Inc. (''Cboe'') Rule 5.31(d)(1)(A)(ii) (providing that Cboe initiates its ''opening rotation'' for a series upon receipt of ''both the first disseminated transaction and the first disseminated quote on the primary market'' on or after 9:30 a.m. EST, which is identical the Exchange's ''Auction Trigger,'' without waiting for the dissemination of a Rotational Quote (or an additional two milliseconds)). The Exchange believes that its ''Auction Process'' is akin to Cboe's ''opening rotation'' (*compare* Rule 952NYP(a)(5) *with* Cboe Rule 5.31(e)) and its ''Auction Imbalance Information'' is akin to Cboe's ''Opening Auction Updates'' (*compare* Rule 952NYP(a)(3) *with* Cboe Rule 5.31(c)). Like Cboe, the Exchange disseminates a message to its market participants to signal the initiating of the opening process. *Compare* Cboe Rule 5.31(d) *with* proposed Rule 952NYP(d)(1).

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] *See supra* note 15 (regarding Cboe's opening process, per Cboe Rule 5.31).

[19] *Id.*

[20] 15 U.S.C. 78s(b)(3)(A)(iii).

[21] 17 CFR 240.19b–4(f)(6).

of the Act and Rule 19b–4(f)(6)(iii) thereunder.[22]

A proposed rule change filed under Rule 19b–4(f)(6)[23] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[24] 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)[25] 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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEAMER–2024–48 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–NYSEAMER–2024–48. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEAMER–2024–48 and should be submitted on or before September 25, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–19770 Filed 9–3–24; 8:45 am]

BILLING CODE 8011–01–P

[22] 17 CFR 240.19b–4(f)(6). In addition, Rule19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[23] 17 CFR 240.19b–4(f)(6).

[24] 17 CFR 240.19b–4(f)(6)(iii).

[25] 15 U.S.C. 78s(b)(2)(B).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100857; File No. SR–EMERALD–2024–22]

Self-Regulatory Organizations: MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the Excessive Quoting Fee

August 28, 2024.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'') and Rule 19b–4 thereunder,[2] notice is hereby given that on August 15, 2024, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange''), filed with the Securities and Exchange Commission (''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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

The Exchange is filing a proposal to amend the MIAX Emerald Fee Schedule (the ''Fee Schedule'') to modify the Excessive Quoting Fee. The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-options/all-options-exchanges/rule-filings,* at MIAX Emerald'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

The Exchange proposes to amend Section 1)c) of the Fee Schedule to add another exemption to the daily Excessive Quoting fee. The Exchange filed the initial proposal on August 5, 2024 (SR–EMERALD–2024–20). On August 15, 2024, the Exchange withdrew SR–EMERALD–2024–20 and resubmitted this proposal.

For background, the Exchange adopted the Excessive Quoting Fee as a result of a significant upgrade to the MIAX Emerald System[3] network architecture, based on customer demand, which resulted in the Exchange's network environment becoming more transparent and deterministic.

Pursuant to the Excessive Quoting Fee, the Exchange will assess a fee of $10,000 per day to any Market Maker[4]

[3] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[4] The term ''Market Maker'' refers to ''Lead Market Maker'' (''LMM''), ''Primary Lead Market Maker'' (''PLMM'') and ''Registered Market Maker'' (''RMM''), collectively. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

that exceeds 3.5 billion inbound quotes [5] sent to the Exchange on that particular day. However, the daily Excessive Quoting Fee will not be assessed for the first day that a Market Maker exceeds the 3.5 billion inbound quote limit in a rolling 12-month period.[6] In counting the total number of quotes for the purposes of the Excessive Quoting Fee, the Exchange excludes messages that are generated as a result of sending a mass purge message to the Exchange (*i.e.,* cancel/replace messages). The 3.5 billion inbound quote limit for the Excessive Quoting Fee resets each trading day.[7]

Proposal

The Exchange proposes to amend Section 1)c) of the Fee Schedule to establish another exemption to the daily Excessive Quoting Fee. In particular, the Exchange proposes that, notwithstanding the exemptions described above, the Exchange may determine not to assess the Excessive Quoting Fee in times of extraordinary market conditions, with such determination to be made by a designated Exchange Official. The Exchange notes that its rules already provide other instances of review by an Exchange Official in times of extraordinary or unusual market conditions; accordingly, such review is not new or novel.[8]

The Exchange provides the following example of how the proposed exemption would operate. On Day 1, if Marker Maker ''Firm A'' exceeds 3.5 billion inbound quotes, the Exchange would not assess the Excessive Quoting Fee because this is the first trading day within a rolling 12-month period in which that particular Market Maker surpassed the 3.5 billion inbound quote limit. On Day 2, if Firm A again exceeds 3.5 billion inbound quotes the Exchange would normally assess the Excessive Quoting Fee; however, if the Exchange Official determines that extraordinary market conditions existed on Day 2, the Exchange would not assess the Excessive Quoting Fee on all Market Makers,[9] including Firm A, for exceeding the inbound quote limit on that day. As such, Firm A would not be assessed the Excessive Quoting Fee on Day 2, but the rolling 12-month period would still be in effect for Firm A. On Day 3, if Firm A again exceeds 3.5 billion inbound quotes, in the absence of extraordinary market conditions declared by the designated Exchange Official, the Exchange would assess the Excessive Quoting Fee on Firm A.

The purpose of this proposal is to provide relief to Market Makers when there is increased volatility in the market place to the extent that Market Makers may routinely exceed the 3.5 billion inbound quote limit over one or more trading days. As previously noted by the Exchange, increased volatility in the market place may lead to an increase in the number of quotes generated by Market Makers for existing options. The result of these types of market conditions and factors is that a Market Maker will potentially exceed the 3.5 billion inbound quote limit each day while those conditions continue to exist. The Exchange believes that this proposal will help allow the Exchange to maintain fair and orderly markets based on unusual market conditions or extreme volatility, which may impact all participants of the Exchange.

The Exchange believes that the proposed exemption will not undermine the purpose of the Excessive Quoting Fee, but will continue to balance the interests of Market Makers sending quotes to the Exchange, pursuant to their quoting obligations and quoting strategies, while ensuring that Market Makers do not over utilize the Exchange's System by sending excessive numbers of quotes to the potential detriment of other Members [10] of the Exchange.

The proposal contemplates that extreme market conditions would have to occur in order for the Exchange to invoke the proposed exemption. The Exchange Official in charge of making such determination would take into account several different factors and market conditions. Such conditions may include, but are not limited to, swings in major U.S. indices (*i.e.,* the S&P 500, Dow Jones Industrial Average, or Nasdaq-100 Indices) without such indices stabilizing up or down; higher than expected or unusual trading volumes; and increased volatility in the marketplace. In the Exchange's experience, when there is higher than expected price fluctuation, this generates a higher volume of quotes, leading to a significant increase in quoting activity by Market Makers.

The Exchange believes that the process of exempting certain trading days from counting towards the Excessive Quoting Fee is similar to that utilized by NYSE Arca, Inc. (''NYSE Arca'') for exempting certain trading days from counting towards NYSE Arca's ''Monthly Excessive Bandwidth Utilization Fee,'' [11] although the substantive basis for the exemptions are different.

The Excessive Quoting Fee was not intended to be a source of revenue for the Exchange, as the Exchange noted in its proposals to adopt the Excessive Quoting Fee and increase the inbound quote limit.[12] Rather, the Excessive Quoting Fee was designed to ensure that Market Makers do not over utilize the Exchange's System by sending excessive numbers of quotes to the Exchange, potentially to the detriment of all other Members of the Exchange. The proposed exemption provides relief during times of extraordinary market conditions, based upon review by a designated Exchange Official, and will not undermine the purpose of the Excessive Quoting Fee, but will continue to balance the interests of Market Makers sending quotes to the Exchange, pursuant to their quoting obligations and quoting strategies and not over utilize the System. The Exchange also notes that since the adoption of the Excessive Quoting Fee in early 2021, the Exchange assessed the Excessive Quoting Fee only one time.

Implementation

The proposed changes are immediately effective.

2. Statutory Basis

The Exchange believes that its proposal to amend the Fee Schedule is

[5] The term ''quote'' or ''quotation'' means a bid or offer entered by a Market Maker that is firm and may update the Market Maker's previous quote, if any. The Rules of the Exchange provide for the use of different types of quotes, including Standard quotes and eQuotes, as more fully described in Rule 517. A Market Maker may, at times, choose to have multiple types of quotes active in an individual option. *See* the Definitions Section of the Fee Schedule.

[6] This exemption was established in 2023. *See* Securities Exchange Act Release No. 98088 (August 8, 2023), 88 FR 55096 (August 14, 2023) (SR–EMERALD–2023–20).

[7] *See* Fee Schedule, Section 1)c).

[8] *See, e.g.,* Exchange Rule 506(d)(1).

[9] For Market Makers that did not yet exceed the 3.5 billion inbound quote limit, Day 2 would also not count towards the exemption in the rule that allows Market Makers to exceed the limit one time on a rolling 12-month basis. *See* Fee Schedule, Section 1)c).

[10] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* the Definitions Section of the Fee Schedule.

[11] *See* NYSE Arca Options Fees and Charges, page 13, *available at https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf* (''The Exchange may exclude one or more days of data for purposes of calculating the Fee for an OTP Holder or OTP Firm if the Exchange determines, in its sole discretion, that one or more OTP Firms or the Exchange was experiencing a bona fide systems problem.'').

[12] *See* Securities Exchange Act Release Nos. 91406 (March 24, 2021), 86 FR 16795 (March 31, 2021) (SR–EMERALD–2021–10) *and* 94368 (March 7, 2022), 87 FR 14051 (March 11, 2022) (SR–EMERALD–2022–09). *See supra* note 6.

consistent with Section 6(b) of the Act [13] in general, and furthers the objectives of Section 6(b)(4) and (5) of the Act [14] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among its Members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Rule Change is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.[15]

There are currently 17 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 16–17% of the market share of executed volume of multiply-listed equity and exchange-traded fund (''ETF'') options trades.[16] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, for the month of July 2024, the Exchange had a market share of 4.40% of executed volume of multiply-listed equity and ETF options trades.[17]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, modifications to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

The Exchange believes that the proposed exemption is reasonable because it provides relief to Market Makers from the Excessive Quoting Fee in times of extraordinary market conditions, based upon review of several factors by a designated Exchange Official. The Exchange believes the proposed exemption will not undermine the purpose of the Excessive Quoting Fee, but will continue to balance the interests of Market Makers sending quotes to the Exchange, pursuant to their quoting obligations and quoting strategies, while ensuring that Market Makers do not over utilize the Exchange's System by sending excessive numbers of quotes to the potential detriment of other Members of the Exchange. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to mitigate effects of an ever-changing marketplace without affecting its competitiveness or the quantity of quotes being sent by Market Makers. The Exchange also believes that the process of exempting certain trading days from counting towards the Excessive Quoting Fee is similar to that utilized by NYSE Arca, Inc. (''NYSE Arca'') for exempting certain trading days from counting towards NYSE Arca's ''Monthly Excessive Bandwidth Utilization Fee,'' [18] although the substantive basis for the exemptions are different.

The Proposed Rule Change is an Equitable Allocation of Fees

The Exchange believes the proposed change is an equitable allocation of fees. The proposed exemption is an equitable allocation of fees because it would be available to all Market Makers. All Market Makers would be eligible for the exemption during times of extraordinary market conditions. For clarity, when the Exchange Official determines that extraordinary market conditions exist, every Market Maker of the Exchange would qualify for the proposed exemption and not be subject to the Excessive Quoting Fee on that particular trading day(s).[19] In addition, to the extent the exemption encourages Market Makers to maintain their quoting activity on the Exchange by mitigating the initial impact of the Excessive Quoting Fee, the Exchange believes the proposed change would promote market quality to the benefit of all market participants.

The Proposed Rule Change is not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory because it neither targets nor will it have a disparate impact on any particular type of Market Maker. The Exchange believes the proposed exemption is not unfairly discriminatory because it would apply to all Market Makers on an equal and non-discriminatory basis. The Exchange believes that the proposed change would encourage Market Makers to continue quoting on the Exchange during times of extraordinary market conditions, which will help maintain fair and orderly markets to the benefit of all Exchange market participants. The proposed exemption would thus support continued quoting and trading opportunities for all market participants, thereby promoting just and equitable principles of trade, removing impediments to and perfecting the mechanism of a free and open market and a national market system and, in general, protecting investors and the public interest.

The Exchange will continue to review the quoting behavior of all firms in connection with changing market conditions and technology or algorithm changes on a regular basis to ensure that the proposed exemption is providing relief for Market Makers as intended.

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

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional quotes to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants.

Intramarket Competition

The Exchange does not believe the proposed changes would impose any burden on intramarket competition that is not necessary or appropriate. The proposed exemption would apply equally to all Market Makers during times of extraordinary market conditions. To the extent the proposed change is successful in encouraging Market Makers to maintain their quoting activity on the Exchange, the Exchange believes the proposed change will

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4).

[15] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (''Reg NMS Adopting Release'').

[16] *See* the ''Market Share'' section of the Exchange's website, *available at https://www.miaxglobal.com/* (last visited August 5, 2024).

[17] *See id.*

[18] *See supra* note 11.

[19] *See supra* note 9.

continue to promote market quality to the benefit of all market participants.

Intermarket Competition

The Exchange operates in a highly competitive market in which market participants can readily favor one of the 17 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 16–17% of the market share of executed volume of multiply-listed equity and ETF options trades.[20] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, for the month of July 2024, the Exchange had a market share of 4.40% of executed volume of multiply-listed equity and ETF options trades.[21]

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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[22] and Rule 19b–4(f)(2)[23] thereunder. 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 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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–EMERALD–2024–22 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–EMERALD–2024–22. 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 (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–EMERALD–2024–22 and should be submitted on or before September 25, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–19767 Filed 9–3–24; 8:45 am]

BILLING CODE 8011–01–P

[20] *See supra* note 16.

[21] *See id.*

[22] 15 U.S.C. 78s(b)(3)(A)(ii).

[23] 17 CFR 240.19b–4(f)(2).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA–6668]

Notice of Intention To Cancel Registrations of Certain Investment Advisers Pursuant to Section 203(h) of the Investment Advisers Act of 1940

August 29, 2024.

Notice is given that the Securities and Exchange Commission (the ''*Commission*'') intends to issue an order, pursuant to section 203(h) of the Investment Advisers Act of 1940 (the ''*Act*''), cancelling the registrations of the investment advisers whose names appear in the attached Appendix, hereinafter referred to as the ''*registrants*.''

Section 203(h) of the Act provides, in pertinent part, that if the Commission finds that any person registered under section 203, or who has pending an application for registration filed under that section, is no longer in existence, is not engaged in business as an investment adviser, or is prohibited from registering as an investment adviser under section 203A, the Commission shall by order cancel the registration of such person.

Each registrant listed in the attached Appendix either (a) has not filed a Form ADV amendment with the Commission as required by rule 204–1 under the Act[1] and appears to be no longer engaged in business as an investment adviser or (b) has indicated on Form ADV that it is no longer eligible to remain registered with the Commission as an investment adviser but has not filed Form ADV–W to withdraw its registration. Accordingly, the Commission believes that reasonable grounds exist for a finding that these registrants are no longer in existence, are not engaged in business as investment advisers, or are prohibited from registering as investment advisers under section 203A, and that their registrations should be cancelled pursuant to section 203(h) of the Act.

Notice is also given that any interested person may, by September 23, 2024, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the cancellation of the registration of any registrant listed in the attached Appendix, accompanied by a statement as to the nature of such person's interest, the reason for such person's request, and the issues, if any,

[1] Rule 204–1 under the Act requires any adviser that is required to complete Form ADV to amend the form at least annually and to submit the amendments electronically through the Investment Adviser Registration Depository.

of fact or law proposed to be controverted, and the writer may request to be notified if the Commission should order a hearing thereon. Any such communication should be emailed to the Commission's Secretary at *Secretarys-Office@sec.gov.*

At any time after September 23, 2024, the Commission may issue an order or orders cancelling the registrations of any or all of the registrants listed in the attached Appendix, upon the basis of the information stated above, unless an order or orders for a hearing on the cancellation shall be issued upon request or upon the Commission's own motion. Persons who requested a hearing, or who requested to be advised as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. Any registrant whose registration is cancelled under delegated authority may appeal that decision directly to the Commission in accordance with rules 430 and 431 of the Commission's rules of practice (17 CFR 201.430 and 431).

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.*

FOR FURTHER INFORMATION CONTACT: Priscilla Dao, Senior Counsel, at 202–551–6825; SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE, Washington, DC 20549–8549.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.[2]

Sherry R. Haywood,

Assistant Secretary.

Appendix

SEC No.	Full legal name
801–56141	MARKSTON INTERNATIONAL LLC.
801–54866	LINDNER CAPITAL ADVISORS, INC.
801–66530	INVESTMENT MANAGEMENT ADVISORS, INC.
801–108088	FIDUCIARY CAPITAL ADVISORS INC.
801–19890	COBEY JACOBSON & GORDON INC.
801–63230	VANTAGE ADVISORS, LLC.
801–73943	TOURADJI CAPITAL MANAGEMENT LP.
801–69184	CONFIDENTIAL PLANNING I, LLC.
801–90167	FORESIGHT WEALTH MANAGEMENT, LLC.
801–74413	NUKU ASSET INC.
801–99347	WORTH CONSIDERING, INC.
801–74005	HARBINGER CAPITAL PARTNERS LLC.
801–77260	FOUR WOOD CAPITAL ADVISORS LLC.
801–113353	JASPER ASSET MANAGEMENT, LLC.
801–111045	SMARTMONEY.CO, LLC.
801–109971	E*HEDGE SECURITIES, INC.
801–112086	HIGH HURDLE CAPITAL LLC.
801–112865	MATRIX ADVISORY INC.
801–113083	THE PARKRIDGE COMPANIES, LLC.
801–117231	PERSONAL ADVISER INC.
801–119829	HERCULES INVESTMENTS LLC.
801–117917	LOOP INVESTING TECHNOLOGIES LLC.
801–121545	BREACHER CAPITAL ADVISORS, LLC.
801–119748	OATH ADVISORS LLC.
801–119266	MIX CAPITAL LTD.
801–120546	DNDRO INC.
801–121332	CMPD WEALTH, CORP.
801–122121	AE ADVISORS LLC.
801–123314	SAFAHI CORP.
801–123265	MAYA ADVISORS, L.L.C.
801–127103	HORIZON FINANCIAL MANAGEMENT INC.
801–128112	KEYTRENDS INVESTMENTS LLC.
801–127612	VANCE FUNDS LIMITED.
801–128646	M26 CAPITAL, LLC.
801–119809	CERTEZA FUND ADVISORS LLC.
801–123697	DIGITAL FUNDS LLC.
801–111839	MAUND & JONES LLC.

[FR Doc. 2024–19849 Filed 9–3–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100864; File No. SR–NYSEARCA–2024–66]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 6.64P–O

August 28, 2024.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 13, 2024, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Rule 6.64P–O (Auction Process). The proposed rule change is available on the Exchange's website at *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

The Exchange proposes to modify Rule 6.64P–O (Auction Process) regarding the automated process for opening (and reopening) option series on the Exchange.[4]

Rule 6.64P–O (the ''Rule'') describes the opening Auction Process.[5] The Exchange has determined that the Auction Process could be incrementally improved by removing the existing requirement that the Exchange disseminate a Rotational Quote before commencing an Auction. The Exchange believes that this proposed modification could enhance the speed and efficiency of its Auction Process without impairing price discovery.

Commencement of the Auction Process

Pursuant to the Rule, for each option series, the Auction Process begins once the Exchange receives the Auction Trigger, and the Exchange sends a Rotational Quote[6] to both OPRA and proprietary data feeds.[7] The Auction Trigger occurs when the Primary Market for the underlying security first disseminates both a two-sided quote and a trade of any size that is at or

[2] 17 CFR 200.30–5(e)(2).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] An ''Auction'' refers to the opening or reopening of a series for trading either with or without a trade. *See* Rule 6.64P–O(a)(1). For simplicity, the Exchange will simply refer to the ''opening'' of a series herein.

[5] ''Auction Process'' refers to the process that begins when the Exchange receives an Auction Trigger for a series and ends when the Auction is conducted. *See* Rule 6.64P–O(a)(5).

[6] ''Rotational Quote'' refers to the highest Market Maker bid and lowest Market Maker offer on the Exchange when the Auction Process begins, and such Rotational Quote will be updated (for price and size) during the Auction Process. *See* Rule 6.64P–O(a)(13).

[7] *See* Rule 6.64P–O(d)(1).

within the quote.'' [8] The Auction Trigger signals the opening of trading in an underlying security, which in turn, enables the Exchange to commence the process of opening options on that underlying.

After the Auction Trigger, the Exchange sends a Rotational Quote for each option series on the underlying security. Once a Rotational Quote is disseminated, the Exchange waits a minimum of two milliseconds and then conducts an Auction, provided that ''there is both a Legal Width Quote and, if applicable, Market Maker quotes with a non-zero offer in the series (subject to the Opening MMQ Timer(s) requirements in paragraph (d)(3) of this Rule).'' [9]

Proposed Change to Commencement of the Auction Process

The Exchange proposes to remove from the Rule the requirements that the Exchange delay its opening Auction until it disseminates a Rotational Quote and waits at least two additional milliseconds post-dissemination (the ''Rotational Quote Requirement'').[10] The proposed rule will specify that, upon receipt of an Auction Trigger for an underlying security, the Exchange will disseminate a message to market participants indicating the initiation of the opening process and will begin transitioning each option series for that underlying security from a pre-open state to continuous trading.[11] This proposed change does not alter any of the other prerequisites to commencing an Auction. Consistent with current functionality, the Auction process will begin opening an option series once there is a Legal Width Quote.[12]

The Exchange believes that this proposed change would result in a more timely and efficient opening process. At a minimum, once the Auction Trigger is received and, absent the Rotational Quote Requirement, each option series would open at least two milliseconds earlier.[13] The Exchange has determined (based on feedback from market participants) that the relative benefit of delaying the Auction Process for the Rotational Quote Requirement is outweighed by the benefit of improving the speed at which each option series opens. The Exchange notes that, notwithstanding the proposal to eliminate the Rotational Quote Requirement, the Exchange would continue to disseminate imbalance messages as early as 8:00 a.m. EST indicating the trading interest available in each option series pre-Auction (*i.e.,* the ''Auction Imbalance Information'').[14] Similarly, the proposed elimination of the Rotational Quote Requirement would likewise not alter the other prerequisites to the Exchange commencing an Auction (*e.g.,* the presence of a Legal Width Quote). Furthermore, the Exchange notes that its Auction Process, as modified herein, would remain consistent with that of at least one other options exchange that likewise does not include a Rotational Quote Requirement as a precondition to opening each option series.[15] The Exchange therefore believes that the proposal to eliminate the Rotational Quote Requirement would benefit market participants because it would allow the Exchange to compete on more equal footing with at least one other options exchange that does not include such a requirement as a precondition to opening each series.

Finally, the Exchange proposes to make a technical change to renumber current Rule 6.64P–O(a)(5)(i) to Rule 6.64P–O(a)(5)(A), which would add clarity and internal consistency to Exchange rules.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[16] in general, and furthers the objectives of Section 6(b)(5),[17] in particular, because 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, 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 the proposed changes to its Auction Process would promote a fair and orderly market by improving the speed and efficiency of the Exchange's opening process. The Exchange has determined (based on feedback from market participants) that the relative benefit of delaying the Auction Process for the Rotational Quote Requirement is outweighed by the benefit of improving the speed at which each option series opens. The Exchange notes that, notwithstanding the proposal to eliminate the Rotational Quote Requirement, the Exchange would continue to disseminate the Auction Imbalance Information, which informs market participants about the trading interest available pre-Auction. Moreover, the proposed change would not alter any of the Exchange's other prerequisites to commencing an Auction (*e.g.,* the presence of a Legal Width Quote).

Furthermore, the Exchange believes that the proposed change would

[8] *See* Rule 6.64P–O(a)(7). For a Core Open Auction, the Auction Trigger occurs at or after 9:30 a.m. EST and for a Trading Halt Auction, the Auction Trigger occurs at the end of a trading halt. *See* Rule 6.64P–O(a)(7)(A) and (B), respectively.

[9] *See* Rule 6.64P–O(d)(2). *See* Rule 6.64P–O(a)(10)(A)–(C) (describing that a Legal Width Quote is comprised of a Calculated NBBO that may be locked, but not crossed, does not contain a zero offer, and does not exceed the Exchange-determined ''maximum differential''). A Calculated NBBO is ''the highest bid and lowest offer'' among all Market Maker quotes and the ABBO [*i.e.,* Away Market BBO] during the Auction Process. *See* Rule 6.64P–O(a)(8).

[10] *See* proposed Rule 6.64P–O(d)(1)-(2). Consistent with this proposed change, the Exchange proposes to eliminate from Rule 6.64P–O(a)(13) the definition of Rotational Quote. *See* proposed Rule 6.64P–O(a) (which would no longer include (a)(13)).

[11] *See* proposed Rule 6.64P–O(d)(1). The proposed rule specifies that a message is disseminated to market participants informing them that the Auction Trigger has been received, the receipt of which enables the Exchange to transition option series in that underlying security from a pre-open state to continuous trading. The Exchange notes that the dissemination of a message indicating receipt of the Auction Trigger is consistent with current functionality except that, with the removal of the Rotational Quote Requirement, this message now signals to market participants that the Exchange may commence its transition of option series in that underlying to continuous trading.

[12] The Rule addresses how an option series transitions from pre-open state to continuous trading in circumstances where, after a specified time period, the prerequisites to commencing an Auction have not yet been satisfied. *See* Rule 6.64P–O(d)(4).

[13] *Compare* proposed Rule 6.64P–O(d)(2) *with* (current) Rule 6.64P–O(d)(2). The Exchange notes that the required delay of *at least* two milliseconds occurs *after* the Exchange has disseminated a Rotational Quote. Thus, under the current Rule, the time lapse from receipt of Auction Trigger to commencing an Auction is, by necessity, longer than two milliseconds. *See* Rule 6.64P–O(d)(2).

[14] *See* Rule 6.64P–O(c)(1). The Auction Imbalance Information includes the Auction Collars, Auction Indicator, Book Clearing Price, Far Clearing Price, Indicative Match Price, Matched Volume, Market Imbalance, and Total Imbalance. *See* Rule 6.64P–O(a)(3)(A)–(D). For Trading Halt Auctions, the Exchange disseminates the Auction Imbalance Information at the beginning of a trading halt *See* Rule 6.64P–O(c)(2).

[15] *See, e.g.,* Cboe Options Exchange Inc. (''Cboe'') Rule 5.31(d)(1)(A)(ii) (providing that Cboe initiates its ''opening rotation'' for a series upon receipt of ''both the first disseminated transaction and the first disseminated quote on the primary market'' on or after 9:30 a.m. EST, which is identical the Exchange's ''Auction Trigger,'' without waiting for the dissemination of a Rotational Quote (or an additional two milliseconds)). The Exchange believes that its ''Auction Process'' is akin to Cboe's ''opening rotation'' (*compare* Rule 6.64P–O(a)(5) *with* Cboe Rule 5.31(e)) and its ''Auction Imbalance Information'' is akin to Cboe's ''Opening Auction Updates'' (*compare* Rule 6.64P–O(a)(3) *with* Cboe Rule 5.31(c)). Like Cboe, the Exchange disseminates a message to its market participants to signal the initiating of the opening process. *Compare* Cboe Rule 5.31(d) *with* proposed Rule 6.64P–O(d)(1).

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

promote just and equitable principles of trade because it would allow the Exchange to compete on more equal footing with at least one other options exchange that does not include an analogous Rotational Quote Requirement as a precondition to opening each option series.[18]

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 Exchange believes that the proposed change to the Auction Process would not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because all market participants that participate in the opening process may benefit equally from the proposal, as the rules of the Exchange apply equally to all market participants. With respect to inter-market competition, the Exchange notes that the Exchange's modified Auction Process would remain consistent with that of other options exchanges that likewise do not include a Rotational Quote Requirement as a precondition to opening each option series.[19]

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[20] and Rule 19b–4(f)(6) thereunder.[21] 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.[22]

A proposed rule change filed under Rule 19b–4(f)(6)[23] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[24] 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)[25] 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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEARCA–2024–66 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–SR–NYSEARCA–2024–66. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–SR–NYSEARCA–2024–66 and should be submitted on or before September 25, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–19778 Filed 9–3–24; 8:45 am]

BILLING CODE 8011–01–P

[18] *See supra* note 15 (regarding Cboe's opening process, per Cboe Rule 5.31).

[19] *Id.*

[20] 15 U.S.C. 78s(b)(3)(A)(iii).

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 240.19b–4(f)(6). In addition, Rule19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[23] 17 CFR 240.19b–4(f)(6).

[24] 17 CFR 240.19b–4(f)(6)(iii).

[25] 15 U.S.C. 78s(b)(2)(B).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100853; File No. SR–DTC–2024–801]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Extension of Review Period of Advance Notice To Host Certain Core Clearance and Settlement Systems in a Public Cloud

August 28, 2024.

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010 (''Clearing Supervision Act'')[1] and Rule 19b–4(n)(1)(i)[2] under the Securities Exchange Act of 1934 (''Act''),[3] notice is hereby given that on August 14, 2024, The Depository Trust Company (''DTC'')

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] 15 U.S.C. 78a *et seq.*

filed with the Securities and Exchange Commission (''Commission'') an advance notice as described in Items I, II and III below, which Items have been prepared primarily by the clearing agency. The Commission is publishing this notice to solicit comments on the advance notice from interested persons and to extend the review period of the advance notice.

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

DTC files this advance notice seeking no objection to host a specified set of core clearance, settlement, and risk applications, including any Regulation Systems Compliance and Integrity (''Reg. SCI'') systems and Critical SCI systems,[4] (''Core C&S Systems'') on an on-demand network of configurable information technology resources running on a public cloud infrastructure (''Cloud'' or ''Cloud Infrastructure'') hosted by a single, third-party service provider (''Cloud Service Provider'' or ''CSP'') (altogether, the ''Cloud Proposal''), as described in greater detail below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the advance notice and discussed any comments it received on the advance notice. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A and B below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants or Others

DTC has not received or solicited any written comments relating to this proposal. If any written comments are received, DTC will amend this filing to publicly file such comments as an Exhibit 2 to this filing, as required by Form 19b–4 and the General Instructions thereto.

Persons submitting written comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b–4, the Securities and Exchange Commission (''Commission'') does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on How to Submit Comments, available at *www.sec.gov/regulatory-actions/how-to-submitcomments.* General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202–551–5777.

DTC reserves the right to not respond to any comments received.

(B) Advance Notices Filed Pursuant to Section 806(e) of the Clearing, and Settlement Supervision Act

I. Description of the Proposal

Pursuant to the Clearing Supervision Act and Rule 19b–4(n)(1)(i) under the Exchange Act,[5] DTC files this advance notice seeking no objection to the Cloud Proposal, as described herein.

The specified set of Core C&S Systems that the Clearing Agencies intend to host in the Cloud, and the transition schedule for such hosting, are listed in Exhibit 3 to this advance notice filing.[6] However, the Clearing Agencies recognize that it may become necessary to deviate from the proposed transition schedule as risks change over time and the proposed implementation would occur over several years. The Clearing Agencies' process for monitoring, assessing, and escalating such risks, which may result in a deviation, is described in Section I.D, below. If the Clearing Agencies would need to deviate from that schedule, they would provide Commission staff notice of such deviation, the reason for the deviation, and how the implementation schedule would be updated to account for the deviation. Further, the Clearing Agencies recognize that deviating from the proposed transition schedule would necessitate a separate analysis to determine whether such deviation could materially affect the nature or level of risk posed by each of the Clearing Agencies.

DTC's two affiliate clearing agencies, Fixed Income Clearing Corporation (''FICC'') and National Securities Clearing Corporation (''NSCC'' and together with DTC and FICC, the ''Clearing Agencies'')[7] have each filed with the Commission advance notices to adopt the same Cloud Proposal. Accordingly, each respective advance notice filing is written from the perspective of the Clearing Agencies, collectively, instead of DTC, FICC, and NSCC individually.[8]

A. The Current System and Summary of Proposed Change

Today, the Clearing Agencies' Core C&S Systems are hosted using Compute,[9] Storage and Networking, as defined below, running in private data centers (*i.e.,* on-premises). The current data-center footprint consists of a single data center in each of two regions. Each regional data center has a corresponding data bunker used for synchronous data protection and restoration.[10]

The Clearing Agencies view the proposed transition to using a Cloud Infrastructure to host the specified set of Core C&S Systems as a natural progression of the Clearing Agencies' information technology strategy that aligns with their overall corporate strategy—to deliver on modernization and maximize the value of their platforms for stakeholders and continue to invest in risk management excellence.

For over 11 years, the Clearing Agencies have honed their expertise in operating non-Core C&S Systems within the Cloud.[11] Throughout that time, the Clearing Agencies have continually refined their capabilities across

[4] 17 CFR 242.1000 *et seq.*

[5] 17 CFR 240.19b–4(n)(1)(i).

[6] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the proposed transition schedule (*i.e.,* the Core C&S Systems to Move to Cloud). The Clearing Agencies have provided this schedule in confidential Exhibit 3 to this advance notice filing.

[7] The Clearing Agencies are each a subsidiary of The Depository Trust & Clearing Corporation (''DTCC''). DTCC operates on a shared service model with respect to the Clearing Agencies. Most corporate functions are established and managed on an enterprise-wide basis pursuant to intercompany agreements under which it is generally DTCC that provides relevant services to the Clearing Agencies.

[8] Capitalized terms not otherwise defined herein have the meaning as set forth in respective rules of the Clearing Agencies, *available at https://www.dtcc.com/legal/rules-and-procedures.*

[9] The existing Compute platform consists of both on-premises mainframe and private cloud platforms.

[10] Note: The data bunkers cannot run applications, as they are only for data protection and restoration.

[11] Some of the non-Core C&S Systems already operating in Cloud include systems that support risk analysis, various reporting engines, and shared infrastructure capabilities. More specifically, for risk analysis, there are applications for certain risk testing and calculations used to assess industry risk postures for various Clearing Agency clients, as well as warehousing large sets of risk data for quantitative analytics. For the various report engines, there are applications that provide publicly disseminatable data sets and documentation, certificate imaging, as well as certain archival storage capabilities. For shared infrastructure capabilities, there are applications that support the Clearing Agencies' engineering and development departments for dev-op capabilities such as code scanning, code repositories, and infrastructure-as-code deployment pipelines.

technical, risk, legal, and compliance dimensions, in tandem with the Cloud's own evolution and the industry's increasing adoption of it. Given this extensive maturity and development over the past decade, the Clearing Agencies believe that hosting Core C&S Systems in the Cloud, via a single CSP, is now appropriate and essential. By consolidating resources under a single CSP, the Clearing Agencies can optimize efficiency, reduce costs, mitigate risks, and maintain a cohesive environment for seamless collaboration and operation.

As described in greater detail in this advance notice, the Clearing Agencies propose to provision, within a single CSP, logically segregated sections of the Cloud Infrastructure that would provide the Clearing Agencies with the virtual equivalent of physical data center resources, including scalable resources that can (i) handle various computationally intensive applications with load-balancing and resource management (''Compute''); (ii) provide configurable storage (''Storage''); and (iii) provide network resources and services (''Network''). These resources would be logically segregated from other customers of the CSP. The Clearing Agencies would leverage the CSP's IaaS (*i.e.,* infrastructure as a service) and PaaS (*i.e.,* platform as a service) services for building and running Core C&S Systems.

The Clearing Agencies do not propose to transition all Core C&S Systems entirely out of their regional data centers at this time, but rather, to host a specified set of Core C&S Systems in a Cloud Infrastructure while maintaining the remaining applications in the Clearing Agencies' regional data centers for the near term. The proposed transition would be achieved incrementally over a course of several years and would result in the Clearing Agencies hosting some Core C&S Systems on-premises and others in a Cloud Infrastructure.[12]

This phased approach to transitioning to Cloud is to reduce risk. The Clearing Agencies believe that a ''big-bang'' approach of moving all applications at once introduces significant execution risk, primarily driven by the sheer scale and scope of such an effort. Moreover, many clearance and settlement applications on the Clearing Agencies' mainframe are still tightly coupled together. Even after such applications are modernized, many could experience latency dependencies with other applications that have not yet been modernized, hence the need to keep some applications in the Clearing Agencies' existing data centers for the near term. However, applications with little to no coupling, particularly those applications that have already been modernized, are ripe for Cloud transition and the subject of this Cloud Proposal. As for the remaining clearance and settlement applications that are not part of this proposal and would continue to be hosted on-premises, the Clearing Agencies have not thoroughly assessed when those applications would transition to Cloud, which may take several years, or whether such transition would be the subject of a later, separate advance notice proposal.

Integration between on-premises and Cloud-based Core C&S Systems would, as it is for non-Core C&S Systems that are already hosted in private and public cloud, leverage existing patterns and processes. The primary methods of application integration are application program interfaces (a/k/a APIs), messaging queues (a/k/a MQ messaging), and file transfer. All three are used to integrate internal and client applications, and all three methods provide interoperability between applications running on mainframe, private cloud, and public cloud.

For these reasons, the Clearing Agencies strongly believe that the phased approach enables the Clearing Agencies to best approach the transition to Cloud, safely and confidently.

B. Why Use Cloud

The Clearing Agencies believe there are very strong and compelling reasons to use Cloud as part of their diverse, platform strategy, including, as discussed below, the waning of the on-premises industry, improved resilience, expanded security capabilities, and increased scalability.

1. Waning On-Premises Industry

Although on-premises mainframes have been a stalwart for hosting critical applications for many years, it is the Clearing Agencies' experience that industry investment and development in on-premises platforms is waning, and the ability to source skilled and experienced staff to operate such platforms is increasingly challenging. Meanwhile, vendor consolidations are beginning to negatively affect investment and innovation in the private cloud space.[13] As investment dollars are increasingly allocated to Cloud, vendor choice, innovation, and support will continue to diminish for on-premises platforms. This poses a growing risk to the Clearing Agencies, who today continue to rely primarily upon on-premises mainframes and private cloud solutions from a resiliency perspective.[14] The Clearing Agencies believe the best way to manage against this risk at this time is to leverage a diverse platform strategy that will increase the use of and reliance upon Cloud. The use of Cloud, as part of a broader platform strategy, serves as an important tool in enabling the Clearing Agencies to anticipate and manage these and other risks more effectively.

2. Improved Resilience

The Clearing Agencies must ensure that any Core C&S Systems in the Cloud have resiliency and recovery capabilities commensurate with the Clearing Agencies' importance to the functioning of the U.S. financial markets. As explained in detail below, the Clearing Agencies believe that Cloud will enhance the resiliency of their Core C&S Systems by virtue of the Clearing Agencies' architectural design decisions, and the Cloud's redundancy, availability, and the Clearing Agencies' disciplined approach to deployment of Core C&S Systems to Cloud. In particular, the Clearing Agencies believe that Cloud will enhance their ability to withstand and recover from adverse conditions by provisioning redundant Compute, Storage, and Network resources in three availability zones, in each of two autonomous and geographically diverse regions, for a total of six availability zones that are comprised of many data centers.

The primary/hot region would be operational and accepting traffic, while the secondary/warm region would receive replicated data from the hot region with applications on stand-by. This solution significantly reduces operational complexity, mitigates the risk of human error by providing tools for automating routine tasks and orchestrating complex workflows, thereby reducing the need for manual

[12] A result of the Cloud Proposal would be that the Clearing Agencies would operate Reg. SCI and Critical SCI systems both on-premises and on a Cloud Infrastructure.

[13] For example, the VBlock platform, which has been the core, private cloud distributed hosting platform of the Clearing Agencies for over a decade, is no longer available for purchase. Another example is the continued consolidation in the private cloud software space, which has concentrated the industry and reduce aggregate investment in innovation.

[14] In this context, ''resiliency'' is the ''ability to anticipate, withstand, recover from, and adapt to adverse conditions, stresses, attacks, or compromises on systems that include cyber resources.'' Systems Security Engineering: Cyber Resiliency Considerations for Engineering of Trustworthy Secure Systems, Spec. Publ. NIST SP No. 800–160, vol. 2 (2018).

intervention,[15] and provides resiliency and assured capacity (although, the Clearing Agencies would continue to periodically review the CSP's capacity planning process through quarterly reviews).[16]

The Clearing Agencies are assured of adequate capacity with the proposed hot/warm architecture because the Compute resources of the warm, ''recovery'' region would be already running with needed capacity. Additionally, the Clearing Agencies have reviewed the effect of a large, regional outage with the CSP, which indicated that a vast majority of the CSP's customers are not configured to use the secondary region as a failover region; thus, they would not be using capacity in that region. Moreover, a review of data from two large outages in the primary region did not show a change in capacity availability in the secondary region.

The Clearing Agencies also believe that Cloud reduces capacity-management risks when compared with on-premises platforms in three important ways: (1) capacity in Cloud can be added almost instantly; (2) such capacity can be added at magnitudes greater than what is possible with traditional, on-premises platforms; and (3) the risk of a supply chain effect on capacity realization (*i.e.,* the risks associated with receiving and deploying servers necessary to create more capacity) is greatly reduced.

The proposed hot/warm configuration also enables application rotation between regions. The Clearing Agencies would have the ability to operationally rotate either a single application, groups of applications, or all applications to the warm region for both planned and unplanned events. Collectively, the proposed design of the Cloud Infrastructure helps ensure that the Clearing Agencies can meet any applicable two-hour recovery time objective.

Each availability zone, in each of the two regions, would be comprised of multiple physical data centers. Each data center would have its own distinct physical infrastructure with separate staff and dedicated connections to utility power, standalone backup power sources, independent mechanical services, and independent network connectivity.

Although not dependent on each other, availability zones of a region are connected to each other with private, fiber-optic networking, enabling Core C&S Systems to automatically failover between a region's availability zones without interruption. Since each availability zone can operate independently, but failover capability is nearly instantaneous, a loss of one availability zone would not affect operation in another; therefore, no Core C&S System would be reliant on the functioning of a single availability zone.[17]

Altogether, the proposed Cloud Infrastructure would afford the Clearing Agencies six levels of redundancy (*i.e.,* three availability zones, made up of many data centers, in each of the two regions), with primary/secondary regions running in a hot/warm configuration, respectively, in geographically separate and segregated locations, and with each region containing multiple copies of the data. Thus, even if an availability zone is lost in the primary region, the Cloud can continue to seamlessly operate Core C&S Systems in the primary region, thereby significantly reducing availability risk and any attendant consequences for the Clearing Agencies' participants and customers. As a result, the Cloud Infrastructure offers the Clearing Agencies multiple redundancies within which to run Core C&S Systems, limits the effect of an incident at the CSP to the smallest footprint possible, and mitigates the possibility of the Clearing Agencies suffering an intra-, inter-, or multi-region outage.

By comparison, the Clearing Agencies' current on-premises hosting capabilities, both mainframe and private cloud, are operating on one primary data center in one region, with a second, recovery data center in a second region (excluding data bunkers, which do not have Compute capabilities). In other words, it is many times less likely that an unplanned, out of region failover would be needed for Core C&S Systems hosted in Cloud than currently hosted on-premises. (Even in the unlikely event that the Clearing Agencies needed to fail over to the secondary Cloud region, the decision and process of doing so would continue to be in the sole discretion of the Clearing Agencies.) This increased redundancy represents a material improvement in resiliency for the Clearing Agencies and a material reduction in risk for the industry.

Additionally, transitioning to Cloud offers the Clearing Agencies a more effective strategy for avoiding technical debt and system degradation because the CSP, in its role as such, would be performing regular system upgrades and maintenance, helping to ensure the Cloud's resiliency. Unlike on-premises solutions that may struggle to keep pace with evolving technology, due in part to the waning demand for on-premises infrastructure, CSPs take on the responsibility of regularly updating and maintaining their cloud infrastructure, which they do in a competitive environment. This approach helps ensure that the CSP's cloud infrastructure remains up to date, secure, and performs at its best, minimizing the likelihood of accumulating technical debt and preventing the decline of system capabilities and resiliency over time. This is not to say that on-premises infrastructures are not updated or maintained today but, instead, that the CSP does it better and faster. CSPs excel in ensuring that systems remain up to date, secure, and perform at their best by leveraging automation, scalability, built-in security measures, service level agreements (''SLAs''), economies of scale, and continuous monitoring and improvement processes. These advantages collectively enable CSPs to provide more reliable, resilient, and high-performance services compared to traditional on-premises environments.

3. Expanded Security Capabilities

Hosting Core C&S Systems in Cloud would not change the physical and cybersecurity standards to which the Clearing Agencies currently align—the National Institute of Standards and Technology (''NIST'') [18] and Center for internet Security (''CIS'').[19] Application of NIST is considered a best practice for financial services use of cloud.[20]

[15] The CSP's built-in security features in its Cloud Infrastructure also can reduce the risk of security breaches caused by human error, such as misconfigurations or improper access controls.

[16] The Clearing Agencies would continue to perform periodic business continuity and disaster recovery tests to verify business continuity plans and disaster recovery infrastructure will support a two-hour recovery time objective for critical systems.

[17] To further ensure the resiliency of the Compute, Storage, and Network capabilities, the CSP's services are divided into ''data plane'' and ''control plane'' services. The Clearing Agencies' applications would run using data plane services, while control plane services are used to configure the environment. Resources and requests are further partitioned into cells, or multiple instantiations of a service that are segregated from each other and invisible to the CSP's customers, on each plane, again minimizing the effect of a potential incident to the smallest footprint possible.

[18] National Institute of Standards and Technology (2023) The NIST Cybersecurity Framework 2.0. (National Institute of Standards and Technology, Gaithersburg, MD), NIST Cybersecurity White Paper (NIST CSWP) 29 ipd, Released August 8, 2023. *https://doi.org/10.6028/NIST.CSWP.29.ipd.*

[19] Center for internet Security Benchmarks, *cisecurity.org/cis-benchmarks.*

[20] U.S. Department of the Treasury, *The Financial Services Sector's Adoption of Cloud Services* (February 8, 2024), *available at https://*

Continued

Moreover, as discussed further below, the Clearing Agencies would continue to apply existing security processes and standards to include network and identity and access management (''IAM'') controls, security governance and controls for sensitive data, security configuration, provisioning, logging and monitoring, and security testing and validations.

By hosting in Cloud through the CSP that the Clearing Agencies have engaged, the Clearing Agencies would be able to add cloud-specific security capabilities and measures provided by the CSP, as well as third-party tools. For example, such capabilities and measures would include automation, monitoring, and security incident response capabilities, as well as default separation between Reg. SCI and non-Reg. SCI operating domains, and ubiquitous encryption, all of which are not available in the current on-premises data centers. Similarly, micro-segmentation of applications and infrastructure provided by the CSP, which also is not available in the Clearing Agencies data centers, limits the effect of a security incident and reduces the time to detection and recovery.[21]

4. Increased Scalability

Cloud implementation would allow for greater scalability of Compute, Storage, and Network resources that support Core C&S Systems.[22] With a Cloud Infrastructure, the Clearing Agencies could quickly provision or de-provision Compute, Storage, or Network resources to meet demands, including elevated trade volumes, and provide more flexibility to create development and test environments, as well as other system development needs.[23] For example, the CSP could support elastic workloads and scale dynamically without the need for the Clearing Agencies to procure, test, and install additional servers, storage, or other hardware.

The Clearing Agencies would pre-provision Compute and Storage resources proactively, in addition to scaling resources on-demand. This means that the Clearing Agencies would be able to increase Compute capacity in one or both regions via manual or automated processes for Core C&S Systems. The rapid deployment of Compute capacity would allow the Clearing Agencies to obtain access to resources far more quickly than with on-premises data centers. The Clearing Agencies would combine the pre-provisioning of primary capacity with regular capacity stress testing to verify that the underlying Compute can sustain required business volumes. The stress testing data would be used to determine the base levels of pre-provisioned capacity.

The ability to quickly scale workloads materially improves the Clearing Agencies ability to respond to unexpected market events and external scenarios, such as a global pandemic.[24] This capability also enables the Clearing Agencies to run risk calculations more frequently, at greater speeds, and with more compute-intensive models than is economically feasible compared to the Clearing Agencies' on-premises infrastructure.

In sum, transitioning to Cloud not only enhances scalability but also significantly improves agility beyond the Clearing Agencies' on-premises capabilities. The on-demand resources provided by the CSP enable dynamic scalability, helping to ensure optimal performance during peak times, efficient resource allocation during periods of lower demand, and the ability to innovate faster to meet evolving business requirements.

C. Why a Single CSP Is Appropriate

The Clearing Agencies strongly believe that hosting Core C&S Systems with a single CSP is appropriate. The Clearing Agencies have assessed the capabilities of the CSP in adherence with the Clearing Agency Risk Management Framework,[25] which requires the respective Board of Directors of the Clearing Agencies to approve policies governing relationships with service providers, such as the CSP, thus helping to ensure alignment with the Clearing Agencies' risk management principles.

Beyond simply being a well-known, reputable, industry-leading, and capable CSP, the Clearing Agencies and the CSP have spent several years discussing the Clearing Agencies' needs, including operational, legal, and regulatory obligations; what-if scenarios; and commercial implications. That extensive effort led to a number of benefits, including the CSP introducing new products [26] and the establishment of an exhaustive contractual agreement between the Clearing Agencies and the CSP that addresses the Clearing Agencies' needs for hosting Core C&S Systems in Cloud (''Cloud Agreement'').[27] [28]

Meanwhile, it is generally understood that in the present environment adding a secondary CSP or an on-premises backup introduces significant complexity, costs, and risks that

home.treasury.gov/system/files/136/Treasury-Cloud-Report.pdf.

[21] For example, the CSP provides infrastructure capable of withstanding Distributed Denial of Service (''DDoS'') attacks at far greater magnitudes than the Clearing Agencies' current capabilities, as the CSP has exponentially more internet bandwidth, given their business function, than the Clearing Agencies. (DDoS is a cyberattack in which the attacker floods a server with illegitimate traffic/requests to prevent legitimate users from accessing online services, websites, or computers connected to the attacked server.)

[22] The Clearing Agencies would continue to follow existing policies and procedures regarding capacity planning and change management. The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the Change Management Policy and the Technology Capacity and Demand Assessment Policy. The Clearing Agencies have provided these documents in confidential Exhibit 3 to this advance notice filing.

[23] The Clearing Agencies periodically perform capacity and availability planning analyses that result in capacity baselines and forecasts, as an input to technology delivery and strategic planning to ensure cost-justifiable support of operational business needs. These analyses are based on the collection of performance data, trending, scenarios, and periodic high-volume capacity stress tests and include storage capacity for log and record retention. Results are reported to senior technology management as inputs to performance management and investment planning. In addition, each quarter, the Clearing Agencies review the CSP's capacity planning accuracy for the prior quarter and review the upcoming quarter's forecast, along with providing input to the CSP for anticipated major changes in the Clearing Agencies' proposed use of resources. The Clearing Agencies' IT Governance Committee is the designated escalation point for handling capacity management issues.

[24] Supply chain challenges during the Covid–19 pandemic highlighted a lack of resiliency and scalability in traditional IT vendors' abilities to deliver resources when needed. Lead times of up to 18 months were experienced and delayed many efforts to expand capacity. This was not the case with CSPs, which did not experience capacity constraints or an ability to meet demand. This further demonstrates how the option to host Core C&S Systems in Cloud is a critical risk mitigation tool for managing against the long-term risk of a waning on-premises industry.

[25] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the Clearing Agency Risk Management Framework. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[26] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding two examples of CSP Whitepapers. The Clearing Agencies have provided these documents in confidential Exhibit 3 to this advance notice filing.

[27] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the Cloud Agreement. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[28] Among other things, the Cloud Agreement sets forth the CSP's responsibility to maintain the hardware, software, networking, and facilities that run Cloud services. See also the separately submitted Table of Reg. SCI Provisions provided in confidential Exhibit 3 to this advance notice filing that provides a summary of the terms and conditions of the Cloud Agreement that the Clearing Agencies believe help enable their compliance with Reg. SCI.

outweigh expected benefits.[29] An on-premises or secondary CSP backup would require the Clearing Agencies to engineer their primary Cloud Infrastructure to the lowest common denominator, so that the systems operating on the primary infrastructure also could run on a completely separate and distinct secondary, backup infrastructure. This approach would severely reduce the value that Cloud provides, introduce significant cost with little benefit, and greatly increase operational complexity, all of which would result in negative consequences for the efficiency and resiliency of the Clearing Agencies, their participants, and the industry.

Notwithstanding the extensive benefits from moving to Cloud, the Clearing Agencies fully appreciate and are committed to managing the risks presented in relying on a single CSP, as identified and discussed in Section II.A, further below.

D. Transition Timeframe

The Clearing Agencies believe that transitioning certain Core C&S Systems to the Cloud is critical to managing the risks that are inherent in technology and vendor selection. However, as stated above in Section I.A, the intent of the Cloud Proposal is not to move all Core C&S Systems to Cloud at one time. The Clearing Agencies believe that a ''big-bang'' transition would introduce unnecessary execution risk, primarily driven by the sheer scale and scope of such an effort. Moreover, many applications on the mainframe are still tightly coupled together and not ready to be moved to public cloud. Rather, at this time, the Clearing Agencies are proposing to move only a subset of the Core C&S Systems to the Cloud and to do so on an incremental basis, in consideration of the specifics of each application and the needs of the Clearing Agencies.[30] This approach helps enable the hosting of Core C&S Systems on the most appropriate platform, at the most appropriate time, in an efficient and secure manner.

The subset of Core C&S Systems selected for this proposal have been initially identified based on several preliminary criteria, including, but not limited to, whether:

- the application would benefit from the presence of data sets already present in Cloud;
- the application would benefit from elasticity enabled by Cloud (*e.g.,* user interfaces); and
- the application already meets certain architectural patterns for Cloud (*e.g.,* the application has already been modernized and currently hosted in private cloud and/or is a siloed application—little to no coupling with other applications).

Assuming the Clearing Agencies would receive no regulatory objection to this advance notice, each application of the proposed subset of Core C&S Systems then would undergo an in-depth, architectural review that would follow the Clearing Agencies' governance process, governed by the System Delivery Process.[31] The governance process includes, where applicable, a detailed review and approval by the Information Technology Architecture Review Board (''ARB''),[32] the New Initiatives process,[33] to include the Business Case Council and the Risk Assessment Council that vet the financials and risks of the proposed move, and the Investment Management Committee.[34] Further escalations would be made to the Executive Committee and applicable Board of Directors of the Clearing Agencies, as needed. Re-platforming efforts also would be communicated to regulators in accordance with the change reporting requirements of Section 1003(a)(1) of Reg. SCI, as applicable.[35]

The above-described governance process does not include a specific set of criteria or thresholds for the ultimate determination on whether an application should or should not be moved to Cloud—it is not a formulaic decision. Rather, the Clearing Agencies employ a more qualitative evaluation process that involves various reviews and considers high-level architectural principles that may be applicable to more than one application. However, at this time, none of the Core C&S Systems that have been initially identified as part of the Cloud Proposal, based on the preliminary criteria listed above, have completed that more detailed governance review process. Given the extensiveness of the process, it would not begin until after the Clearing Agencies would receive no regulatory objection to this advance notice.

Although the Clearing Agencies do not anticipate needing to deviate from the proposed transition schedule for the selected Core C&S Systems, the Clearing Agencies recognize that deviation may be necessary, given that the more in-depth governance review process has not completed and because risks could change over the proposed, multiyear implementation period. For example, a deviation may be necessary to address a business need or a change in industry or regulatory requirements or standards. Regardless, any deviation would follow the same detailed governance process, and the Clearing Agencies would provide notice of such deviation to Commission staff, the reason for the deviation, and how the proposed implementation schedule would be updated to account for the deviation. Further, the Clearing Agencies recognize that deviating from the proposed transition schedule would necessitate a separate analysis to determine whether such deviation could materially affect the nature or level of risk posed by each of the Clearing Agencies.

Even though certain on-premises infrastructure components would be decommissioned after applications are moved to Cloud, the Clearing Agencies' private cloud, mainframe services, and data-center facilities would remain available for no less than five more years to help facilitate exit plans from Cloud that rely on an on-premises option. However, to be clear, the on-

[29] As noted in the U.S. Department of Treasury's report, *The Financial Services Sector's Adoption of Cloud Services,* ''No financial institution reported the capability to [run applications across multiple CSPs] for more complex use cases, such as running core operations on multiple public clouds. Running an application across multiple CSPs at the same time may also be less desirable, given the costs, staffing, and complexity involved in doing so, particularly given the complexity associated with identifying and managing risk across multiple cloud environments.'' *Available at https://home.treasury.gov/system/files/136/Treasury-Cloud-Report.pdf* at 6.

[30] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the DTCC Global Business Continuity and Resilience Policy and Standards, which defines the governance structure, high-level roles and responsibilities, and the framework for business continuity and resilience processes at the Clearing Agencies. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[31] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the DTCC System Delivery Policy. The System Delivery Policy defines requirements that support adherence to the System Delivery Process for application development projects. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[32] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the IT Architecture Policy (''ITA Policy''). The ITA Policy provides a set of controls that must be followed to adequately address applicable risks. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[33] The Clearing Agencies also have separately submitted a request for confidential treatment to the Commission regarding the New Initiatives Policy. The New Initiatives Policy provides the governance and oversight structure for the Clearing Agencies to bring initiatives to market timely and efficiently while minimizing risk. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[34] Such reviews and decisions are based on high-level architectural principles that may be applicable to more than one application.

[35] 17 CFR 242.1003, *et seq.*

premises option would not be available to address short-term disruptions, where the Cloud is temporarily unavailable. Management of such disruptions is discussed in Section II.B, further below.

II. Expected Effects on Risks to the Clearing Agencies, Their Participants, or the Market

Although the Clearing Agencies are not proposing to transition all Core C&S Systems to Cloud for the reasons described in Sections I.A and D, above, transitioning the proposed subset of Core C&S Systems from an on-premises infrastructure supported by a consolidating industry, as described in Section I.B.1, above, to a new Cloud Infrastructure maintained by an industry-leading CSP provides numerous advantages, as described in Sections I.B.2–4 and C, above. However, such transition is not without risk, as discussed below.

A. Risks Presented by the Cloud Proposal

1. Concentration Risk

The Clearing Agencies appreciate that reliance on a single CSP for hosting the subset of Core C&S Systems that are the subject of this proposal creates concentration risk, particularly in the event of the CSP choosing to terminate its services (*i.e.,* commercial risk) or is unexpectedly unavailable (*i.e.,* operational risk). The Clearing Agencies also appreciate that they would have some reliance on the CSP to help meet certain regulatory obligations of the Clearing Agencies (*i.e.,* regulatory risk), thus introducing the familiar concept of concentration risk in a relatively new context. However, concentration risk exists today as the Clearing Agencies are dependent on a single mainframe provider, a single database provider for the mainframe, and a single virtualization provider for private cloud. Moreover, the Clearing Agencies believe that they have adequately addressed these risks, as discussed throughout Sections II.B.1–4., below.

2. Cloud Management Risk

Managing the applicable subset of Core C&S Systems hosted on a Cloud Infrastructure presents different risks and challenges than managing such systems hosted on-premises because many activities and services previously provided by the Clearing Agencies would now be provided by the CSP. For example, the Clearing Agencies would be dependent upon the CSP for fulfilling all of its contractual obligations, including security of the Cloud, proper capacity planning, and protection of Cloud services from prolonged operational outages. As such, overseeing the CSP becomes a critical activity to ensure the CSP is delivering services that meet or exceed the Clearing Agencies' requirements for operating those select Core C&S Systems. As discussed in Sections II.B.1–4, below, the Clearing Agencies believe that they have adequately addressed this risk.

B. Management and Mitigation of Identified Risks

1. Cloud Agreement

The Clearing Agencies believe that the Cloud Agreement, including all its amendments and addendums, is a strong tool in helping to effectively mitigate the commercial and regulatory risks borne from the concentration risk, as described in Section II.A.1, above, as well as risks in managing the CSP that would host the subset of selected Core C&S Systems in the Cloud, as described in Section II.A.2, above. Following is a summary of some of the key terms and conditions covered in the agreement and how they help mitigate these risks.

i. Adequate Notice

Under the Cloud Agreement, the CSP may not unilaterally terminate the relationship with the Clearing Agencies absent good cause or without sufficient notice to allow the Clearing Agencies to transition their applications elsewhere. Specifically, the CSP must provide an extensive notice if it wishes to terminate the Cloud Agreement for convenience or if it wishes to terminate an individual CSP service offering or lower an existing SLA on which the Clearing Agencies rely.[36]

The CSP is permitted to terminate the Cloud Agreement with shorter notice periods in the event of a critical breach [37] or an uncured material breach [38] [39] of the Cloud Agreement. In the highly unlikely event that a critical breach or uncured material breach occurs, the Clearing Agencies would have sufficient notice to shift their operations away from the CSP. Contract provisions that allow a party to terminate for uncured material breaches are designed to limit the types of actions that could lead to contract termination and to establish a period of time to resolve an aggrieved party's claim (often 30 days) followed by an additional extended period in which to remediate the claim. This gives the parties time and incentive to address the problem without having to resort to termination. In other words, even if the CSP notifies the Clearing Agencies of an alleged breach (material or critical), termination of services is not immediate. Additionally, regardless of the need to shift operations elsewhere—convenience or breach—the Cloud Agreement provides for the parties to work together and for the CSP to provide professional services to assist with such a shift.[40]

The Clearing Agencies believe the risk of termination under the above-discussed shorter notice period is minimal. In all cases of an alleged breach, the CSP must notify the Clearing Agencies in writing and provide time for them to cure the alleged breach (''Notice Period'').[41] With respect to an alleged material breach, which requires the CSP to extend the Notice Period if the Clearing Agencies demonstrate a good faith effort to cure the alleged material breach, the Clearing Agencies would use the Notice Period to attempt to cure the alleged material breach while also preparing to transition elsewhere. As a result, it is highly unlikely that a critical breach or a material breach would remain uncured beyond the Notice Period. If one does remain uncured, however, the CSP can only terminate the rights or accounts associated with the breach, not the entire Cloud Agreement; [42] meanwhile,

[36] The Cloud Agreement permits an exception to this sufficient notice provision in the event the CSP must terminate the individual service offering if necessary to comply with the law or requests of a government entity or to respond to claims, litigation, or loss of license rights related to third-party intellectual property rights. In this event, the CSP must provide reasonable notice to the Clearing Agencies of the termination of the individual service offering. *See* Reg. SCI Addendum, Section 10 *Termination.* The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[37] Critical breaches are material breaches (i) for which the Clearing Agencies knew their behavior would cause a material breach (such as a willful violation of Cloud Agreement terms); (ii) that cause ongoing material harm to the CSP, its services, or its customers (*e.g.,* criminal misuse of the services); or (iii) for undisputed non-payment under the Cloud Agreement. *See* Reg. SCI Addendum, Section 10 *Termination.* The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[38] Typically, a breach is considered material only if it goes to the root of the agreement between the parties or is so substantial that it defeats the object of the parties in making the contract. *See* Reg. SCI Addendum, Section 10 *Termination.* The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[39] *See* Reg. SCI Addendum, Section 10 *Termination.* The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[40] *See* Reg. SCI Addendum, Section 11 *Post-Termination Services.* The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[41] *See* Reg. SCI Addendum, Section 10 *Termination.* The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[42] *See* Amendment 1, Section 8 *Temporary Suspension,* of the Cloud Agreement. The Clearing

and the Clearing Agencies would have ample notice to shift operations to avoid a disruption to Core C&S Systems, if needed.

As explained above, adequate notice under the Cloud Agreement plays an important role in managing concentration risk by providing the Clearing Agencies with advance warning of potential disruptions or changes in the agreement or services thereunder, which would allow the Clearing Agencies to take proactive measures in mitigating the potential impact of commercial and regulatory risk, thereby reducing concentration risk.

ii. Regulatory Compliance and CSP Oversight

The Clearing Agencies' transition to Cloud does not alter their responsibility to maintain compliance with applicable regulations. Consistent with FFIEC Guidance (as defined and discussed further below), the Clearing Agencies' will continue to fully comply with all applicable regulatory obligations, particularly Reg. SCI.[43]

The Clearing Agencies believe the combination of the following would provide them with reasonable assurance that the proposed transition to Cloud would enable them to continue to fully satisfy their regulatory obligations, including Reg. SCI, thus helping to mitigate the regulatory risk highlighted in Section II.A.1, above: (i) the Cloud Agreement; (ii) the CSP's compliance programs as described in its whitepapers [44] and publicly available policies (*e.g.,* its Penetration Testing Policy),[45] [46] [47] [48] and user guides; (iii) the CSP's SLAs; [49] [50] [51] (iv) the CSP's Systems Organization Controls reports (*e.g.,* SOC 1, SOC 2, SOC 3) [52] and International Organization for Standardization (''ISO'') certifications (*e.g.,* ISO 27001); [53] (v) the CSP's size, scale, and ability to deploy extensive resources to protect and secure its facilities and services; and (vi) the CSP's commercial incentive to perform.

Moreover, as noted in Section II.B.ii., above, oversight of the CSP relationship and services has become a standing practice of the Clearing Agencies to ensure that the CSP is meeting or exceeding its contractual obligations, including helping the Clearing Agencies demonstrate their regulatory compliance. Such oversight, which also helps mitigate the cloud management risk raised in Section II.A.2, above, would include a strong relationship between the CSP and the Clearing Agencies, including between their senior management. Within the Cloud Agreement itself, there are established obligations on the CSP to provide the Clearing Agencies' information necessary for the Clearing Agencies to satisfy certain compliance and regulatory requirements, particularly Reg. SCI. For example, the Cloud Agreement obligates the CSP to provide the Clearing Agencies with immediate notification where a systems intrusion by an unauthorized party or a systems disruption is suspected.[54] The agreement also provides for detailed quarterly briefing meetings between the Clearing Agencies and the CSP, during which the Clearing Agencies would be provided information on and could review service level performance, material systems changes, capacity management, SLA updates, and important security notices.[55]

The Cloud Agreement permits the Clearing Agencies to perform an annual review of the CSP's documentation and services to gain comfort that the CSP is meeting its contractual requirements and that the notification procedures are in place to allow the Clearing Agencies to meet their regulatory requirements, particularly Reg. SCI. The agreement also allows a regulator of the Clearing Agencies to receive information about the Clearing Agencies' usage of the CSP services, and it allows the regulator to perform its own on-site review, if requested.[56]

2. Cloud Architecture

To mitigate operational risk associated with the concentration risk from relying on a single CSP, the Clearing Agencies would architect the Cloud Infrastructure hosting their Core C&S Systems to be highly resilient, improving the availability of such systems and related Clearing Agency services during any degradation in CSP services:

- *Use of multiple availability zones per region.* The Clearing Agencies would use at least three availability

Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[43] Reg. SCI imposes certain information security and incident reporting standards on the Clearing Agencies and requires them to adopt an information technology governance framework reasonably designed to ensure that ''SCI systems,'' and for purpose of security, ''indirect SCI systems,'' have adequate levels of capacity, integrity, resiliency, availability, and security. 17 CFR 242.1000 *et seq.*

[44] *Supra* note 25.

[45] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the Operational & Technology Risk Technology Risk Management (''OTR CS&TRM'') Procedure—Application Penetration Test which describes the application penetration test procedures for the Clearing Agencies' web applications and supports compliance with the Information Systems Acquisition Policy, Development and Maintenance Policy Security Control Standards, and Ethical Application Penetration Testing (''EAPT'') Control Standards. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[46] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the EAPT Control Standards. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[47] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the DTCC Information Security—Systems Acquisition Development and Maintenance Policy and Control Standards, which governs the security aspects of information systems acquisition, development, and maintenance for DTCC and its subsidiaries. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[48] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the DTCC Information Security—Communications and Operations Policy and Control Standards, which helps ensure the correct and secure operation of information processing facilities. The Clearing Agencies have provided this document in confidential Exhibit 3 The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[49] The Clearing Agencies have provided the CSP's SLAs in confidential Exhibit 3 to this advance notice filing.

[50] Amendment 2, Section 2.2 *To the Service Level Agreements* of the Cloud Agreement provides that the CSP may change its SLAs from time to time but must provide prior notice to the Clearing Agencies before material reducing the benefits offered under the SLAs. The Clearing Agencies have provided Cloud Agreement in confidential Exhibit 3 to this advance notice filing.

[51] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the DTCC Legal Review of Third Party Vendor Contracts Policy, which (1) defines the scope of Vendor Contracts, (2) clarifies what agreements fall outside the scope and are excluded from the definition of Vendor Contracts, (3) details the process the Clearing Agencies follow when receiving requests to review Vendor Contracts and related materials from CPS Contracts, and (4) establishes the requirements around the creation, maintenance, update, review, and use of contract templates and negotiation guidelines for third party relationships. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[52] The FFIEC Guidance provides that the Clearing Agencies may obtain SOC reports, other independent audits, or ISO certification reports to gain assurance that the CSP's controls are operating effectively. *See* FFIEC, Security in a Cloud Computing Environment at 7. The Clearing Agencies review the CSP's SOC–2 on an annual basis.

[53] The CSP has certifications for the following frameworks: NIST, Cloud Security Alliance, Control Objectives for Information and Related Technology (''COBIT''), ISO, and the Federal Information Security Management Act (''FISMA'').

[54] *See* Reg. SCI Addendum, Sections 8.1 *Systems Intrusion Notification* and 4 *Briefing Meetings.* The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[55] *Id.*

[56] *See* Reg. SCI Addendum, Sections 3 *Customer Right of Access and Audit* and 4 *Brief Meetings.* The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

zones, in each of the two CSP regions, with each availability zone made up of multiple data centers.

• *Multi-regions.* In the event of a primary region outage, the Clearing Agencies would recover in the secondary region. Out-of-region recovery would be tested annually by the Clearing Agencies, and a primary/secondary (*i.e.,* hot/warm) model would be used to ensure continuous data replication and recovery is achieved.[57] Recovery exercises of non-Core C&S Systems currently hosted in cloud demonstrate the ability to recover applications within required recovery time objectives, including meeting a 2-hour recovery time objective for relevant applications in the event of an out-of-region recovery.

• *Multi-node, high availability clusters across availability zones.* Clusters (*i.e.,* three or more servers or nodes) protect against local hardware and service failures providing uninterrupted operations. Each cluster would be distributed across three availability zones. Clusters synchronously replicate data across all nodes to protect against data loss and provide continuous availability.

• *Static stability and static capacity models.* Static capacity would be pre-provisioned for compute, storage, and memory for applications based on capacity stress testing results and capacity requirements. The Clearing Agencies would pre-provision capacity needed for applications and services and would not rely on capacity on-demand models, thus reducing the risk of running out of capacity.

• *Exit plans.* The Clearing Agencies' existing policies require that all applications hosted in Cloud have documented exit plans, with each plan updated annually.[58] The Clearing Agencies' Cloud architecture also reduces ''vendor lock-in'' by using capabilities such as ''containers'' [59] that can exist in both the public and private cloud, where appropriate and applicable. For the foreseeable future, the Clearing Agencies plan to continue to own or lease private data center space to host private cloud and mainframe capabilities. The Clearing Agencies private, on-premises data centers help enable a long-term exit plan from Cloud, if needed. However, such data centers would not be a means to address a short-term incident at the CSP. Additionally, for the second CSP that the Clearing Agencies already have contracted and connected with for hosting non-Core C&S Systems, they are now working on the contractual and operational requirements that would be necessary to possibly host Core C&S Systems in its Cloud to further enable exit plans from the primary CSP.

• *Regional Isolation Architecture.* A cross-regional outage is highly unlikely at the CSP, as the CSP has designed and implemented a series of controls to ensure that defects cannot be introduced to more than a single region at a time.[60] Services are regionally isolated with a single exception—the IAM service. The IAM service is not regionally isolated and depends on a single region. If the primary region for the IAM service fails, the service will continue to operate but as read-only. To mitigate this risk, the Clearing Agencies would architect applications and infrastructure services in such a manner that they would not require updates (*i.e.,* writes) to the IAM service in order to rotate out of region.

In summary, cloud architecture helps mitigate operational risk borne from concentration risk, as raised in Section II.A.1, above, by providing resilient infrastructure, scalable resources, robust security measures, and disaster recovery capabilities, all of which assist in minimizing the impact of disruptions.

3. Standing Risk Management Practices

The Clearing Agencies' standing risk management practices also help minimize operational risk by systemically identifying, assessing, mitigating, monitoring, and responding to risk. For example, the Clearing Agencies have considered the possibility of the CSP being completely and unexpectedly unavailable, whether due to technical issues or other reasons. The parallel risk exists today with respect to the Clearing Agencies' existing infrastructure. Just like with the CSP, it is possible that the Clearing Agencies' two existing data centers—one primary and one backup—become completely and unexpectedly unavailable. In fact, it is more likely that those two data centers become unavailable than the CSP's data centers because the CSP has so many more data centers for each availability zone, in both its primary and secondary regions, with each data center, not just the associated region or availability zone, having its own physical infrastructure, staff, power, backup power, mechanical services, and network connectivity, as discussed in Section I.B.2, above. Even for the CSP's IAM service that runs cross regions, the applications in each region operate off read-only versions of the IAM roles and responsibilities, such that loss of the primary would not affect operation of those applications. Nevertheless, to help manage a crisis event, such as the Clearing Agencies' or the CSP's data centers becoming unavailable, the Clearing Agencies have standing risk management plans and practices already in place, as described below.[61]

In the very unlikely event of an unexpected single- or multi-region outage in which the Clearing Agencies operate, or a complete and unexpected CSP outage, the Clearing Agencies would initiate the existing Major Incident Management (''MIM'') process, which is an existing process that involves evaluating the technical impact of the event, and if the event is deemed to have a material impact to the business, the Business Incident Management System (''BIMS'') [62] would be activated. Depending on the severity of the event, the DTCC Global Business Continuity and Resilience (''BCR'') Policy would provide a predictable structure to be utilized during crises and could be leveraged to address, respond to, and manage an outage.[63] In addition to internal risk management practices, the Clearing Agencies have plans to help address various outage scenarios and the potential effects of an outage.[64]

[57] *See* Reg. SCI Addendum, Section 5 *Customer Testing of CSP Systems.* The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[58] *Supra* note 29.

[59] A container is a standard unit of software that packages up code and all its dependencies, so the application runs reliably from one computing environment to another (*e.g.,* public and private clouds).

[60] The CSP owns the control and has provided documentation of the control to the Clearing Agencies.

[61] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the Operational Response Capabilities Matrix. The Clearing Agencies have provided these documents in confidential Exhibit 3 to this advance notice filing.

[62] MIM is part of the IT organization that manages technology specific incidents at the Clearing Agencies that are typically resolved at the application or hardware level with support from the appropriate subject matter experts (''SMEs''). Incidents that have a business impact are escalated to BIMS and appropriate SMEs are added to manage the impact, which includes Business Continuity and Resilience. BIMS participants can request the Crisis Management Team be activated if the incident requires discussion or has escalated to a potential disaster that may require a declaration of disaster.

[63] The Clearing Agencies are taking into consideration the forthcoming requirements of adopted and effective Rule 17ad–25(i) under the Exchange Act, 17 CFR 240.17ad–25(i), and anticipate that the Clearing Agencies' approach in managing the risk presented by a CSP outage for Core C&S Systems would be consistent with those requirements.

[64] For example, there is an existing plan to manage a Fedwire protracted outage. A Fedwire protracted outage is an interruption or outage of Federal Reserve Bank hardware or software that prevents the bank from processing payment orders online and that is not expected to be resolved before

The BCR Policy and Standards is structured to employ existing DTCC and Clearing Agency teams and committees, which become the tactical leadership to react, respond, and manage a crisis situation.[65] The teams are comprised of the following:

- *Crisis Management Team.* Comprised of the Management Committee, site General Managers, Head of the Board Risk Committee,[66] and other SMEs, as needed.
- *Crisis Response Teams.*
  - *Business Continuity Coordinators and Plan Approvers*—These are individuals who manage business continuity at a plan level.
  - *Fair and Orderly Markets Groups*—These are crisis teams comprised of internal stakeholders and top executives from external firms deemed necessary to ensure a fair and orderly market. They would be activated (based on impact to the legal entity) to gather information during a large systemic event when operational coordination is required with clients and the sector.
  - *IT Management Team*—Comprised of Information Technology managing directors and SMEs.
  - *Management Risk Committee*—Comprised of senior members across the enterprise.
  - *Senior Site Management Team (''SSMT'')*—Each DTCC office with a facility level resilience plan (''FLRP'') has an SSMT, that is comprised of senior leadership from the site.
  - *Site Assessment Team (''SAT'')*—Sites with an FLRP have a SAT that responds to site-specific events. This team is comprised of a primary/back-up site General Manager and representatives from BCR, IT, Workplace Design and Service, Global Security Management, and Human Resources. A Data Center Services representative also is added for sites that have a data center.
  - *MIM and BIMS Teams*—Part of the IT organization that manages technology specific and are typically resolved at the application or hardware level with support from the appropriate SMEs.
- *Crisis Communication Team.* The Crisis Communication Team is comprised of officer-level members from Marketing and Communication, Human Resources, General Counsel's Office, and Regulatory Relations, as well as members of their staffs, as applicable.

The Clearing Agencies believe that these standing risk management practices are key to managing the operational risk borne from concentration risk outlined in Section II.A.1, above, by helping to promote proactive risk management culture, enhancing operational resilience, and enabling the Clearing Agencies to better navigate uncertainties and maintain business continuity.

4. Industry Standards for Cloud Management

i. Cloud Management: Federal Financial Institutions Examination Council Cloud Computing Guidance (''FFIEC'')

On April 30, 2020, FFIEC[67] issued a joint statement to address the use of Cloud computing services and security risk management principles in the financial services sector (''FFIEC Guidance'').[68] While the FFIEC Guidance does not contain regulatory obligations, it highlights risk management practices that financial institutions should adopt for the safe and sound use of Cloud computing services in five broad areas (''FFIEC Risk Management Categories''): Governance, Cloud Security Management, Change Management, Resilience and Recovery, and Audit and Control Assessment. As discussed below, the Clearing Agencies would implement practices consistent with the FFIEC Risk Management Categories for Core C&S Systems operated in Cloud to help address cloud management risk, as highlighted in Section II.A.2, above, by providing frameworks, guidelines, and best practices, that enhance transparency, reliability, and security.

(a) Governance

The Clearing Agencies and the CSP rely on a shared responsibility model that differentiates between security ''of'' the Cloud and security ''in'' the Cloud.[69] This model is not specific to the agreement between the Clearing Agencies and the CSP; rather, it is a more universally followed model for public cloud services. Under the model, the CSP maintains sole responsibility and control over the security and resiliency ''of'' the Cloud, and their customers are responsible for the security and resiliency ''in'' the Cloud (*i.e.,* security and resiliency of hosted applications and data). This means that the Clearing Agencies must manage their own application architectures, data backups, change management controls, network configurations within applications, and response to application failures. In addition, the Clearing Agencies must manage their own data usage and data-at-rest encryption configuration, IAM access policies and roles, operating system upkeep, security group configurations, and network traffic encryption in transit configurations. The Clearing Agencies also manage how they place workloads onto the CSP's platform.

Meanwhile, the CSP must manage backend hardware services for Compute, Storage, Networking, database, and global architectures such as regions, availability zones, data centers, power, and HVAC, as well as backend security services that protect core infrastructures. The CSP manages the underlying infrastructure and upkeep, so that the Clearing Agencies (and other customers) can place workloads on the CSP platform with proper security and separation without having to manage these traditional data center tasks. The Clearing Agencies review the CSP's policies and procedures for these functions during the quarterly reviews and during annual risk assessments.

When looking more closely at hardware management, the Clearing Agencies believe there are benefits in how the CSP manages hardware for Cloud compared to how the Clearing

the bank's next Fedwire Funds Service Funds Transfer Business Day. In the event of such an outage, the Clearing Agencies will assess the situation and employ, as needed and applicable, the steps outlined in the BCR Policy and Standards, the Federal Reserve Banks Operating Circulars (*see, e.g.,* Operating Circular No. 6, *available at https://www.frbservices.org/binaries/content/assets/crsocms/resources/rules-regulations/070123-operating-circular-6.pdf*), and any other regulatory guidance.

[65] The Clearing Agencies have established a list of situations that are covered under the BCR Policy and Standards, any of which could escalate to a disaster and trigger use of the Standards. The technology events include (i) infrastructure outage, (ii) external hosting provider service outage, and (iii) loss of logical access to a Clearing Agency facility. The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the BCR Policy and Standards which define the governance structure, high-level roles and responsibilities, and the framework for business continuity and resilience processes at the Clearing Agencies. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[66] The Board Risk Committee is a Board level committee established by the Boards of the Clearing Agencies to assist their respective Boards in fulfilling their responsibilities for oversight of risk management activities at the Clearing Agencies. This includes oversight of credit, market, liquidity, operational, and systemic risks.

[67] FFIEC is a formal interagency body empowered to prescribe uniform principles, standards, and report forms for the federal examination of financial institutions by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Consumer Financial Protection Bureau, and to make recommendations to promote uniformity in the supervision of financial institutions.

[68] *Available at https://www.ffiec.gov/press/pr043020.htm.*

[69] ''Shared responsibility'' conveys the responsibility of the Clearing Agencies and the CSP vis-à-vis each other from a business operations perspective. It does not mean that the CSP has taken on or that the Clearing Agencies have relinquished any of their Reg. SCI compliance requirements.

Agencies manage hardware for their own data centers. For example, with on-premises data centers, the Clearing Agencies must oversee a multifaceted supply chain, involving many vendors to obtain and administer physical Compute, Storage, and Network capacity. Delivery times may fluctuate, and scarcities can affect project outcomes, as seen during the Covid-19 pandemic. In contrast, with the proposed Cloud Infrastructure, the CSP controls the hardware supply chain and even partakes in key areas of the manufacturing process to circumvent typical problems such as chip shortages. Moreover, the Clearing Agencies get to review the CSP's equipment forecast for each upcoming quarter, affording the Clearing Agencies the opportunity to address potential supply chain difficulties, if any, without jeopardizing their access to adequate capacity, by leveraging capabilities such as reserved capacity. Altogether, the Clearing Agencies believe the CSP's management of Cloud hardware will be a benefit to them.

The CSP would perform its own risk and vulnerability assessments of the CSP infrastructure on which the Clearing Agencies would run their Core C&S Systems. In published documentation and in meetings conducted with the CSP, the CSP asserts that it maintains an industry-leading automated test system, with strong executive oversight, and conducts full-scope assessments of its hardware, infrastructure, internal threats, and application software. The CSP asserts that it has an aggressive program for conducting internal adversarial assessments (''Red Team'') designed not only to evaluate system security but also the processes used to monitor and defend its infrastructure. The CSP also uses external, third-party assessments as a cross-check against its own results and to ensure that testing is conducted in an independent fashion. Pursuant to the CSP's documentation, results of these processes are reviewed weekly by the CSP's Chief Information Security Officer and the Chief Executive Officer with senior CSP leaders to discuss security and action plans.[70]

The Clearing Agencies have the responsibility to perform risk assessments and technical security testing, including control validation, penetration testing, and adversarial testing of their applications running on the Cloud Infrastructure. This includes testing of the application interface layer of some CSP provided services such as storage and key management.

As mentioned, the Clearing Agencies' testing includes assessing the configuration of the CSP provided services. The Clearing Agencies' Technology Risk Management staff would work with the Clearing Agencies' Information Technology staff to ensure that the CSP tools are configured to appropriately manage and mitigate potential sources of risk and will assess the effectiveness of those configurations.[71] The Technology Risk Management staff has developed an application, Cloud Governance Insights (''CGI''), to continuously monitor all Cloud Infrastructure for alignment to security baselines and configurations best practices.[72] The CGI dashboard allows Information Technology and Technology Risk Management staff to understand the environment risk posture and reporting of key risk indicators (''KRIs''). The Clearing Agencies' Red Team would operate freely ''in the Cloud,'' attempting to subvert or circumvent controls.[73] The testing would include probing of the CSP provided services to look for weaknesses in the Clearing Agencies' deployment of those tools.

Technology Risk Management staff would routinely report test results to the Technology Risk Management Steering Committee and the Management Risk Committee, appropriate functional Operations and Information Technology management, senior management, and the Board of Directors of the Clearing Agencies.[74] [75] Automated vulnerability scanning reports, source code analysis, and results of specific assessments would be risk-rated and assigned a priority for remediation in accordance with Clearing Agency Information Security Program requirements.[76] [77]

Management and oversight of the Cloud implementation follows the Clearing Agencies' standard governing principles for large information technology projects.[78] To maintain accountability over the CSP's performance, regular reporting to the Boards of the Clearing Agencies by senior management is essential and required, pursuant to the DTCC Third Party Risk Procedures.[79] Such reporting helps ensure that senior management takes appropriate actions to address significant performance deterioration, changing risks, or material issues identified through ongoing monitoring, thereby helping to ensure proactive risk management and continuous improvement.[80] The Clearing Agencies' Board of Directors has established a Technology and Cyber Committee to assist the Board of Directors in overseeing information technology and cybersecurity strategy and capabilities.

Information Technology and the Enterprise Program Management Office (''EPMO'') are responsible for the

---

[70] The CSP does not provide assessment results to its customers, as doing so would constitute a breach of generally accepted security best practices. Instead, the CSP provides its customers with industry-standard reports—such as SOC2 Type II—prepared by an independent third-party auditor to provide relevant contextual information to its customers. The CSP also conducts periodic audit meetings specifically designed to discuss security concerns with its customers discussed later during the ''CSP Audit Symposium.'' Additionally, the Clearing Agencies have certain audit rights (pursuant to Section 3 *Customer Rights of Access and Audit* of the Reg. SCI Addendum) to review information about the nature and scope of the CSP's vulnerability management program.

[71] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the OTR TRM Core Process Procedure—Security Configuration Violation Rules, which is used to manage enterprise information security risk by ensuring a consistent configuration violation scoring process that provides timely identification of configuration violations and their severity ratings. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[72] CGI is the Clearing Agencies' internally developed solution to perform Cloud Security Posture Management and assess Cloud Infrastructure compliance against TRM Control Standards and Security Baselines in near real-time.

[73] *Supra* note 47.

[74] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the DTCC Information Security—Information Security Management Policy and Control Standards, which defines the roles, responsibilities, and accountabilities for DTCC's security practices and organization structure suited to protect DTCC's critical systems and business assets. Information Security Management evaluates DTCC's information security program's overall effectiveness, and establishes, maintains, communicates, and periodically reassesses information security policies and a comprehensive information security program that are approved by management. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[75] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the DTCC Information Security—Risk Management Policy and Control Standards, which provides (i) requirements for establishing, implementing, maintaining, and continually improving the information risk management program, (ii) a governance structure utilized for the escalation of information risks to an appropriate management level, and (iii) organizational roles and responsibilities for the delivery of comprehensive information security and technology risk management program. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[76] *Supra* note 46.

[77] *Supra* note 47.

[78] *Supra* note 32.

[79] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the DTCC Third Party Risk Procedures, which establish the standards and practices to be used by certain business line departments and/or functional units to manage the potential risks associated with engaging with an external service provider. The Clearing Agencies have provided these documents in confidential Exhibit 3 to this advance notice filing.

[80] *Supra* note 62.

identification, management, monitoring, and reporting on the risks associated with the modernization and migration of applications to Cloud. To that end, reports on the status and progress of these efforts are reported to applicable Clearing Agency committees based on escalation criteria in the EPMO Procedure.[81] These reports include overall risk and issue summaries and analysis of key risk indicators for the migration of applications to the public cloud.

Finally, the Clearing Agencies' Internal Audit Department (''IAD''), as the independent third line of defense, is responsible for assessing and challenging the firm's control environment and risk management and control frameworks, which include those related to the Cloud, including, but not limited to, security controls and configurations, and report the results of those assessments to management and the Audit Committee of the Board.[82]

Ultimately, there is no primary/secondary relationship, as the Clearing Agencies and the CSP each have their own set of responsibilities which, when combined, address the entire risk space.

(b) Cloud Security Management

The Clearing Agencies have established a robust Cloud security program to (i) manage the security of the Core C&S Systems that would be running on the Cloud Infrastructure hosted by the CSP, and (ii) assess and monitor the CSP management of security of the Cloud Infrastructure that it operates. The security program is built upon Clearing Agency Information Security Policies and Control Standards that establish requirements that apply to any technology system as well as any tool that provides technology services.[83] [84] [85] [86] Below describes elements of the Clearing Agencies' Cloud security management in the areas of (i) IAM controls (*i.e.,* determining who is accessing the systems, granting access to the applications, and then controlling what information they can access); (ii) security governance and controls for sensitive data; (iii) security configuration, provisioning, logging, and monitoring; and (iv) security testing.

(1) Network and IAM Controls

The Clearing Agencies recognize that robust network security configuration and IAM would provide reasonable assurance that users—including Clearing Agency employees, market participants, and service accounts for systems [87]—are granted least-privileged access [88] to the network, applications, and data in the Cloud. The Clearing Agencies would use third-party tools to automate appropriate role-based access to the Core C&S Systems running in the Cloud. By enforcing strict separation of duties and least-privileged access for infrastructure, applications, and data, the Clearing Agencies would protect the confidentiality, availability, and integrity of the data in the Cloud.

The Clearing Agencies have established IAM requirements that build upon the least-privileged model.[89] As part of the IAM program, all users must be assigned an appropriate enterprise identification. Additionally, the Clearing Agencies have established Highly Privileged Access Management capabilities and policies to further restrict highly privileged access to be used only in pre-determined scenarios that must be tied to a change, incident, request, or release records.[90]

Cloud users would be granted access to systems via a standardized and auditable approval process. The user identifications and granted access would be managed through their full lifecycle from a centralized IAM system maintained and administered by the Clearing Agencies. Role-, attribute-, and context-based access controls would be used as defined by internal standards [91] consistent with industry recommended practices to promote the principles of least-privileged access and separation of duties.[92]

The Clearing Agencies would use and manage third-party tools not otherwise provided by nor managed by the CSP for single sign-on and least-privileged access.[93] The network also would include hardware and software to limit and monitor ingress and egress traffic, encrypt data in transmission, and isolate traffic between the Clearing Agencies and the Cloud.[94] Since the Clearing Agencies would continue to provide cryptographic services, including key management, the CSP and other network service providers would not be able to decrypt Clearing Agency data either at rest or while in transit.

(2) Security Governance and Controls for Sensitive Data

The Clearing Agencies' data governance framework that would apply to Cloud implementation is identified within the Clearing Agency Information Security Policies and Control Standards.[95] The Clearing Agency Information Security Policies and Control Standards address data moving between systems within the Cloud as

[81] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the Enterprise Program Management Office Procedure, which outlines the minimum standards and practices the Clearing Agencies use to manage, measure, and monitor the performance of key processes aligned to the Enterprise Program Management Office Policy. The Clearing Agencies have provided these documents in confidential Exhibit 3 to this advance notice filing.

[82] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the Internal Audit Department Policies and Procedures, which contains the policies and guidance that direct the activities of the Clearing Agencies' IAD. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[83] *Supra* notes 46–47, 73–74.

[84] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the DTCC Information Security—Asset Security Policy and Control Standards, which governs management of security for the information assets of the Clearing Agencies. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[85] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the DTCC Information Security—Monitoring and Incident Management Policy and Control Standards, which governs DTCC's information security monitoring and incident management and specifies requirements for (i) detecting unauthorized information processing activities, (ii) ensuring information security events and weaknesses associated with information systems are communicated in a manner allowing timely corrective action to be taken, and (iii) ensuring a consistent and effective approach is applied to the management of information security incidents. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[86] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the DTCC Information Security—Asset Access Control Policy and Standards, which governs management of security for the information assets of the DTCC and its subsidiaries. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[87] Service accounts are non-interactive accounts that permit application access to support activities such as monitoring, logging, or backup. Service accounts are also used for machine-to-machine communications.

[88] Least-privileged access means users only have the permission needed to perform their work, and no more.

[89] *Supra* note 85.

[90] *Id.*

[91] *Id.*

[92] (1) ISO/IEC 27002:2013—Information technology—Security techniques—Code of practice for information security controls; (2) NIST Cybersecurity Framework (CSF) Version 1.1; (3) NIST Special Publication 800–53 Revision 4—Security and Privacy Controls for Federal Information Systems and Organizations.

[93] For example, the Clearing Agencies currently use Bravura Security Privileged Access Management (a/k/a PAM) for highly privileged access management.

[94] *Supra* notes 47, 84–85.

[95] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the DTCC Data Risk Management Policy, which establishes requirements for the sound management of data risk across the data lifecycle. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

well as data transiting and traversing both trusted and untrusted networks. For example, the Clearing Agencies' Information Security Policies and Control Standards require a system or Software as a Service (*i.e.,* SaaS) to (i) store data and information, including all copies of data and information in the system, in the U.S., throughout its lifecycle; (ii) be able to retrieve and access the data and information throughout its lifecycle; (iii) for data in the system hosted in the Cloud, encrypt such data with key pairs kept and owned by the Clearing Agencies; (iv) comply with U.S. federal and applicable state data regulations regarding data location; and (v) enable secure disposition of non-records in accordance with the Clearing Agencies' Information Governance Policy.[96]

Furthermore, the Clearing Agencies' policies establish the overall data governance framework applied to the management, use, and governance of Clearing Agency information to include digital instantiations, storage media, or whether the information is located, processed, stored, or transmitted on the Clearing Agencies' information systems and networks; public, private, or hybrid cloud infrastructures; third-party data centers and data repositories; or SaaS applications.[97] The Information Classification and Handling Policy [98] classifies the Clearing Agencies' information into categories. System owners of technology that enable classification and/or labeling of information are responsible for ensuring the correct classification level is designated in the system of record and the applicable controls are enforced. All information requiring disposal is required to be disposed of securely in accordance with all applicable procedures. Sensitive data must be handled in a manner consistent with requirements in the Information Classification and Handling Policy.

The Clearing Agencies would implement key security components, namely ubiquitous authentication, and encryption via use of an automated public key infrastructure, coupled with responsive, highly available authentication, authorization tools, and key management strategies to ensure appropriate industry standard security controls are in place for sensitive data both in transit to and at rest in Cloud.[99]

External connectivity to the Clearing Agencies' systems hosted by the CSP would be provided, as it is now, through dedicated private circuits or over encrypted tunnels through the internet. These network links also would have additional security controls, including encryption during transmission and restrictions on network access to and from the Cloud. Additionally, the Clearing Agencies would use dedicated redundant private network connections between the Clearing Agencies data centers and the CSP infrastructure. The Clearing Agencies currently maintains two data centers and will do so in the near term to provide redundant, geographically diverse connectivity for market participants.

All network communications between the Clearing Agencies and the Cloud Infrastructure would rely on industry standard encryption for traffic while in transit. Data at rest would be safeguarded through pervasive encryption. The Clearing Agencies' Encryption Standards [100] describe requirements for implementation of the minimum required strengths, encryption at rest, and cryptographic algorithms approved for use in cryptographic technology deployments across the Clearing Agencies. All Clearing Agency identifying data is encrypted in transit using industry standard methods. The Key Management Service (''KMS'') Strategy [101] dictates that all CSP endpoints support HTTPS for encrypting data in transit. The Clearing Agencies also secure connections to the endpoint service by using virtual private computer endpoints and ensures client applications are properly configured to ensure encapsulation between minimum and maximum Transport Layer Security versions pursuant to the Clearing Agencies' encryption standard.

The Clearing Agencies would have exclusive control over the encryption keys; only Clearing Agency authorized users and approved third parties would be able to access Clearing Agency data. The CSP systems and staff would not have access to the Clearing Agencies' certificates or keys.[102] The Clearing Agencies would be responsible for the application architecture, software, configuration, and use of the CSP services, and for the maintenance of the environment, including ongoing monitoring of the application environment to achieve the appropriate security posture. To do this, the Clearing Agencies would follow (i) existing security design and controls; (ii) Cloud-specific information security controls defined in the Clearing Agencies' Information Security Policies and Control Standards; [103] and (iii) regulatory compliance requirements detailed in sources or information technology practices that are widely available and issued by an authoritative body that is a U.S. governmental entity or agency including NIST–CSF,[104] COBIT,[105] and the FFIEC Guidelines.[106]

The Clearing Agencies would use third-party and custom developed tools for CSP security compliance monitoring, security scanning, and reporting. Alerts and all API-level actions would be gathered using both CSP provided, Clearing Agency developed, and third-party monitoring tools. The CSP provided monitoring tool would be enabled by default at the organization level to monitor all CSP services activity. Centralized logging provides near real-time analysis of events and contains information about all aspects of user and role management, detection of unauthorized, security relevant configuration changes, and inbound and outbound communication.

As discussed just above, the Clearing Agencies would use a KMS Strategy to encrypt data in transit and at rest in the Cloud. KMS is designed so that no one, including CSP employees, can retrieve customer plaintext keys and use them. The Federal Information Processing Standards 140–2 validated Host Security Modules (''HSMs'') in KMS protect the confidentiality and integrity of Clearing Agency customer keys.[107] Customer plaintext keys are not written to disk and are only used in protected, volatile memory of the HSMs for the time needed to perform the customer's requested cryptographic operation. KMS keys are not transmitted outside of Cloud regions in which they were created. Updates to the KMS HSM firmware will be controlled by quorum-based access control [108] that is audited

[96] *Supra* note 85.

[97] *Supra* note 46.

[98] *Supra* note 83.

[99] *Supra* note 47.

[100] *Supra* note 91.

[101] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the DTCC Information Security—Public Key Infrastructure Policy and Control Standards, which governs the public key infrastructures implemented and used within DTCC and its subsidiaries. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[102] Certificate management is the process of creating, monitoring, and handling digital keys (certificates) to encrypt communications.

[103] *Supra* note 91.

[104] NIST Cybersecurity Framework Version 1.1.

[105] *COBIT 2019 Framework: Governance and Management Objectives.*

[106] FFIEC Information Technology Examination Handbook—Information Security (September 2016).

[107] The HSM is analogous to a safe to which only the Clearing Agencies have the combination and the ability to access the keys to locks stored within.

[108] A quorum-based access mechanism requires multiple users to provide credentials over a fixed period in order to obtain access.

and reviewed by an independent group within the CSP.

(3) Security Configuration, Provisioning, Logging, and Monitoring

Automated delivery of business and security capability via the use of ''Infrastructure as Code'' and continuous integration/continuous deployment pipeline methods would permit security controls to be consistently and transparently deployed on-demand. The Clearing Agencies would provision Cloud Infrastructure using pre-established system configurations that are deployed through Infrastructure as Code, then scanned for compliance to secure baseline configuration standards. The Clearing Agencies also would employ continuous configuration monitoring and periodic vulnerability scanning. The Clearing Agencies would perform regular reviews and testing of Clearing Agency systems running in Cloud while relying upon information provided by the CSP through the CSP's SOC2 and Audit Symposiums. Finally, configuration, security incident, and event monitoring would rely on a blend of CSP native and third-party solutions.

The Clearing Agencies also plan to use tools offered by the CSP, developed by the Clearing Agencies, and third parties to monitor the Core C&S Systems running in Cloud. The Clearing Agencies would track metrics, monitor log files, set alarms, and have the ability to act on changes to Core C&S Systems and the environment in which they operate. The CSP would provide a dashboard to reflect-general health (*e.g.,* up/down status of a region and CSP provided services running in that region) but would not give additional insights into performance of services and applications which run on those services. The Clearing Agencies' centralized logging system would provide for a single frame of reference for log aggregation, access, and workflow management by ingesting the CSP's logs coming from native detective tools and the Clearing Agencies' instrumented controls for logging, monitoring, and vulnerability management. This instrumentation would give the Clearing Agencies a real-time view into the availability of Cloud services as well as the ability to track historical data. By using the enterprise monitoring tools that the Clearing Agencies have in place, the Clearing Agencies would be able to integrate the availability and capacity management of Cloud into the Clearing Agencies' existing processes, hosted in Cloud, to respond to issues in a timely manner.

The Clearing Agencies also would use specialized third-party tools, as discussed just above, to programmatically configure Cloud services and securely deploy infrastructure. This automation of configuration and deployment would help ensure that Cloud services are repeatably and consistently configured securely and validated. Change detection tools providing event logs into the incident management system also are vital for reacting to and investigating unexpected changes to the environment.

The Clearing Agencies would implement tools for the Core C&S Systems and back-office environments that would be hosted on the Cloud Infrastructure, notably, IAM, monitoring and Security Information and Event Management systems, the workflow system of record for incident handling, KMS, and enterprise Data Loss Prevention.

Finally, the CSP prioritizes assurance programs and certifications, underscoring its ability to comply with financial services regulations and standards and to provide the Clearing Agencies with a secure Cloud Infrastructure.[109]

(4) Security Testing and Verification

Security testing is integrated into business-as-usual processes as outlined in relevant policy and procedures.[110] These documents define how testing is initiated, executed, and tracked.

For new assets and application (or code) releases, Technology Risk Management determines whether and what type of security testing is required through a risk-based analysis.[111] If required, testing would be conducted prior to implementation. The different testing techniques are outlined below:

- *Automated Security Testing.* Using industry standard security testing tools and/or other security engineering techniques specifically configured for each test, the Clearing Agencies would test to identify vulnerabilities and deliver payloads with the intent to break, change, or gain access to unauthorized areas within an application, data, or system.
- *Manual Penetration Testing.* Using information gathered from automated testing and/or other information sources, the Clearing Agencies would manually test to identify vulnerabilities and deliver payloads with the intent to break, change, or gain access to the unauthorized area within an application or system.
- *Blue Team Testing.* The Blue Team identifies security threats and risks in the operating environment and analyzes the network, system, and SaaS environments and their current state of security readiness. Blue Team assessment results guide risk mitigation and remediation, validate the effectiveness of controls, and provide evidence to support authorization or approval decisions. Blue Team testing ensures that the Clearing Agencies' networks, systems, and SaaS solutions are as secure as possible before deploying to a production environment.

The results of the Clearing Agencies' security controls testing are risk-rated and managed to remediation via two separate control standards.[112]

(c) Change Management: Software Development and Release Process

Consistent with FFIEC Guidance, the Clearing Agencies' use of Cloud would have sufficient change management controls in place to effectively transition systems and information assets to Cloud and would help ensure the security and reliability of applications in Cloud.[113] The Clearing Agencies' enterprise software development lifecycle processes [114] would help ensure the same control environment for all Clearing Agency resources. The Clearing Agencies would establish baselines for design inputs and control requirements and enforce workload isolation and segregation through Cloud using existing Cloud native technical controls and added new tools. The Clearing Agencies also would plan to use other specialized platform monitoring tools for logging, scanning of configuration, and systems process scanning. The Clearing Agencies also would have oversight as the code owner and would have final review and approval for related changes and code merges before deployment into production. Finally, the Clearing Agencies would periodically conduct static code scanning and perform vulnerability scanning for external dependencies prior to deployment in production, along with manual penetration testing of the provided application code. In addition, the Clearing Agencies would perform routine scans of Compute resources with the existing enterprise scanning tools. Any identified vulnerabilities would be reviewed for severity, prioritized, and logged for remediation tracking in upcoming development releases.

[109] The CSP has certifications for the following frameworks: NIST, Cloud Security Alliance, COBIT, ISO, and FISMA.

[110] *Supra* note 46.

[111] *Supra* note 30.

[112] *Supra* notes 46–47.

[113] *Supra* note 30.

[114] *Id.*

The Clearing Agencies would create a ''user acceptance plan'' prior to promoting code to Cloud production. This user acceptance plan would include tests of all major functions, processes, and interfacing systems, as well as security tests. Through acceptance tests, the Clearing Agencies' users would be able to simulate complete application functionality of the live environment. The change would move to the next stage of the Clearing Agencies' delivery model only after satisfying the criteria for this phase.[115]

The Clearing Agencies would have internal projects that would address change management of the various applications and services. In particular, the Clearing Agencies would run a suite of supporting services that enable building, running, scaling, and monitoring of the Clearing Agencies' business applications in Cloud, in an automated, resilient, and secure manner.[116] The application platform relies on various CSP and third-party tools for different components, including IaaS, Infrastructure as Code, CI/CD, Container as a Service, Continuous Delivery, and Platform Monitoring.

With respect to software development in Cloud, the Clearing Agencies would establish a closed, non-production Cloud environment that would enable the Clearing Agencies to develop, test, and integrate new capabilities, including those related to security capabilities. This non-production Cloud environment would focus on the foundational security, operations, and infrastructure requirements with the intent to take lessons learned to implement into future production. The Clearing Agencies would maintain a Cloud Reference Architecture that defines necessary capabilities and controls required to securely host Core C&S Systems. The minimum foundational security requirements would be based on the NIST–CSF and CIS benchmarks and include the design and implementation requirements of a secure Cloud account structure within a multi-region Cloud environment. The Clearing Agencies would maintain enterprise security requirements that provide structure for current and future development. As the Cloud environment is further developed and expanded, there would be a comprehensive process to identify any incremental risks and develop and implement controls to manage and mitigate those risks.

(d) Resilience and Recovery

As noted earlier, given the Clearing Agencies' roles as systemically important financial market utilities, it is vital that operations moved to the Cloud have appropriately robust resilience and recovery capabilities. As discussed in Section II.B.ii.2, above, the Cloud Infrastructure would be architected to include (i) two autonomous and geographically diverse regions; (ii) three availability zones per region, with each availability zone comprised of multiple data centers; (iii) multi-node, high availability clusters across each availability zone; (iv) static stability and static capacity models; and (v) regional isolation, all to help ensure the persistent availability of Compute, Storage, and Network capabilities in Cloud.

Additionally, the CSP's practice in deploying service updates to Cloud would help ensure that the consequences of any incidents would be limited to the fullest extent possible.[117] The CSP achieves this by (i) fully automating the build and deployment process and (ii) deploying services to production in a phased manner.

CSP service updates are first deployed to cells, which minimizes the chance that a disruption from a service update in one cell would disrupt other cells. Following a successful cell-based deployment, service updates are next deployed to a specific availability zone, which limits any potential disruption to that zone. Following a successful availability zone deployment, service updates are then deployed in a staged manner to other availability zones, starting with the same region and later within other regions until the process is complete.

The Clearing Agencies would meet regularly with the CSP, in addition to formal quarterly briefing meetings with the CSP, as described in the Reg. SCI Addendum.[118] The informal discussions and quarterly briefing meetings would permit the Clearing Agencies to gather information in advance of the quarterly systems change report. Most reportable systems changes would continue to occur based on changes to Compute, Storage, Network, or applications controlled by the Clearing Agencies.

(e) Audit Controls and Assessment

The Clearing Agencies would regularly test security controls and configurations, including by monitoring the CSP's technical, administrative, and physical security controls that support the Clearing Agencies' systems in the Cloud Infrastructure.

(1) Internal Risk Assessments

As part of their existing third-party vendor risk activities, the Clearing Agencies' Third-Party Risk department (''TPR'') would assess the operational risks of the CSP as a critical vendor annually.[119] [120] [121] Additionally, as a critical vendor, the CSP is subject to heightened risk management requirements, as defined in the DTCC Third Party Risk CriticalPlus Program Procedures,[122] which include an executive sponsor that must be at the Managing Director level or higher, documented annual meetings, quarterly reporting, and monthly notifications. Issues rated moderate or above, negative news, performance concerns or remediations are directly escalated to the Management Risk Committee monthly.[123]

[115] The ''user acceptance plan'' represents only one aspect of the overall change management program at the Clearing Agencies.

[116] *Supra* note 30.

[117] The Clearing Agencies would continue to retain responsibility for patching, configuration, and monitoring of the operating systems and applications in Cloud.

[118] *See* Reg. SCI Addendum, Section 4 *Briefing Meetings.* The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[119] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the DTCC Third Party Risk Governance & Monitoring Procedures, which describes the minimum requirements for practices and standards to be used by business owners to monitor and manage third party relationships for DTCC and its subsidiaries. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[120] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the DTCC Third Party Risk Policy and the DTCC Third Party Risk Procedures, which establish the standards and practices to be used by certain business line departments and/or functional units to manage the potential risks associated with engaging with an external service provider. The Clearing Agencies have provided these documents in confidential Exhibit 3 to this advance notice filing.

[121] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the Third Party Risk—Technology and Resilience Procedure, which supplements the ''DTCC Third Party Risk Policy'', ''DTCC Third Party Risk Procedures'', and ''DTCC Third Party Risk Governance and Monitoring Procedures'' and covers the following: standard technology risk assessments (*e.g.,* due diligence), fourth party reviews, NYDFS cyber security assessments, and onsite assessments. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[122] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the DTCC Third Party Risk CriticalPlus Program Procedures. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[123] *Supra* note 62.

(2) Internal Audit Department

As mentioned in Section II.B.ii.4.(a), above, the Clearing Agencies' IAD, as the third line of defense, is independent from the Clearing Agencies' business lines, support areas, and controls functions, and promotes resiliency and security through the assessment of risk management and control frameworks to raise awareness of control risks and changes for improving controls and governance processes.

IAD assesses the risks of the Clearing Agencies, at least annually, as part of the development of the risk-based audit plan, which is reviewed and refreshed, as needed, on a quarterly basis.[124] The development of the audit plan includes the consideration of IADs risk assessment results, which informs cycle coverage requirements for Cloud. Additional considerations include, but are not limited to, regulatory requirements and expectations, initiatives, and institutional and industry risk trends, including risks associated with technology and cloud-based processes.

IAD's specific reviews of Cloud Infrastructure have not identified any material deficiencies and the scope of the reviews have included, but are not limited to, consideration of governance and oversight, contagion risk and logical separation, access management, security configuration and monitoring, concentration risk, exit strategy, business continuity and disaster recovery. IAD also has assessed the design of controls for a cloud platform scheduled for use in 2024 and is proposing a Cloud Security audit for 2024.[125]

(3) Key Risk and Key Performance Indicators [126]

The Clearing Agencies have established processes to evaluate the Clearing Agencies' management of CSPs. Cloud vendors are rated through a quarterly TPR survey. If a survey results in a poor rating, then it is reported to the Management Risk Committee (''MRC'').[127] TPR is responsible for the timely reporting and escalation of third-party risks. On a regular basis, TPR will review all active assessments to identify any high risks or potential issues that may require further discussion or escalation to senior management, Corporate Procurement Services (''CPS''), or internal stakeholders. The DTCC Third Party Risk Procedures provide a list of events that must be presented to the MRC.[128]

The Clearing Agencies have developed key performance indicators (''KPIs'') for Cloud and socialized these KPIs internally. The KRIs already exist for Core C&S Systems and are aligned to overall systems availability, capacity, data integrity, and security.[129] The CSP KPIs would feed into existing KRIs and would be used to evaluate the CSP's performance after Cloud implementation. KPIs would be added to monitor the performance and risks of the CSP services for which the Clearing Agencies have contracted. These post-Cloud implementation KRIs and KPIs would allow the Clearing Agencies to assess their ongoing use of the CSP against their operational and security requirements and would help demonstrate the effectiveness of risk controls and the CSP's performance against commitments in the SLAs, and will be reported on a regular basis to the Clearing Agencies' Management Committee, Board of Directors, and Technology and Risk Committees of the Board of Directors.

(4) Auditing the CSP and Access Rights [130]

The CSP hosts an annual Audit Symposium. The Cloud Agreement gives the Clearing Agencies the right to attend the symposium so that the Clearing Agencies may inspect and verify evidence of the design and effectiveness of the CSP's control environment.[131] The CSP also hosts an annual Cloud security conference focused on security, governance, risk and compliance, which the Clearing Agencies would attend. Through preparation for and attendance at these events, the Clearing Agencies could provide feedback and make requests of the CSP for future modifications of its control environment.

The Clearing Agencies' Information Technology staff currently meets with CSP representatives weekly to focus on technical issues related to the Clearing Agencies' proposed Cloud environment. As required under the Cloud Agreement, the Clearing Agencies hold quarterly compliance briefings with the CSP, wherein the Clearing Agencies receive information, including any necessary documentation, from the CSP to help assure the Clearing Agencies that the CSP is meeting its obligations.[132] The information provided includes updates to services and SLAs, CSP performance, and details that help the Clearing Agencies meet their reporting obligations under Section 1003(a)(1) of Reg. SCI. The Clearing Agencies' management, including Security, Information Technology, TPR, and the Internal Audit Department, coordinate to ensure appropriate representation during such briefings. The CSP is required under Cloud Agreement to maintain records showing its compliance with the agreements for a period of five years.[133]

The CSP would be required to maintain an information security program, including controls and certifications, that is as protective as the program evidenced by the CSP's SOC–2 report. The CSP must make available on demand to the Clearing Agencies its SOC–2 report as well as the CSP's other certifications from accreditation bodies and information on its alignment with various frameworks, including NIST–CSF, and ISO.[134]

As part of the annual risk assessment of the CSP, TPR collects risk and control related assurance documents from the CSP and coordinates review with the Clearing Agencies' respective subject matters specialists. TPR, Security, and Business Continuity would determine the adequacy and reasonableness of the documentation received to complete the Third-Party Risk Assessment. Finally, the Cloud Agreement provides that the Clearing Agencies' and their regulators may visit the facilities of the CSP under specified conditions. TPR would help

[124] *Supra* note 81.

[125] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the Clearing Agencies' Cloud Platform Internal Audit Report. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[126] *Supra* note 62.

[127] *Supra* note 119.

[128] *Supra* note 78.

[129] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the IT–Q4 2023 Risk Tolerance. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[130] *Supra* note 62.

[131] *See* Reg. SCI Addendum, Section 3 *Customer Right of Access and Audit.* The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[132] *Supra* note 117.

[133] *See* Reg. SCI Addendum, Section 7.3 *CSP Records.* The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[134] The FFIEC Guidance provides that the Clearing Agencies may obtain SOC reports, other independent audits, or ISO certification reports to gain assurance that the CSP's controls are operating effectively. *See* FFIEC, Security in a Cloud Computing Environment, at 7. The Clearing Agencies review the CSP's SOC–2 on an annual basis. *See* Reg. SCI Addendum, Section 2 *CSP Information Security Program.* The SOC reports, along with other artifacts showing compliance with these sections, are available to the Clearing Agencies on demand. In addition, during each Briefing Meeting (*See* Reg. SCI Addendum Section 4 *Briefing Meetings*), updates are provided on any material changes to certification standards, policies, procedures, controls or security standards at the CSP. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

coordinate bi-annual visits of the data centers.[135]

The Clearing Agencies plan to use the CSP's services combined with additional third-party tools to monitor systems deployed by ingesting logs into a security incident and event monitoring tool to provide a ''single pane of glass'' view into the Cloud Infrastructure. When incidents are detected, the Clearing Agencies would follow their existing incident response governance to identify, detect, contain, eradicate, and recover from incidents.

III. Consistency With the Clearing Supervision Act

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 and strengthening the liquidity of systemically important financial market utilities.[136] Section 805(a)(2) of the Clearing Supervision Act[137] also authorizes the Commission to prescribe risk management standards for the payment, clearing and settlement activities of designated clearing entities, like the Clearing Agencies, for which the Commission is the supervisory agency. Section 805(b) of the Clearing Supervision Act[138] states that the objectives and principles for risk management standards prescribed under Section 805(a) shall be to:

- promote robust risk management;
- promote safety and soundness;
- reduce systemic risks; and
- support the stability of the broader financial system.

The Commission adopted Rule 17ad–22 under Section 805(a)(2) of the Clearing Supervision Act and the Exchange Act in furtherance of these objectives and principles.[139] Rule 17ad–22 under the Exchange requires covered clearing agencies, like the Clearing Agencies, to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing basis.[140]

The Clearing Agencies believe that the Cloud Proposal is consistent with Section 805(b)(1) of the Clearing Supervision Act[141] and the requirements of Rules 17ad–22(e)(17)(ii) under the Exchange Act.[142]

A. Consistency With Section 805(b)(1) of the Clearing Supervision Act

Promote Robust Risk Management. As described above, the Clearing Agencies believe that the Cloud Proposal promotes robust risk management, specifically operational risk management, by providing scalable and secure infrastructure for hosting Core C&S Systems. The Cloud Proposal would add additional security capabilities, allow for regular updates and maintenance of applications, and reduce the risk of data breaches while also ensuring compliance with industry standards. Additionally, transitioning to Cloud would offer flexibility in scaling resources, which can enable the Clearing Agencies to adapt quickly to changing security needs and allocate resources more efficiently.

Today, the Clearing Agencies' ability to risk manage extreme market events is directly tied to their ability to scale their on-premises resource during such events, which is directly tied to the Clearing Agencies having previously expended enough capital to build enough capacity based on earlier performance testing of their applications to withstand such extreme market events. Although the Clearing Agencies would continue to performance test their applications regardless of where the applications are hosted, by hosting the applications in Cloud, the number of scalable resources is already available, when needed, without the Clearing Agencies having to pre-purchase it or build it. This level of nearly unbounded, on-demand scalability provides a much-welcomed risk-management feature for extreme events, such as a global pandemic as noted above.

Overall, risk management is inherently strengthened by hosting in Cloud through advanced security features, real-time monitoring, on-demand scalability, and compliance standards implemented by the CSP. By leveraging these capabilities, the Clearing Agencies can better proactively identify and address risks, ensuring data integrity and regulatory compliance.

Promote Safety and Soundness. The Clearing Agencies also believe that the Cloud Proposal promotes safety and soundness. As discussed above, transitioning to Cloud provides centralized management and improved scalability. The CSP provides cloud-specific security capabilities, including encryption, access controls, and regular updates, reducing the risk of security breaches. Centralized monitoring allows for better visibility into potential threats, enabling quick response and mitigation. The agility afforded by Cloud would allow the Clearing Agencies to respond to performance challenges more efficiently and effectively. For instance, as noted above, in the face of unexpected surges in demand, Cloud scalability would allow the Clearing Agencies to seamlessly adjust resources, helping to prevent service disruptions and loss of operations. Such agility not only enhances the effectiveness of operations but also mitigates the risks associated with unexpected fluctuations in workload performance. These benefits improve the Clearing Agencies abilities to maintain operational continuity and resilience, which help promote safety and soundness.

Reduce Systemic Risk. The Clearing Agencies also believe that the Cloud Proposal would reduce systemic risk by improving overall resilience and security. As described above, hosting Core C&S Systems in Cloud would provide distributed infrastructure and data redundancy (*i.e.,* multiple availability zones, supported by many data centers, across two regions), making the systems less susceptible to single points of failure. Moreover, disaster recovery would be streamlined, minimizing the effect of potential disruptions, while automatic backup systems, geographic redundancy, and faster data recovery mechanisms would all contribute to a more resilient infrastructure. In the event of a localized issue, the distributed nature of Cloud would help prevent widespread disruptions.

Production resiliency also is greatly improved in Cloud compared to the Clearing Agencies' on-premises capabilities, where a single location hosts an application, on a single copy of primary storage. Instead, Cloud would host an application across three primary availability zones, made of up of many data centers, each of which contain actively running instances and synchronous copies of the data. If the Clearing Agencies' primary, on-premises data center fails, an out of region recovery will be necessary and will likely result in approximately two hours of downtime. By comparison, in Cloud, even if an entire availability zone fails

[135] *See* Reg. SCI Addendum, Sections 3 *Customer Right of Access and Audit* and 9 *Regulatory Supervision.* The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[136] 12 U.S.C. 5461(b).

[137] 12 U.S.C. 5464(a)(2).

[138] 12 U.S.C. 5464(b).

[139] 17 CFR 240.17ad–22. Exchange Act Release Nos. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7–08–11) (Clearing Agency Standards); 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7–03–14) (Standards for Covered Clearing Agencies).

[140] 17 CFR 240.17ad–22.

[141] 12 U.S.C. 5464(b)(1).

[142] 17 CFR 240.17ad–22(e)(17)(ii).

(meaning the failure of multiple data centers), Core C&S Systems would continue to operate within the region, thus avoiding an out of region recovery and any downtime.

The Clearing Agencies would employ meaningful security capabilities and measures provided by the CSP and third-party tools to further enhance the security of the Clearing Agencies' Core C&S Systems. This approach to security would help reduce systemic risks associated with operational outages and significantly reduce the risk associated with data loss or downtime. Additionally, the Cloud environment facilitates regular updates and patch management, ensuring that security measures stay current. This proactive maintenance helps mitigate vulnerabilities that could otherwise contribute to systemic risk. Overall, the adoption of Cloud enhances the stability and security of IT infrastructure, contributing to a reduction in systemic risks.

Altogether, the Clearing Agencies believe that the benefits afford from operating in a Cloud Infrastructure would help the Clearing Agencies reduce systemic risk.

Support the Stability of the Broader Financial System. The Clearing Agencies believe that the Cloud Proposal supports the stability of the broader financial system by enhancing efficiency, resilience, and security of the Clearing Agencies' Core C&S Systems. Cloud services would provide the Clearing Agencies with scalable and flexible infrastructure, allowing for more efficient resource allocation and cost management, which supports operational resiliency and stability. With the ability to rapidly deploy new applications and services, the Clearing Agencies would become more agile in adapting to market trends and participant and customer needs.

In terms of resilience, the Cloud Infrastructure offers distributed data storage and failover solutions, reducing the impact of localized disruptions and improving recovery capabilities. This resilience is crucial for the Clearing Agencies' Core C&S Systems to continue functioning even in the face of unforeseen events. Moreover, the CSP's strengthened security capabilities help protect sensitive data, mitigating the risk of cyberattack or data breaches that could undermine the stability of the financial system. Overall, the transition to Cloud fosters improved operational efficiency, resilience, and robust security practices, contributing to the stability of the broader financial system.

Accordingly, the proposed changes provided in this Cloud Proposal are consistent with (i) promoting robust risk management; (ii) promoting safety and soundness; (iii) reducing systemic risks; and (iv) promoting the stability of the broader financial system, all in support of the objectives and principles of Section 805(b) of the Clearing Supervision Act.[143]

B. Consistency With Rule 17ad–22(e)(17)(ii) Under the Exchange Act

Rule 17ad–22(e)(17)(ii) requires the Clearing Agencies to establish, implement, maintain, and enforce written policies and procedures reasonably designed to manage the Clearing Agencies' operational risk by ''ensuring that systems have a high degree of security, resiliency, operational reliability, and adequate, scalable capacity.'' [144]

Security. As described above and in policies and procedures confidentially filed, the Clearing Agencies have established a robust Cloud security program to manage the security of the Core C&S Systems that would be running in Cloud and to monitor the CSP's management of security of the Cloud Infrastructure that it operates. Processes are formally defined, automated to the fullest extent, repeatable with minimal variation, accessible, adhered to, and timely. The enterprise security program encompasses all of the Clearing Agencies' assets existing in the Clearing Agencies' offices, data centers, and within the Cloud Infrastructure, and IAM controls ensure least-privileged user access to applications in Cloud. The Clearing Agencies have appropriate controls in place to help ensure the security of confidential information in-transit between the Clearing Agencies' data centers and the Cloud Infrastructure, between systems within the Cloud Infrastructure, and at-rest. All network communications between the Clearing Agencies and Cloud would rely on industry standard encryption for traffic while in transit, and data at rest would be safeguarded through pervasive encryption. Finally, automated delivery of business and security capability via the use of the Infrastructure as Code, Cloud agnostic tools, and continuous integration/continuous deployment pipeline methods help ensure security controls are consistently and transparently deployed.

Resiliency and Operational Reliability. As stated above, resiliency and operational reliability of the Cloud Infrastructure is built into the system with functionality for the Clearing Agencies' Core C&S Systems to run in multiple availability zones within multiple regions. Regions are segregated from one another and are designed to minimize the possibility of a multi-region outage. The Clearing Agencies have designed their Cloud Infrastructure to have primary (hot)/secondary (warm) regions, at all times, ensuring Compute, Storage, and Network resources would be available in a new redundant region in the event of a primary region failure. As a result, the Cloud Infrastructure offers the Clearing Agencies multiple redundancies within which to run Core C&S Systems, while simultaneously restricting the effect of an incident at the CSP to the smallest footprint possible.

Scalability. As described above, since additional computing power can be launched on demand, the scalability in a Cloud computing environment is considerable and instantaneous. The Clearing Agencies could provision or de-provision Compute, Storage, and Network resources to meet demand at any given point in time. In the current on-premises environment, immediate scalability is limited by the capacity of the on-premises hardware. Additional physical servers and network equipment would be needed to scale beyond the limits of the on-premises hardware, potentially affecting the ability to quickly adapt to evolving market conditions, including spikes in trading volume.

For these reasons, the Clearing Agencies believe that the Cloud Proposal would help ensure that the Clearing Agencies' systems have a high degree of security, resiliency, operational reliability, and adequate, scalable capacity, consistent with Rule 17ad–22(e)(17)(ii) under the Exchange Act.[145]

III. Date of Effectiveness of the Advance Notice

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date the proposed change was filed with the Commission or (ii) the date any additional information requested by the Commission is received.[146] The clearing agency shall not implement the

[143] 12 U.S.C. 5464(b).

[144] 17 CFR 240.17ad–22(e)(17)(ii). The Clearing Agencies maintain several policies specifically designed to manage the risks associated with maintaining adequate levels of system functionality, confidentiality, integrity, availability, capacity, and resiliency for systems that support core clearing, risk management, and data management services.

[145] 17 CFR 240.17ad–22(e)(17)(ii).

[146] 12 U.S.C. 5465(e)(1)(G).

proposed change if the Commission has any objection to the proposed change.[147]

The clearing agency shall post notice on its website of proposed changes that are implemented. The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number DTC–2024–801 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–DTC–2024–801. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the advance notice that are filed with the Commission, and all written communications relating to the advance notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of DTC and on DTCC's website (*dtcc.com/legal/sec-rule-filings*). Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–DTC–2024–801 and should be submitted on or before September 25, 2024.

V. Date of Timing for Commission Action

Section 806(e)(1)(G) of the Clearing Supervision Act provides that DTC may implement the changes if it has not received an objection to the proposed changes within 60 days of the later of (i) the date that the Commission receives the Advance Notice or (ii) the date that any additional information requested by the Commission is received,[148] unless extended as described below.

Pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act, the Commission may extend the review period of an advance notice for an additional 60 days, if the changes proposed in the advance notice raise novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension.[149]

Here, as the Commission has not requested any additional information, the date that is 60 days after DTC filed the Advance Notice with the Commission is October 13, 2024. However, the Commission believes that the changes proposed in the Advance Notice raise novel and complex issues. The Commission finds the issues novel because DTC proposes a gradual migration of a specified set of Core C&S Systems to a public cloud infrastructure hosted by a single, third-party service provider. The Commission also finds the issues raised by the Advance Notice complex because the selection of the subset of applications proposed for migration involves a detailed governance review process that would require careful scrutiny and consideration of its associated risks. Therefore, the Commission finds it appropriate to extend the review period of the Advance Notice for an additional 60 days under Section 806(e)(1)(H) of the Clearing Supervision Act.[150]

Accordingly, the Commission, pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act,[151] extends the review period for an additional 60 days so that the Commission shall have until December 12, 2024 to issue an objection or non-objection to advance notice SR–DTC–2024–801.

All submissions should refer to File Number SR–DTC–2024–801 and should be submitted on or before September 25, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[152]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–19763 Filed 9–3–24; 8:45 am]

BILLING CODE 8011–01–P

[147] 12 U.S.C. 5465(e)(1)(F).

[148] 12 U.S.C. 5465(e)(1)(G).

[149] 12 U.S.C. 5465(e)(1)(H).

[150] *Id.*

[151] *Id.*

[152] 17 CFR 200.30–3(a)(91).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100861; File No. SR–CBOE–2024–035]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend Rule 4.3 To List and Trade Options on Bitcoin Exchange-Traded Funds

August 28, 2024.

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 August 19, 2024, Cboe Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''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

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend Rule 4.3. The text of the proposed rule change is provided in Exhibit 5.

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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 amend Rule 4.3 regarding the criteria for underlying securities. Specifically, the Exchange proposes to amend Rule 4.3, Interpretation and Policy .06(a)(4) to allow the Exchange to list and trade options on Units [3] that represent interests in the following exchange-traded products: the Fidelity Wise Origin Bitcoin Fund (the ''Fidelity Fund''), the ARK21Shares Bitcoin ETF (the ''ARK 21Shares Fund''), the Invesco Galaxy Bitcoin ETF (the ''Invesco Fund''), the Franklin Bitcoin ETF (the ''Franklin Fund''), the VanEck Bitcoin Trust (the ''VanEck Fund''), and the WisdomTree Bitcoin Fund (the ''WisdomTree Fund''), the Grayscale Bitcoin Trust BTC (the ''Grayscale Fund''), the Bitwise Bitcoin ETF (the ''Bitwise Fund''), the iShares Bitcoin Trust ETF (the ''iShares Fund''), and the Valkyrie Bitcoin Fund (the ''Valkyrie Fund'' and, collectively, the ''Bitcoin Funds''), designating them as ''Units'' deemed appropriate for options trading on the Exchange. Current Rule 4.3, Interpretation and Policy .06 provides that, subject to certain other criteria set forth in that Rule, securities deemed appropriate for options trading include Units that represent certain types of interests,[4] including interests in certain specific trusts that hold financial instruments, money market instruments, or precious metals (which are deemed commodities).

The Bitcoin Funds are Bitcoin-backed commodity ETFs structured as trusts. Similar to any Unit currently deemed appropriate for options trading under Rule 4.3, Interpretation and Policy .06, the investment objective of each Bitcoin Fund trust is for its shares to reflect the performance of Bitcoin (less the expenses of the trust's operations), offering investors an opportunity to gain exposure to Bitcoin without the complexities of Bitcoin delivery. As is the case for Units currently deemed appropriate for options trading, a Bitcoin Fund's shares represent units of fractional undivided beneficial interest in the trust, the assets of which consist principally of Bitcoin and are designed to track Bitcoin or the performance of the price of Bitcoin and offer access to the Bitcoin market.[5] The Bitcoin Funds provide investors with cost-efficient alternatives that allow a level of participation in the Bitcoin market through the securities market. The primary substantive difference between Bitcoin Funds and Units currently deemed appropriate for options trading are that Units may hold securities, certain financial instruments, and specified precious metals (which are deemed commodities), while Bitcoin Funds hold Bitcoin (which is also deemed a commodity).

The Exchange believes the Bitcoin Funds satisfy the Exchange's initial listing standards for Units on which the Exchange may list options. Specifically, the Bitcoin Funds satisfy the initial listing standards set forth in Rule 4.3, Interpretation and Policy .06(b), as is the case for other Units on which the Exchange lists options (including trusts that hold commodities). Rule 4.3, Interpretation and Policy .06 requires that Units must either (1) meet the criteria and standards set forth in Rule 4.3, Interpretation and Policy .01(a),[6] or (2) be available for creation or redemption each business day from or through the issuer in cash or in kind at a price related to net asset value, and the issuer must be obligated to issue Units in a specified aggregate number even if some or all of the investment assets required to be deposited have not been received by the issuer, subject to the condition that the person obligated to deposit the investments has undertaken to deliver the investment assets as soon as possible and such undertaking is secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the issuer, as provided in the respective prospectus. The Bitcoin Funds satisfy Rule 4.3, Interpretation and Policy .06(b)(2), as they are all subject to this creation and redemption process.

While not required by the Rules for purposes of options listings, the majority of the Bitcoin Funds satisfy the criteria and guidelines set forth in Rule 4.3, Interpretation and Policy .01. Pursuant to Rule 4.3(a), a security (which includes a Unit) on which options may be listed and traded on the Exchange must be duly registered (with the Commission) and be an NMS stock (as defined in Rule 600 of Regulation NMS under the Securities Exchange Act of 1934, as amended (the ''Act'')), and be characterized by a substantial number of outstanding shares that are widely held and actively traded.[7] Each of the Bitcoin Funds is an NMS Stock as defined in Rule 600 of Regulation NMS under the Act.[8] The Exchange

[3] Rule 1.1 defines a ''Unit'' (which may also be referred to as an exchange-traded fund (''ETF'')) as a share or other security traded on a national securities exchange and defined as an NMS stock as set forth in Rule 4.3.

[4] *See* Rule 4.3, Interpretation and Policy .06(a), which permits options trading on Units that represent (1) interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that hold portfolios of securities and/or financial instruments including, but not limited to, stock index futures contracts, options on futures, options on securities and indexes, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse purchase agreements (the ''Financial Instruments''), and money market instruments, including, but no limited to, U.S. government securities and repurchase agreements (the ''Money Market Instruments'') comprising or otherwise based on or representing investments in indexes or portfolios of securities and/or Financial Instruments and Money Market Instruments (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities and/or Financial Instruments and Money Market Instruments); (2) interests in a trust or similar entity that holds a specified non-U.S. currency deposited with the trust or similar entity when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency and pays the beneficial owner interest and other distributions on deposited non-U.S. currency, if any, declared and paid by the trust (''Currency Trust Shares''); (3) commodity pool interests principally engaged, directly or indirectly, in holding and/or managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or non-U.S. currency (''Commodity Pool Units''); (4) interests in the SPDR Gold Trust, the iShares COMEX Gold Trust, the iShares Silver Trust, the Aberdeen Standard Physical Silver Trust, the Aberdeen Standard Physical Gold Trust, the Aberdeen Standard Physical Palladium Trust, the Aberdeen Standard Physical Platinum Trust, the Sprott Physical Gold Trust or the Goldman Sachs Physical Gold ETF; or (5) an interest in a registered investment company (''Investment Company'') organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies, which is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value (''NAV''), and when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined NAV (''Managed Fund Share'').

[5] The trust may include minimal cash.

[6] Rule 4.3, Interpretation and Policy .01 provides for guidelines to be by the Exchange when evaluating potential underlying securities for Exchange option transactions.

[7] The criteria and guidelines for a security to be considered widely held and actively traded are set forth in Rule 4.3, Interpretation and Policy .01, subject to exceptions.

[8] An ''NMS stock'' means any NMS security other than an option, and an ''NMS security'' means any

Continued

believes each Bitcoin Fund is characterized by a substantial number of outstanding shares that are widely held and actively traded.

As of August 7, 2024, the Bitcoin Funds had the following number of shares outstanding:

Bitcoin fund	Shares outstanding
Fidelity Fund	201,100,100
ARK 21Shares Fund	45,495,000
Invesco Fund	7,965,000
Franklin Fund	11,100,000
VanEck Fund	9,600,000
WisdomTree Fund	1,420,000
Grayscale Fund	296,930,100
Bitwise Fund	69,910,000
iShares Fund	606,120,000
Valkyrie Fund	31,335,000

All but one Bitcoin Fund had more than 7,000,000 shares outstanding, which is the minimum number of shares of a corporate stock that the Exchange generally requires to list options on that stock pursuant to Rule 4.3, Interpretation and Policy .01(a)(1). However, the Exchange believes shares outstanding (*i.e.,* free float [9]), while commonly used to determine investable capacities of corporate stocks, the figure has little utility with respect to ETFs due to the market structure of ETFs. Proofing of ETF baskets, in addition to the efficiency of creation/redemption mechanisms, decouple concepts of ''floating'' ETF shares against the impacts of ETF liquidity to the liquidity of ETF constituents. While ETF market-makers may often limit the amount of floating ETF shares, primary market mechanisms enable virtually limitless capacity to create and redeem ETF shares on a daily basis.[10] As evidenced during their time in market since beginning trading in January of 2024, the gross value of daily shares created or redeemed for each Bitcoin Fund exceeds the assets under management (''AUM'') of each fund as of August 7, 2024, which was as follows:

Bitcoin fund	AUM
Fidelity Fund	10,240,420,000
ARK 21Shares Fund	2,887,759,000
Invesco Fund	405,628,500
Franklin Fund	339,882,800
VanEck Fund	617,779,500
WisdomTree Fund	81,690,950
Grayscale Fund	20,117,590,000
Bitwise Fund	2,266,633,000
iShares Fund	18,274,490,000
Valkyrie Fund	527,831,700

As a result, the Exchange believes this demonstrates that each Bitcoin Fund is characterized by a substantial number of outstanding shares.

Further, the below table contains information regarding the number of beneficial holders of certain Bitcoin Funds as of the specified dates:

Bitcoin fund	Beneficial holders	Date
Fidelity Fund	279,656	6/27/2024
ARK 21Shares Fund	69,425	6/26/2024
Invesco Fund	13,420	6/25/2024
Franklin Fund	12,224	6/27/2024
VanEck Fund	19,061	6/28/2024
WisdomTree Fund	3,509	7/2/2024

As this table shows, each of these six Bitcoin Funds has more than 2,000 beneficial holders, which is the minimum number of holders the Exchange generally requires for corporate stock in order to list options on that stock pursuant to Rule 4.3, Interpretation and Policy .01(a)(2). The Exchange does not have access to the number of beneficial holders of the other Bitcoin Funds. However, given those other four funds have significant trading volumes similar to the trading volumes of the Bitcoin Funds listed in the table above (as discussed below), the Exchange believes it is reasonable to expect that shares of all of the Bitcoin Funds are characterized by a substantial number of outstanding shares that are widely held.

The Exchange also believes each Bitcoin Fund is characterized by a substantial number of outstanding shares that are actively traded. As of August 7, 2024, the total trading volume (by shares and notional) for each fund since they began trading on January 11, 2024 and the average daily volume (''ADV'') over the 30-day period of July 9 through August 7, 2024 for each Bitcoin Fund was as follows:

Bitcoin fund	Trading volume (shares)	Trading volume (notional $)	ADV (shares)
Fidelity Fund	1,490,261,825	78,936,647,100.20	6,014,335.50
ARK 21Shares Fund	413,159,977	24,787,148,013.81	1,893,335.00
Invesco Fund	78,609,595	4,578,462,838.89	299,372.94
Franklin Fund	58,954,975	2,063,321,834.88	338,901.56
VanEck Fund	59,991,039	4,195,401,686.66	265,605.84
WisdomTree Fund	39,977,866	2,546,889,570.58	209,501.33
Grayscale Fund	2,074,101,826	95,371,791,353.17	4,794,193.00
Bitwise Fund	455,817,104	14,926,192,896.43	2,250,989.25
iShares Fund	5,209,443,211	185,451,676,432.50	28,406,964.00
Valkyrie Fund	100,580,329	1,762,278,782.37	349,587.41

security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan (or an effective national market system plan for reporting transaction in listed options). *See* 17 CFR 242.600(b)(64) (definition of ''NMS security'') and (65) (definition of ''NMS stock'').

[9] All outstanding ETF shares are considered free float, as there are no restricted ETF shares or shares held by insiders, as is the case with respect to corporate stocks.

[10] This is the primary reasoning for why the Exchange may list options on ETFs as long as they are subject to the creation and redemption process and generally do not need to satisfy the criteria set forth in Interpretation and Policy .01.

As demonstrated above, despite the Bitcoin Funds have been trading for approximately seven months, the trading volume for each is substantially higher than 2,400,000 shares (between 16 and 620 times that amount), which is the minimum 12-month volume the Exchange generally requires for a security in order to list options on that security as set forth in Rule 4.3, Interpretation and Policy .01. Additionally, as of August 7, 2024, the six-month ADV for each Bitcoin Fund is in the top 20% of all ETFs that are currently trading. The Exchange believes this data demonstrates each Bitcoin Fund is characterized by a substantial number of outstanding shares that are actively traded.

Options on Bitcoin Funds will be subject to the Exchange's continued listing standards set forth in Rule 4.4, Interpretation and Policy .06 for Units deemed appropriate for options trading pursuant to Rule 4.3, Interpretation and Policy .06. Specifically, Rule 4.4, Interpretation and Policy .06 provides that Units that were initially approved for options trading pursuant to Rule 4.3, Interpretation and Policy .06 shall be deemed not to meet the requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering that such Units, if the Units cease to be an NMS stock or the Units are halted from trading in their primary market. Additionally, options on Units may be subject to the suspension of opening transactions in any of the following circumstances: (1) in the case of options covering Units approved for trading under Rule 4.3, Interpretation and Policy .06(b)(1), in accordance with the terms of paragraphs (a), (b), and (c) of Rule 4.4, Interpretation and Policy .01; (2) in the case of options covering Units approved for trading under Rule 4.3 Interpretation and Policy .06(b)(2) (as is the case for the Bitcoin Funds), following the initial twelve-month period beginning upon the commencement of trading in the Units on a national securities exchange and are defined as an NMS stock, there are fewer than 50 record and/or beneficial holders of such Units for 30 or more consecutive trading days; (3) the value of the index or portfolio of securities, non-U.S. currency, or portfolio of commodities including commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or financial instruments and money market instruments on which the Units are based is no longer calculated or available; or (4) such other event shall occur or condition exist that in the opinion of the Exchange makes further dealing in such options on the Exchange inadvisable.

Options on each Bitcoin Fund will be physically settled contracts with American-style exercise.[11] Consistent with current Rule 4.5, which governs the opening of options series on a specific underlying security (including Units), the Exchange will open at least one expiration month for options on each Bitcoin Fund [12] at the commencement of trading on the Exchange and may also list series of options on a Bitcoin Fund for trading on a weekly,[13] monthly,[14] or quarterly [15] basis. The Exchange may also list long-term equity option series (''LEAPS'') that expire from 12 to 180 months from the time they are listed.[16]

Pursuant to Rule 4.5, Interpretation and Policy .07, which governs strike prices of series of options on Units, the interval of strikes prices for series of options Bitcoin Funds will be $1 or greater when the strike price is $200 or less and $5 or greater where the strike price is over $200.[17] Additionally, the Exchange may list series of options pursuant to the $1 Strike Price Interval Program,[18] the $0.50 Strike Program,[19] the $2.50 Strike Price Program,[20] and the $5 Strike Program.[21] Pursuant to Rule 5.4, where the price of a series of a Bitcoin Fund option is less than $3.00, the minimum increment will be $0.05, and where the price is $3.00 or higher, the minimum increment will be $0.10.[22] Any and all new series of Bitcoin Fund options that the Exchange lists will be consistent and comply with the expirations, strike prices, and minimum increments set forth in Rules 4.5 and 5.4, as applicable.

Bitcoin Fund options will trade in the same manner as any other Unit options on the Exchange. The Exchange Rules that currently apply to the listing and trading of all Unit options on the Exchange, including, for example, Rules that govern listing criteria, expiration and exercise prices, minimum increments, position and exercise limits, margin requirements, customer accounts and trading halt procedures will apply to the listing and trading of Bitcoin Funds on the Exchange in the same manner as they apply to other options on all other Units that are listed and traded on the Exchange, including the precious-metal backed commodity Units already deemed appropriate for options trading on the Exchange pursuant to current Rule 4.3, Interpretation and Policy .06(a)(4).

Position and exercise limits for options on Units, including options on Bitcoin Funds, are determined pursuant to Rules 8.30 and 8.42, respectively. Position and exercise limits for Unit options vary according to the number of outstanding shares and the trading volumes of the underlying Unit over the past six months, where the largest in capitalization and the most frequently traded Units have an option position and exercise limit of 250,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market; and smaller capitalization Units have position and exercise limits of 200,000, 75,000, 50,000 or 25,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side

[11] *See* Rule 4.2, which provides that the rights and obligations of holders and writers are set forth in the Rules of the Options Clearing Corporation (''OCC''); and Equity Options Product Specifications (January 3, 2024), available at Equity Options Specifications (cboe.com); *see also* OCC Rules, Chapters VIII (which governs exercise and assignment) and Chapter IX (which governs the discharge of delivery and payment obligations arising out of the exercise of physically settled stock option contracts).

[12] *See* Rule 4.5(b). The monthly expirations are subject to certain listing criteria for underlying securities described within Rule 4.3. Monthly listings expire the third Friday of the month. The term ''expiration date'' (unless separately defined elsewhere in the OCC By-Laws), when used in respect of an option contract (subject to certain exceptions), means the third Friday of the expiration month of such option contract, or if such Friday is a day on which the exchange on which such option is listed is not open for business, the preceding day on which such exchange is open for business. *See* OCC By-Laws Article I, Section 1. Pursuant to Rule 4.5(c), additional series of options of the same class may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying stock moves more than five strike prices from the initial exercise price or prices. New series of options on an individual stock may be added until the beginning of the month in which the options contract will expire. Due to unusual market conditions, the Exchange, in its discretion, may add a new series of options on an individual stock until the close of trading on the business day prior to expiration.

[13] *See* Rule 4.5(d).

[14] *See* Rule 4.5(g).

[15] *See* Rule 4.5(e).

[16] *See* Rule 4.5(f).

[17] The Exchange notes that for options listed pursuant to the Short Term Option Series Program, the Monthly Options Series Program, and the Quarterly Options Series Program, Rules 4.5(d), (e), and (g) specifically sets forth intervals between strike prices on Quarterly Options Series, Short Term Option Series, and Monthly Options Series, respectively.

[18] *See* Rule 4.5, Interpretation and Policy .01(a).

[19] *See* Rule 4.5, Interpretation and Policy .01(b).

[20] *See* Rule 4.5, Interpretation and Policy .04.

[21] *See* Rule 4.5, Interpretation and Policy .01(f).

[22] If options on a Bitcoin Fund are eligible to participate in the Penny Interval Program, the minimum increment will be $0.01 for series with a price below $3.00 and $0.05 for series with a price at or above $3.00. *See* 5.4(d) (which describes the requirements for the Penny Interval Program).

of the market.[23] The Exchange further notes that Rule 10.3, which governs margin requirements applicable to the trading of all options on the Exchange, including options on Units, will also apply to the trading of Bitcoin Fund options.

The Exchange represents that the same surveillance procedures applicable to all other options on Units currently listed and traded on the Exchange will apply to options on Bitcoin Funds, and that it has the necessary systems capacity to support the new option series. The Exchange believes that its existing surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior which might potentially arise from listing and trading Unit options, including precious metal-commodity backed Unit options, as proposed. Also, the Exchange may obtain information from CME Group Inc.'s designated contract markets that are members of the Intermarket Surveillance Group related to any financial instrument that is based, in whole or in part, upon an interest in or performance of Bitcoin, as applicable.

The Exchange has also analyzed its capacity and represents that it believes the Exchange and OPRA have the necessary systems capacity to handle the additional traffic associated with the listing of new series that may result from the introduction of options on Bitcoin Funds up to the number of expirations currently permissible under the Rules. Because the proposal is limited to Units on a single commodity, the Exchange believes any additional traffic that may be generated from the introduction of Bitcoin Fund options will be manageable.

The Exchange believes that offering options on Bitcoin Funds will benefit investors by providing them with an additional, relatively lower cost investing tool to gain exposure to the price of Bitcoin and hedging vehicle to meet their investment needs in connection with Bitcoin-related products and positions. The Exchange expects investors will transact in options on Bitcoin Funds in the unregulated over-the-counter (''OTC'') options market (if the Commission approves Bitcoin Funds for exchange-trading),[24] but may prefer to trade such options in a listed environment to receive the benefits of trading listing options, including (1) enhanced efficiency in initiating and closing out position; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of all listed options. The Exchange believes that listing Bitcoin Fund options may cause investors to bring this liquidity to the Exchange, would increase market transparency and enhance the process of price discovery conducted on the Exchange through increased order flow. The Units that hold financial instruments, money market instruments, or precious metal commodities on which the Exchange may already list and trade options are trusts structured in substantially the same manner as Bitcoin Funds and essentially offer the same objectives and benefits to investors, just with respect to different assets. The Exchange notes that it has not identified any issues with the continued listing and trading of any Unit options, including Units that hold commodities (*i.e.,* precious metals) that it currently lists and trades on the Exchange.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[25] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[26] requirements that the rules of an exchange be 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[27] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposal to list and trade options on Bitcoin Funds will remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors because offering options on Bitcoin Funds will provide investors with an opportunity to realize the benefits of utilizing options on a Bitcoin Fund, including cost efficiencies and increased hedging strategies. The Exchange believes that offering Bitcoin Fund options will benefit investors by providing them with a relatively lower-cost risk management tool, which will allow them to manage their positions and associated risk in their portfolios more easily in connection with exposure to the price of Bitcoin and with Bitcoin-related products and positions. Additionally, the Exchange's offering of Bitcoin Fund options will provide investors with the ability to transact in such options in a listed market environment as opposed to in the unregulated OTC options market, which would increase market transparency and enhance the process of price discovery conducted on the Exchange through increased order flow to the benefit of all investors. The Exchange also notes that it already lists options on other commodity-based Units,[28] which, as described above, are trusts structured in substantially the same manner as Bitcoin Funds and essentially offer the same objectives and benefits to investors, just with respect to a different commodity (*i.e.,* Bitcoin rather than precious metals) and for which the Exchange has not identified any issues with the continued listing and trading of commodity-backed Unit options it currently lists for trading.

The Exchange also believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, because it is consistent with current Exchange Rules previously filed with the Commission. Options on Bitcoin Funds satisfy the initial listing standards and continued listing standards currently in the Exchange Rules applicable to options on all Units, including Units that hold other commodities already deemed appropriate for options trading on the Exchange. Additionally, as demonstrated above, each Bitcoin Fund is characterized by a substantial number of shares that are widely held and actively traded. Bitcoin Fund options will trade in the same manner as any other Unit options—the same Exchange Rules that currently govern the listing and trading of all Unit options, including permissible expirations, strike prices and minimum increments, and

[23] As Bitcoin Funds do not currently trade, options on Bitcoin Funds would be subject to the 25,000 option contract limit.

[24] The Exchange understands from customers that investors have historically transacted in options on Units in the OTC options market if such options were not available for trading in a listed environment.

[25] 15 U.S.C. 78f(b).

[26] 15 U.S.C. 78f(b)(5).

[27] *Id.*

[28] *See* Rule 4.3, Interpretation and Policy .06(a)(4).

applicable position and exercise limits and margin requirements, will govern the listing and trading of options on Bitcoin Funds in the same manner.

The Exchange believes the proposed position and exercise limits for the Bitcoin Fund options are consistent with the Exchange Act, will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, because these position and exercise limits are designed to address potential manipulative schemes and adverse market impacts surrounding the use of options, such as disrupting the market in the security underlying the options. The proposed position and exercise limits are the same limits that apply to other ETF options, including other commodity ETF options. The Exchange believes proposed position and exercise limits balance the liquidity provisioning in the market against the prevention of manipulation, as they currently do for other equity options (including commodity ETF options). The Exchange believes the available supply in the markets of Bitcoin is not relevant when establishing position limits for options on the Bitcoin Funds, as what is held by an ETF has historically not been a relevant factor considered by the Commission when it has considered rule filings to list options on ETFS, including commodity ETFs. The Commission has previously stated:

> Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. In addition, such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.[29]

As the Commission itself notes, the position limits are ''intended to prevent the establishment of options positions that can be used . . . to manipulate or disrupt the *underlying market*'' (emphasis added). When the Commission previously approved Rules to list options on other commodity ETFs, the Commission did not require consideration of whether the available supply of those commodities should be considered when the Exchange established those position limits.[30] The Exchange notes that position limits in the Exchange's Rules at that time were the same as they are today as set forth in Rule 8.30 (and as proposed to be applicable to options on the Bitcoin Funds).

The Exchange represents that it has the necessary systems capacity to support the new Bitcoin Fund options. The Exchange believes that its existing surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior which might arise from listing and trading Unit options, including Bitcoin Fund options.

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 Exchange 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 as Bitcoin Funds would need to satisfy the initial listing standards set forth in the Exchange Rules in the same manner as any other Unit before the Exchange could list options on them. Additionally, Bitcoin Fund options will be equally available to all market participants who wish to trade such options. The Exchange Rules currently applicable to the listing and trading of options on Units on the Exchange will apply in the same manner to the listing and trading of all options on Bitcoin Funds. Also, and as stated above, the Exchange already lists options on other commodity-based Units.[31]

The Exchange does not believe that the proposal to list and trade options on Bitcoin Funds will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the extent that the advent of Bitcoin Fund options trading on the Exchange may make the Exchange a more attractive marketplace to market participants at other exchanges, such market participants are free to elect to become market participants on the Exchange. Additionally, other options exchanges are free to amend their listing rules, as applicable, to permit them to list and trade options on Bitcoin Funds. The Exchange notes that listing and trading Bitcoin Fund options on the Exchange will subject such options to transparent exchange-based rules as well as price discovery and liquidity, as opposed to alternatively trading such options in the OTC market.

The Exchange believes that the proposed rule change may relieve any burden on, or otherwise promote, competition as it is designed to increase competition for order flow on the Exchange in a manner that is beneficial to investors by providing them with a lower-cost option to hedge their investment portfolios. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues that offer similar products. Ultimately, the Exchange believes that offering Bitcoin Fund options for trading on the Exchange will promote competition by providing investors with an additional, relatively low-cost means to hedge their portfolios and meet their investment needs in connection with Bitcoin prices and Bitcoin-related products and positions on a listed options exchange.

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

The Exchange neither solicited nor received written comments on the proposed rule change.

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 Exchange consents, the Commission will:

A. by order approve or disapprove such 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.

[29] *See* Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR–CBOE–1997–11).

[30] *See, e.g.,* Securities Exchange Act Release No. 57894 (May 30, 2008), 73 FR 32061 (June 5, 2008) (SR–CBOE–2005–11) (approval order in which the Commission stated that the ''listing and trading of Gold Trust Options will be subject to the exchanges' rules pertaining to position and exercise limits and margin'').

[31] *See* Rule 4.3, Interpretation and Policy .06(a)(4).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CBOE–2024–035 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–2024–035. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CBOE–2024–035 and should be submitted on or before September 25, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–19771 Filed 9–3–24; 8:45 am]

BILLING CODE 8011–01–P

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100858; File No. SR–NASDAQ–2024–048]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 3, Sections 8, 15 and 25

August 28, 2024.

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 August 20, 2024, 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, 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 amend The Nasdaq Options Market LLC (''NOM'') Rules at Options 3, Sections 8, 15 and 25.

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

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

NOM proposes to amend Options 3, Section 8, Opening and Halt Cross, and Options 8 [sic], Section 25, Anonymity, to permit trade reports to reveal certain additional information concerning contra parties. The Exchange also proposes an amendment to Options 3, Section 15, Risk Protections. Each change will be described below.

Anonymity

Today, transaction reports produced by the System indicate the details of the transactions, but do not reveal ''contra party identities'' pursuant to Options 3, Section 25(a). In limited circumstances, NOM will reveal a Participant's identity as described in Options 3, Section 25(b).[3]

Background

Today, NOM does not display any market participant capacity information[4] prior to execution, nor does NOM provide transaction reports that include contra party identities.[5] For example, NOM does not reveal the market capacity in its NOM Best of Nasdaq Options (''BONO'') feed.[6] Additionally, NOM provides a Clearing Trade Interface[7] message for post-trade

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Pursuant to Options 3, Section 25(b), NOM will reveal a Participant's identity: (1) when a registered clearing agency ceases to act for a participant, or the Participant's clearing firm, and the registered clearing agency determines not to guarantee the settlement of the Participant's trades; (2) for regulatory purposes or to comply with an order of an arbitrator or court; (3) if both Participants to the transaction consent; and (4) Unless otherwise instructed by a Member, NOM will reveal to a member, no later than the end of the day on the date an anonymous trade was executed, when the member's Order has been decremented by another Order submitted by that same member.

[4] A market participant capacity is a code that correlates to the capacity of an order at The Options Clearing Corporation (''OCC'').

[5] The contra party identity is the mnemonic for the contra side of the trade. The term ''mnemonic'' means an acronym comprised of letters and/or numbers assigned to Participants pursuant to Options 1, Section 1(a)(25). A Participant account may be associated with multiple mnemonics. A house account is a number provided by the Exchange to identify members.

[6] Pursuant to Options 3, Section 23(a)(2), Best of Nasdaq Options (BONO) is a data feed that provides the NOM Best Bid and Offer and last sale information for trades executed on NOM. The data provided for each options series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on NOM and identifies if the series is available for closing transactions only.

[7] Pursuant to NOM Options 3, Section 23(b)(1), the Clearing Trade Interface (''CTI'') is a real-time clearing trade update message that is sent to a member after an execution has occurred and contains trade details specific to that member. The information includes, among other things, the following: (i) The Clearing Member Trade Agreement or ''CMTA'' or ''OCC'' number; (ii) Exchange badge or house number; (iii) the Exchange internal firm identifier; (iv) an indicator which will distinguish electronic and non-electronically delivered orders; (v) liquidity indicators and transaction type for billing purposes; and (vi) capacity.

reporting and a Trade Details report [8] that do not display contra party identities.

Unlike NOM, other options exchanges are not anonymous and display market participant capacity prior to execution and provide transaction reports with contra party identities.[9] For example, Phlx displays market participants capacity information in its PHLX Orders feed,[10] and MIAX provides a Clearing Trade Drop report [11] with the contra party MPID displayed.

With this amendment, NOM's CTI would provide the house account of the contra party and NOM's Trade Detail report would provide the mnemonic, firm name, and other relevant clearing information of the contra party. These changes would be identical to the CTI and Trade Detail Report contra party information provided by Phlx, ISE, GEMX and MRX and analogous to the contra party information that MIAX provides its members.

Ovation

In terms of workflow, today, NOM's System executes an order, the trade information for that order is sent to OCC and includes contra party identities. OCC then disseminates trade messages that contain a matched trade per record with both buy and sell sides of an order, also revealing contra party identities.

OCC announced that it will amend its platform, with project Ovation, in 2025.[12] Among other changes, OCC will amend trade reporting and will split the trade into two trade messages; one for the buyer and one for the seller. As a result of this change, OCC Clearing Members will only receive the clearing message relevant to their side(s) of the trade and exchanges will receive both messages and will need to link each trade by clearing sequence numbers, exchange and business date.[13] Therefore, NOM Participants will no longer receive trade message information from OCC that reveals contra party identities. NOM Participants have requested that the Exchange offer contra party identities, similar to other exchanges, on its post-trade reporting because this information is essential information for reconciliations when there are errors or clearing breaks especially on an expiring option or option with a pending corporate action. Additionally, contra party identities are important in the event of an obvious or catastrophic error. Without this information, a representing broker dealer would be less able to input trade detail to the Exchange in a timely manner.

Proposal

At this time, at the request of several NOM Participants, NOM proposes to amend Options 3, Section 25, Anonymity, to permit the Exchange to reveal contra party identities, post-trade, to provide NOM Participants with information that OCC provides today and that other options exchanges also provide today.[14] Specifically, the Exchange proposes to amend Options 3, Section 25(a) which currently states, ''The transaction reports produced by the System will indicate the details of the transactions and shall not reveal contra party identities.'' As amended, Options 3, Section 25(a) would provide, ''Orders and quotes entered into the System will be displayed anonymously and, as such, will trade anonymously. Transaction reports produced by the System (*i.e.,* the Clearing Trade Interface and the Trade Details report) will indicate the details of the transactions, and will include contra party identities.'' The Exchange also proposes to amend Options 3, Section 8, Opening and Halt Cross, to remove the phrase ''trade reported anonymously'' as that language would no longer be relevant with the amendment.

Today, options trades on NOM are not completely anonymous through settlement as they are submitted by the Exchange to OCC with contra-side OCC member information. The Exchange believes that this amendment will continue to provide Participants with anonymity when transacting options orders on NOM, while also providing Participants with post-trade contra party identities as a replacement for the data that OCC is providing today and will no longer be provided with OCC's technology migration. NOM's post trade reporting (*i.e.,* the Clearing Trade Interface and the Trade Details report) would provide information identical to or analogous to other options exchanges that display contra party identities.[15]

Acceptable Trade Range

The Exchange proposes to amend Options 3, Section 15(b)(1), which describes the Acceptable Trade Range. Today, NOM's System calculates an Acceptable Trade Range to limit the range of prices at which an order/quote will be allowed to execute. The Acceptable Trade Range is calculated by taking the reference price, plus or minus a value to be determined by the Exchange. (*i.e.,* the reference price − (x) for sell orders/quotes and the reference price + (x) for buy orders/quotes). Upon receipt of a new order/quote, the reference price is the NBB or internal best bid for sell orders/quotes and the NBO or internal best offer for buy orders/quotes or the last price at which the order/quote is posted whichever is higher for a buy order/quote or lower for a sell order/quote.

If an order/quote reaches the outer limit of the Acceptable Trade Range (the ''Threshold Price'') without being fully executed, it will be posted at the Threshold Price for a brief period, not to exceed one second (''Posting Period''), to allow more liquidity to be collected. Upon posting, either the current Threshold Price of the order/quote or an updated NBB for buy orders/quotes or the NBO for sell orders/quotes (whichever is higher for a buy order/quote lower for a sell order/quote) then becomes the reference price for calculating a new Acceptable Trade Range. If the order/quote remains unexecuted after the Posting Period, a New Acceptable Trade Range will be calculated and the order/quote will execute, route, or post up to the new Acceptable Trade Range Threshold Price. This process will repeat until either (i) the order/quote is executed, cancelled, or posted at its limit price or (ii) the order/quote has been subject to a configurable number of instances of the Acceptable Trade Range as determined by the Exchange (in which case it will be returned).

Today, the System permits a NOM Participant to request that their order be

[8] The Trade Details report is a report containing all of a member's executed trades along with all relevant trade information, and clearing information.

[9] *See e.g.* Nasdaq Phlx, LLC (''Phlx''), Nasdaq ISE, LLC (''ISE''), Nasdaq GEMX, LLC (''GEMX'') and Nasdaq MRX, LLC (''MRX'') and MIAX.

[10] Pursuant to Options 3, Section 23(a)(2), PHLX Orders is a real-time full Limit Order book data feed that provides pricing information for orders on the PHLX Order book for displayed order types as well as market participant capacity. PHLX Orders is currently provided as part of the TOPO Plus Orders data product. PHLX Orders provides real-time information to enable users to keep track of the single and complex order book(s). The data provided for each options series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, leg information on complex strategies and whether the option series is available for trading on Phlx and identifies if the series is available for closing transactions only. The feed also provides auction and exposure notifications and order imbalances on opening/reopening (size of matched contracts and size of the imbalance).

[11] For example, *see* Miami International Securities Exchange LLC (''MIAX'') Clearing Trade Drop specifications at: *https://www.miaxglobal.com/sites/default/files/page-files/Clearing_Trade_Drop_CTD_v2.6c.pdf.*

[12] *See https://www.theocc.com/company-information/occ-transformation.*

[13] *See https://www.theocc.com/getmedia/0db1ac5e-ca85-43b6-a109-4354a572d912/Ovation-Platform-Changes-and-Enhancements_Trade-Sources_Jan2024.pdf.*

[14] *See supra* note 9.

[15] *See supra* note 9.

returned to them if posted at the outer limit of the Acceptable Trade Range instead of executing, routing or posting to the order book. This functionality, which is not specified in the current rule, provides a NOM Participant with additional choice as to the price at which their order could execute. The Exchange proposes to reflect this existing functionality in Options 3, Section 15(b)(1)(A) to make clear that the choice exists to have an order returned. Today, Phlx offers this functionality.[16]

Implementation

The Exchange proposes to implement the amendments to Options 3, Sections 8 and 25 on or before March 31, 2025. The Exchange would announce the date of implementation in an Options Trader Alert ahead of the implementation date. No implementation is necessary for the change to the Acceptable Trade Range rule.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Section 6(b)(5) of the Act,[18] 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.

Anonymity

NOM's proposal to amend Options 3, Sections 8 and 25 to reveal contra party identities post-trade promotes just and equitable principles of trade, and removes impediments to and perfect the mechanism of a free and open market and a national market system because it would provide NOM Participants with identical or analogous post trade information (*i.e.* the Clearing Trade Interface and the Trade Details report) that OCC and other options exchanges[19] provide these market participants today. NOM Participants have requested that the Exchange offer contra party identities, similar to other exchanges, on its post-trade reporting because this information is essential information for reconciliations when there are errors or clearing breaks especially on an expiring option or option with a pending corporate action. Additionally, contra party identities are important in the event of an obvious or catastrophic error. Without this information, a representing broker dealer would be less able to input trade detail to the Exchange in a timely manner.

Today, options trades are not completely anonymous through settlement as they are submitted by the Exchange to OCC with contra-side identities. This amendment will continue to provide NOM Participants with anonymity when transacting options orders on NOM pre-trade, while also providing Participants with post-trade contra party identities as a replacement for the data that OCC is providing today and will no longer provide with OCC's technology migration.

Acceptable Trade Range

The Exchange's proposal to amend Options 3, Section 15(b)(1), which describes the Acceptable Trade Range, to note that, ''. . . unless a Participants has requested that their orders be returned if posted at the outer limit of the Acceptable Trade Range (in which case, the order will be returned) . . .'' protects investors and the public interest because it permits NOM Participants to elect to have their orders returned to them if posted at the outer limit of the Acceptable Trade Range instead of executing, routing or posting to the order book. This functionality provides Participants with additional choice as to the price at which their order could execute. The Acceptable Trade Range functionality is intended to reduce the negative impacts of sudden, unanticipated volatility in individual options, and serve to preserve an orderly market in a transparent and uniform manner, enhance the price-discovery process, increase overall market confidence, and promote fair and orderly markets and the protection of investors. The Exchange proposes to reflect this existing functionality in Options 3, Section 15(b)(1)(A) to make clear that the option exists to have an order returned. Today, Phlx offers this functionality.[20]

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.

Anonymity

The Exchange's proposal does not impose an undue burden on intramarket competition because all NOM Participants currently have the ability to view contra party identities at OCC once the trade executes. With this amendment, all Participants will be able to continue to have the ability to view contra party identities through NOM's post trade reporting. Further, to the extent that NOM fails to provide equivalent post trade information to its Participants as other options exchanges provide today, it would be at a competitive disadvantage as market participants have expressed the importance to receiving this information.

The Exchange's proposal does not impose an undue burden on intermarket competition because other options exchanges[21] provide contra party identities today post-trade. Other options markets could also adopt an anonymity rule similar to NOM.

Acceptable Trade Range

The Exchange's proposal to amend Options 8 [sic], Section 15(b)(1) does not impose an undue burden on intramarket competition because all Participants would have the ability to have their orders returned to them.

The Exchange's proposal to amend Options 3, Section 15(b)(1) does not impose an undue burden on intermarket competition because other options exchanges could adopt similar functionality.

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

Because the foregoing 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

[16] *See* Phlx Options 3, Section 15(b)(1)(B).

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] *See supra* note 9.

[20] *See* Phlx Options 3, Section 15(b)(1)(B).

[21] *See supra* note 9.

become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [22] and subparagraph (f)(6) of Rule 19b–4 thereunder.[23]

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 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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–NASDAQ–2024–048 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–NASDAQ–2024–048. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NASDAQ–2024–048 and should be submitted on or before September 25, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–19768 Filed 9–3–24; 8:45 am]

BILLING CODE 8011–01–P

[22] 15 U.S.C. 78s(b)(3)(A)(iii).

[23] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Publishing in the FR of September 3, 2024.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Thursday, September 5, 2024, at 2:00 p.m.

CHANGES IN THE MEETING: The Closed Meeting scheduled for Thursday, September 5, 2024, at 2:00 p.m., has been changed to Thursday, September 5, 2024, at 1:00 p.m.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

(Authority: 5 U.S.C. 552b)

Dated: August 30, 2024.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–20050 Filed 8–30–24; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100851; File No. SR–NSCC–2024–801]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Extension of Review Period of Advance Notice To Host Certain Core Clearance and Settlement Systems in a Public Cloud

August 28, 2024.

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010 (''Clearing Supervision Act'') [1] and Rule 19b–4(n)(1)(i) [2] under the Securities Exchange Act of 1934 (''Act''),[3] notice is hereby given that on August 14, 2024, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') an advance notice as described in Items I, II and III below, which Items have been prepared primarily by the clearing agency. The Commission is publishing this notice to solicit comments on the advance notice from interested persons and to extend the review period of the advance notice.

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

NSCC files this advance notice seeking no objection to host a specified set of core clearance, settlement, and risk applications, including any Regulation Systems Compliance and Integrity (''Reg. SCI'') systems and Critical SCI systems,[4] (''Core C&S Systems'') on an on-demand network of configurable information technology resources running on a public cloud infrastructure (''Cloud'' or ''Cloud Infrastructure'') hosted by a single, third-party service provider (''Cloud Service Provider'' or ''CSP'') (altogether, the ''Cloud Proposal''), as described in greater detail below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the advance notice and discussed any comments it received on the advance notice. The text of these statements may

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] 15 U.S.C. 78a *et seq.*

[4] 17 CFR 242.1000 *et seq.*

be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A and B below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants or Others

NSCC has not received or solicited any written comments relating to this proposal. If any written comments are received, NSCC will amend this filing to publicly file such comments as an Exhibit 2 to this filing, as required by Form 19b–4 and the General Instructions thereto.

Persons submitting written comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b–4, the Securities and Exchange Commission (''Commission'') does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on How to Submit Comments, available at *www.sec.gov/regulatory-actions/how-to-submitcomments.* General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202–551–5777.

NSCC reserves the right to not respond to any comments received.

(B) Advance Notices Filed Pursuant to Section 806(e) of the Clearing, and Settlement Supervision Act

I. Description of the Proposal

Pursuant to the Clearing Supervision Act and Rule 19b–4(n)(1)(i) under the Exchange Act,[5] NSCC files this advance notice seeking no objection to the Cloud Proposal, as described herein.

The specified set of Core C&S Systems that the Clearing Agencies intend to host in the Cloud, and the transition schedule for such hosting, are listed in Exhibit 3 to this advance notice filing.[6] However, the Clearing Agencies recognize that it may become necessary to deviate from the proposed transition schedule as risks change over time and the proposed implementation would occur over several years. The Clearing Agencies' process for monitoring, assessing, and escalating such risks, which may result in a deviation, is described in Section I.D, below. If the Clearing Agencies would need to deviate from that schedule, they would provide Commission staff notice of such deviation, the reason for the deviation, and how the implementation schedule would be updated to account for the deviation. Further, the Clearing Agencies recognize that deviating from the proposed transition schedule would necessitate a separate analysis to determine whether such deviation could materially affect the nature or level of risk posed by each of the Clearing Agencies.

NSCC's two affiliate clearing agencies, Fixed Income Clearing Corporation (''FICC'') and The Depository Trust Company (''DTC'' and together with NSCC and FICC, the ''Clearing Agencies'')[7] have each filed with the Commission advance notices to adopt the same Cloud Proposal. Accordingly, each respective advance notice filing is written from the perspective of the Clearing Agencies, collectively, instead of NSCC, FICC, and DTC individually.[8]

A. The Current System and Summary of Proposed Change

Today, the Clearing Agencies' Core C&S Systems are hosted using Compute,[9] Storage and Networking, as defined below, running in private data centers (*i.e.,* on-premises). The current data-center footprint consists of a single data center in each of two regions. Each regional data center has a corresponding data bunker used for synchronous data protection and restoration.[10]

The Clearing Agencies view the proposed transition to using a Cloud Infrastructure to host the specified set of Core C&S Systems as a natural progression of the Clearing Agencies' information technology strategy that aligns with their overall corporate strategy—to deliver on modernization and maximize the value of their platforms for stakeholders and continue to invest in risk management excellence.

For over 11 years, the Clearing Agencies have honed their expertise in operating non-Core C&S Systems within the Cloud.[11] Throughout that time, the Clearing Agencies have continually refined their capabilities across technical, risk, legal, and compliance dimensions, in tandem with the Cloud's own evolution and the industry's increasing adoption of it. Given this extensive maturity and development over the past decade, the Clearing Agencies believe that hosting Core C&S Systems in the Cloud, via a single CSP, is now appropriate and essential. By consolidating resources under a single CSP, the Clearing Agencies can optimize efficiency, reduce costs, mitigate risks, and maintain a cohesive environment for seamless collaboration and operation.

As described in greater detail in this advance notice, the Clearing Agencies propose to provision, within a single CSP, logically segregated sections of the Cloud Infrastructure that would provide the Clearing Agencies with the virtual equivalent of physical data center resources, including scalable resources that can (i) handle various computationally intensive applications with load-balancing and resource management (''Compute''); (ii) provide configurable storage (''Storage''); and (iii) provide network resources and services (''Network''). These resources would be logically segregated from other customers of the CSP. The Clearing Agencies would leverage the CSP's IaaS (*i.e.,* infrastructure as a service) and PaaS (*i.e.,* platform as a service) services for building and running Core C&S Systems.

The Clearing Agencies do not propose to transition all Core C&S Systems entirely out of their regional data centers at this time, but rather, to host a specified set of Core C&S Systems in

[5] 17 CFR 240.19b–4(n)(1)(i).

[6] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the proposed transition schedule (*i.e.,* the Core C&S Systems to Move to Cloud). The Clearing Agencies have provided this schedule in confidential Exhibit 3 to this advance notice filing.

[7] The Clearing Agencies are each a subsidiary of The Depository Trust & Clearing Corporation (''DTCC''). DTCC operates on a shared service model with respect to the Clearing Agencies. Most corporate functions are established and managed on an enterprise-wide basis pursuant to intercompany agreements under which it is generally DTCC that provides relevant services to the Clearing Agencies.

[8] Capitalized terms not otherwise defined herein have the meaning as set forth in respective rules of the Clearing Agencies, available at *https://www.dtcc.com/legal/rules-and-procedures.*

[9] The existing Compute platform consists of both on-premises mainframe and private cloud platforms.

[10] Note: The data bunkers cannot run applications, as they are only for data protection and restoration.

[11] Some of the non-Core C&S Systems already operating in Cloud include systems that support risk analysis, various reporting engines, and shared infrastructure capabilities. More specifically, for risk analysis, there are applications for certain risk testing and calculations used to assess industry risk postures for various Clearing Agency clients, as well as warehousing large sets of risk data for quantitative analytics. For the various report engines, there are applications that provide publicly disseminatable data sets and documentation, certificate imaging, as well as certain archival storage capabilities. For shared infrastructure capabilities, there are applications that support the Clearing Agencies' engineering and development departments for dev-op capabilities such as code scanning, code repositories, and infrastructure-as-code deployment pipelines.

a Cloud Infrastructure while maintaining the remaining applications in the Clearing Agencies' regional data centers for the near term. The proposed transition would be achieved incrementally over a course of several years and would result in the Clearing Agencies hosting some Core C&S Systems on-premises and others in a Cloud Infrastructure.[12]

This phased approach to transitioning to Cloud is to reduce risk. The Clearing Agencies believe that a ''big-bang'' approach of moving all applications at once introduces significant execution risk, primarily driven by the sheer scale and scope of such an effort. Moreover, many clearance and settlement applications on the Clearing Agencies' mainframe are still tightly coupled together. Even after such applications are modernized, many could experience latency dependencies with other applications that have not yet been modernized, hence the need to keep some applications in the Clearing Agencies' existing data centers for the near term. However, applications with little to no coupling, particularly those applications that have already been modernized, are ripe for Cloud transition and the subject of this Cloud Proposal. As for the remaining clearance and settlement applications that are not part of this proposal and would continue to be hosted on-premises, the Clearing Agencies have not thoroughly assessed when those applications would transition to Cloud, which may take several years, or whether such transition would be the subject of a later, separate advance notice proposal.

Integration between on-premises and Cloud-based Core C&S Systems would, as it is for non-Core C&S Systems that are already hosted in private and public cloud, leverage existing patterns and processes. The primary methods of application integration are application program interfaces (a/k/a APIs), messaging queues (a/k/a MQ messaging), and file transfer. All three are used to integrate internal and client applications, and all three methods provide interoperability between applications running on mainframe, private cloud, and public cloud.

For these reasons, the Clearing Agencies strongly believe that the phased approach enables the Clearing Agencies to best approach the transition to Cloud, safely and confidently.

[12] A result of the Cloud Proposal would be that the Clearing Agencies would operate Reg. SCI and Critical SCI systems both on-premises and on a Cloud Infrastructure.

B. Why Use Cloud

The Clearing Agencies believe there are very strong and compelling reasons to use Cloud as part of their diverse, platform strategy, including, as discussed below, the waning of the on-premises industry, improved resilience, expanded security capabilities, and increased scalability.

1. Waning On-Premises Industry

Although on-premises mainframes have been a stalwart for hosting critical applications for many years, it is the Clearing Agencies' experience that industry investment and development in on-premises platforms is waning, and the ability to source skilled and experienced staff to operate such platforms is increasingly challenging. Meanwhile, vendor consolidations are beginning to negatively affect investment and innovation in the private cloud space.[13] As investment dollars are increasingly allocated to Cloud, vendor choice, innovation, and support will continue to diminish for on-premises platforms. This poses a growing risk to the Clearing Agencies, who today continue to rely primarily upon on-premises mainframes and private cloud solutions from a resiliency perspective.[14] The Clearing Agencies believe the best way to manage against this risk at this time is to leverage a diverse platform strategy that will increase the use of and reliance upon Cloud. The use of Cloud, as part of a broader platform strategy, serves as an important tool in enabling the Clearing Agencies to anticipate and manage these and other risks more effectively.

2. Improved Resilience

The Clearing Agencies must ensure that any Core C&S Systems in the Cloud have resiliency and recovery capabilities commensurate with the Clearing Agencies' importance to the functioning of the U.S. financial markets. As explained in detail below, the Clearing Agencies believe that Cloud will enhance the resiliency of their Core C&S Systems by virtue of the Clearing Agencies' architectural design decisions, and the Cloud's redundancy, availability, and the Clearing Agencies' disciplined approach to deployment of Core C&S Systems to Cloud. In particular, the Clearing Agencies believe that Cloud will enhance their ability to withstand and recover from adverse conditions by provisioning redundant Compute, Storage, and Network resources in three availability zones, in each of two autonomous and geographically diverse regions, for a total of six availability zones that are comprised of many data centers.

The primary/hot region would be operational and accepting traffic, while the secondary/warm region would receive replicated data from the hot region with applications on stand-by. This solution significantly reduces operational complexity, mitigates the risk of human error by providing tools for automating routine tasks and orchestrating complex workflows, thereby reducing the need for manual intervention,[15] and provides resiliency and assured capacity (although, the Clearing Agencies would continue to periodically review the CSP's capacity planning process through quarterly reviews).[16]

The Clearing Agencies are assured of adequate capacity with the proposed hot/warm architecture because the Compute resources of the warm, ''recovery'' region would be already running with needed capacity. Additionally, the Clearing Agencies have reviewed the effect of a large, regional outage with the CSP, which indicated that a vast majority of the CSP's customers are not configured to use the secondary region as a failover region; thus, they would not be using capacity in that region. Moreover, a review of data from two large outages in the primary region did not show a change in capacity availability in the secondary region.

The Clearing Agencies also believe that Cloud reduces capacity-management risks when compared with on-premises platforms in three important ways: (1) capacity in Cloud can be added almost instantly; (2) such capacity can be added at magnitudes greater than what is possible with traditional, on-premises platforms; and

[13] For example, the VBlock platform, which has been the core, private cloud distributed hosting platform of the Clearing Agencies for over a decade, is no longer available for purchase. Another example is the continued consolidation in the private cloud software space, which has concentrated the industry and reduce aggregate investment in innovation.

[14] In this context, ''resiliency'' is the ''ability to anticipate, withstand, recover from, and adapt to adverse conditions, stresses, attacks, or compromises on systems that include cyber resources.'' Systems Security Engineering: Cyber Resiliency Considerations for Engineering of Trustworthy Secure Systems, Spec. Publ. NIST SP No. 800–160, vol. 2 (2018).

[15] The CSP's built-in security features in its Cloud Infrastructure also can reduce the risk of security breaches caused by human error, such as misconfigurations or improper access controls.

[16] The Clearing Agencies would continue to perform periodic business continuity and disaster recovery tests to verify business continuity plans and disaster recovery infrastructure will support a two-hour recovery time objective for critical systems.

(3) the risk of a supply chain effect on capacity realization (*i.e.,* the risks associated with receiving and deploying servers necessary to create more capacity) is greatly reduced.

The proposed hot/warm configuration also enables application rotation between regions. The Clearing Agencies would have the ability to operationally rotate either a single application, groups of applications, or all applications to the warm region for both planned and unplanned events. Collectively, the proposed design of the Cloud Infrastructure helps ensure that the Clearing Agencies can meet any applicable two-hour recovery time objective.

Each availability zone, in each of the two regions, would be comprised of multiple physical data centers. Each data center would have its own distinct physical infrastructure with separate staff and dedicated connections to utility power, standalone backup power sources, independent mechanical services, and independent network connectivity.

Although not dependent on each other, availability zones of a region are connected to each other with private, fiber-optic networking, enabling Core C&S Systems to automatically failover between a region's availability zones without interruption. Since each availability zone can operate independently, but failover capability is nearly instantaneous, a loss of one availability zone would not affect operation in another; therefore, no Core C&S System would be reliant on the functioning of a single availability zone.[17]

Altogether, the proposed Cloud Infrastructure would afford the Clearing Agencies six levels of redundancy (*i.e.,* three availability zones, made up of many data centers, in each of the two regions), with primary/secondary regions running in a hot/warm configuration, respectively, in geographically separate and segregated locations, and with each region containing multiple copies of the data. Thus, even if an availability zone is lost in the primary region, the Cloud can continue to seamlessly operate Core C&S Systems in the primary region, thereby significantly reducing availability risk and any attendant consequences for the Clearing Agencies' participants and customers. As a result, the Cloud Infrastructure offers the Clearing Agencies multiple redundancies within which to run Core C&S Systems, limits the effect of an incident at the CSP to the smallest footprint possible, and mitigates the possibility of the Clearing Agencies suffering an intra-, inter-, or multi-region outage.

By comparison, the Clearing Agencies' current on-premises hosting capabilities, both mainframe and private cloud, are operating on one primary data center in one region, with a second, recovery data center in a second region (excluding data bunkers, which do not have Compute capabilities). In other words, it is many times less likely that an unplanned, out of region failover would be needed for Core C&S Systems hosted in Cloud than currently hosted on-premises. (Even in the unlikely event that the Clearing Agencies needed to fail over to the secondary Cloud region, the decision and process of doing so would continue to be in the sole discretion of the Clearing Agencies.) This increased redundancy represents a material improvement in resiliency for the Clearing Agencies and a material reduction in risk for the industry.

Additionally, transitioning to Cloud offers the Clearing Agencies a more effective strategy for avoiding technical debt and system degradation because the CSP, in its role as such, would be performing regular system upgrades and maintenance, helping to ensure the Cloud's resiliency. Unlike on-premises solutions that may struggle to keep pace with evolving technology, due in part to the waning demand for on-premises infrastructure, CSPs take on the responsibility of regularly updating and maintaining their cloud infrastructure, which they do in a competitive environment. This approach helps ensure that the CSP's cloud infrastructure remains up to date, secure, and performs at its best, minimizing the likelihood of accumulating technical debt and preventing the decline of system capabilities and resiliency over time. This is not to say that on-premises infrastructures are not updated or maintained today but, instead, that the CSP does it better and faster. CSPs excel in ensuring that systems remain up to date, secure, and perform at their best by leveraging automation, scalability, built-in security measures, service level agreements (''SLAs''), economies of scale, and continuous monitoring and improvement processes. These advantages collectively enable CSPs to provide more reliable, resilient, and high-performance services compared to traditional on-premises environments.

3. Expanded Security Capabilities

Hosting Core C&S Systems in Cloud would not change the physical and cybersecurity standards to which the Clearing Agencies currently align—the National Institute of Standards and Technology (''NIST'') [18] and Center for internet Security (''CIS'').[19] Application of NIST is considered a best practice for financial services use of cloud.[20] Moreover, as discussed further below, the Clearing Agencies would continue to apply existing security processes and standards to include network and identity and access management (''IAM'') controls, security governance and controls for sensitive data, security configuration, provisioning, logging and monitoring, and security testing and validations.

By hosting in Cloud through the CSP that the Clearing Agencies have engaged, the Clearing Agencies would be able to add cloud-specific security capabilities and measures provided by the CSP, as well as third-party tools. For example, such capabilities and measures would include automation, monitoring, and security incident response capabilities, as well as default separation between Reg. SCI and non-Reg. SCI operating domains, and ubiquitous encryption, all of which are not available in the current on-premises data centers. Similarly, micro-segmentation of applications and infrastructure provided by the CSP, which also is not available in the Clearing Agencies data centers, limits the effect of a security incident and reduces the time to detection and recovery.[21]

[17] To further ensure the resiliency of the Compute, Storage, and Network capabilities, the CSP's services are divided into ''data plane'' and ''control plane'' services. The Clearing Agencies' applications would run using data plane services, while control plane services are used to configure the environment. Resources and requests are further partitioned into cells, or multiple instantiations of a service that are segregated from each other and invisible to the CSP's customers, on each plane, again minimizing the effect of a potential incident to the smallest footprint possible.

[18] National Institute of Standards and Technology (2023) The NIST Cybersecurity Framework 2.0. (National Institute of Standards and Technology, Gaithersburg, MD), NIST Cybersecurity White Paper (NIST CSWP) 29 ipd, Released August 8, 2023. *https://doi.org/10.6028/NIST.CSWP.29.ipd.*

[19] Center for internet Security Benchmarks, *cisecurity.org/cis-benchmarks.*

[20] U.S. Department of the Treasury, *The Financial Services Sector's Adoption of Cloud Services* (February 8, 2024), *available at https://home.treasury.gov/system/files/136/Treasury-Cloud-Report.pdf.*

[21] For example, the CSP provides infrastructure capable of withstanding Distributed Denial of Service (''DDoS'') attacks at far greater magnitudes than the Clearing Agencies' current capabilities, as the CSP has exponentially more internet bandwidth, given their business function, than the Clearing Agencies. (DDoS is a cyberattack in which the attacker floods a server with illegitimate traffic/requests to prevent legitimate users from accessing online services, websites, or computers connected to the attacked server.)

4. Increased Scalability

Cloud implementation would allow for greater scalability of Compute, Storage, and Network resources that support Core C&S Systems.[22] With a Cloud Infrastructure, the Clearing Agencies could quickly provision or de-provision Compute, Storage, or Network resources to meet demands, including elevated trade volumes, and provide more flexibility to create development and test environments, as well as other system development needs.[23] For example, the CSP could support elastic workloads and scale dynamically without the need for the Clearing Agencies to procure, test, and install additional servers, storage, or other hardware.

The Clearing Agencies would pre-provision Compute and Storage resources proactively, in addition to scaling resources on-demand. This means that the Clearing Agencies would be able to increase Compute capacity in one or both regions via manual or automated processes for Core C&S Systems. The rapid deployment of Compute capacity would allow the Clearing Agencies to obtain access to resources far more quickly than with on-premises data centers. The Clearing Agencies would combine the pre-provisioning of primary capacity with regular capacity stress testing to verify that the underlying Compute can sustain required business volumes. The stress testing data would be used to determine the base levels of pre-provisioned capacity.

The ability to quickly scale workloads materially improves the Clearing Agencies ability to respond to unexpected market events and external scenarios, such as a global pandemic.[24] This capability also enables the Clearing Agencies to run risk calculations more frequently, at greater speeds, and with more compute-intensive models than is economically feasible compared to the Clearing Agencies' on-premises infrastructure.

In sum, transitioning to Cloud not only enhances scalability but also significantly improves agility beyond the Clearing Agencies' on-premises capabilities. The on-demand resources provided by the CSP enable dynamic scalability, helping to ensure optimal performance during peak times, efficient resource allocation during periods of lower demand, and the ability to innovate faster to meet evolving business requirements.

C. Why a Single CSP is Appropriate

The Clearing Agencies strongly believe that hosting Core C&S Systems with a single CSP is appropriate. The Clearing Agencies have assessed the capabilities of the CSP in adherence with the Clearing Agency Risk Management Framework,[25] which requires the respective Board of Directors of the Clearing Agencies to approve policies governing relationships with service providers, such as the CSP, thus helping to ensure alignment with the Clearing Agencies' risk management principles.

Beyond simply being a well-known, reputable, industry-leading, and capable CSP, the Clearing Agencies and the CSP have spent several years discussing the Clearing Agencies' needs, including operational, legal, and regulatory obligations; what-if scenarios; and commercial implications. That extensive effort led to a number of benefits, including the CSP introducing new products [26] and the establishment of an exhaustive contractual agreement between the Clearing Agencies and the CSP that addresses the Clearing Agencies' needs for hosting Core C&S Systems in Cloud (''Cloud Agreement'').[27] [28]

Meanwhile, it is generally understood that in the present environment adding a secondary CSP or an on-premises backup introduces significant complexity, costs, and risks that outweigh expected benefits.[29] An on-premises or secondary CSP backup would require the Clearing Agencies to engineer their primary Cloud Infrastructure to the lowest common denominator, so that the systems operating on the primary infrastructure also could run on a completely separate and distinct secondary, backup infrastructure. This approach would severely reduce the value that Cloud provides, introduce significant cost with little benefit, and greatly increase operational complexity, all of which would result in negative consequences for the efficiency and resiliency of the Clearing Agencies, their participants, and the industry.

Notwithstanding the extensive benefits from moving to Cloud, the Clearing Agencies fully appreciate and are committed to managing the risks presented in relying on a single CSP, as identified and discussed in Section II.A, further below.

D. Transition Timeframe

The Clearing Agencies believe that transitioning certain Core C&S Systems to the Cloud is critical to managing the risks that are inherent in technology and vendor selection. However, as stated above in Section I.A, the intent of the

[22] The Clearing Agencies would continue to follow existing policies and procedures regarding capacity planning and change management. The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the Change Management Policy and the Technology Capacity and Demand Assessment Policy. The Clearing Agencies have provided these documents in confidential Exhibit 3 to this advance notice filing.

[23] The Clearing Agencies periodically perform capacity and availability planning analyses that result in capacity baselines and forecasts, as an input to technology delivery and strategic planning to ensure cost-justifiable support of operational business needs. These analyses are based on the collection of performance data, trending, scenarios, and periodic high-volume capacity stress tests and include storage capacity for log and record retention. Results are reported to senior technology management as inputs to performance management and investment planning. In addition, each quarter, the Clearing Agencies review the CSP's capacity planning accuracy for the prior quarter and review the upcoming quarter's forecast, along with providing input to the CSP for anticipated major changes in the Clearing Agencies' proposed use of resources. The Clearing Agencies' IT Governance Committee is the designated escalation point for handling capacity management issues.

[24] Supply chain challenges during the Covid-19 pandemic highlighted a lack of resiliency and scalability in traditional IT vendors' abilities to deliver resources when needed. Lead times of up to 18 months were experienced and delayed many efforts to expand capacity. This was not the case with CSPs, which did not experience capacity constraints or an ability to meet demand. This further demonstrates how the option to host Core C&S Systems in Cloud is a critical risk mitigation tool for managing against the long-term risk of a waning on-premises industry.

[25] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the Clearing Agency Risk Management Framework. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[26] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding two examples of CSP Whitepapers. The Clearing Agencies have provided these documents in confidential Exhibit 3 to this advance notice filing.

[27] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the Cloud Agreement. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[28] Among other things, the Cloud Agreement sets forth the CSP's responsibility to maintain the hardware, software, networking, and facilities that run Cloud services. See also the separately submitted Table of Reg. SCI Provisions provided in confidential Exhibit 3 to this advance notice filing that provides a summary of the terms and conditions of the Cloud Agreement that the Clearing Agencies believe help enable their compliance with Reg. SCI.

[29] As noted in the U.S. Department of Treasury's report, *The Financial Services Sector's Adoption of Cloud Services,* ''No financial institution reported the capability to [run applications across multiple CSPs] for more complex use cases, such as running core operations on multiple public clouds. Running an application across multiple CSPs at the same time may also be less desirable, given the costs, staffing, and complexity involved in doing so, particularly given the complexity associated with identifying and managing risk across multiple cloud environments.'' *Available at https://home.treasury.gov/system/files/136/Treasury-Cloud-Report.pdf* at 6.

Cloud Proposal is not to move all Core C&S Systems to Cloud at one time. The Clearing Agencies believe that a ''big-bang'' transition would introduce unnecessary execution risk, primarily driven by the sheer scale and scope of such an effort. Moreover, many applications on the mainframe are still tightly coupled together and not ready to be moved to public cloud. Rather, at this time, the Clearing Agencies are proposing to move only a subset of the Core C&S Systems to the Cloud and to do so on an incremental basis, in consideration of the specifics of each application and the needs of the Clearing Agencies.[30] This approach helps enable the hosting of Core C&S Systems on the most appropriate platform, at the most appropriate time, in an efficient and secure manner.

The subset of Core C&S Systems selected for this proposal have been initially identified based on several preliminary criteria, including, but not limited to, whether:

- the application would benefit from the presence of data sets already present in Cloud;
- the application would benefit from elasticity enabled by Cloud (*e.g.,* user interfaces); and
- the application already meets certain architectural patterns for Cloud (*e.g.,* the application has already been modernized and currently hosted in private cloud and/or is a siloed application—little to no coupling with other applications).

Assuming the Clearing Agencies would receive no regulatory objection to this advance notice, each application of the proposed subset of Core C&S Systems then would undergo an in-depth, architectural review that would follow the Clearing Agencies' governance process, governed by the System Delivery Process.[31] The governance process includes, where applicable, a detailed review and approval by the Information Technology Architecture Review Board (''ARB''),[32] the New Initiatives process,[33] to include the Business Case Council and the Risk Assessment Council that vet the financials and risks of the proposed move, and the Investment Management Committee.[34] Further escalations would be made to the Executive Committee and applicable Board of Directors of the Clearing Agencies, as needed. Re-platforming efforts also would be communicated to regulators in accordance with the change reporting requirements of Section 1003(a)(1) of Reg. SCI, as applicable.[35]

The above-described governance process does not include a specific set of criteria or thresholds for the ultimate determination on whether an application should or should not be moved to Cloud—it is not a formulaic decision. Rather, the Clearing Agencies employ a more qualitative evaluation process that involves various reviews and considers high-level architectural principles that may be applicable to more than one application. However, at this time, none of the Core C&S Systems that have been initially identified as part of the Cloud Proposal, based on the preliminary criteria listed above, have completed that more detailed governance review process. Given the extensiveness of the process, it would not begin until after the Clearing Agencies would receive no regulatory objection to this advance notice.

Although the Clearing Agencies do not anticipate needing to deviate from the proposed transition schedule for the selected Core C&S Systems, the Clearing Agencies recognize that deviation may be necessary, given that the more in-depth governance review process has not completed and because risks could change over the proposed, multiyear implementation period. For example, a deviation may be necessary to address a business need or a change in industry or regulatory requirements or standards. Regardless, any deviation would follow the same detailed governance process, and the Clearing Agencies would provide notice of such deviation to Commission staff, the reason for the deviation, and how the proposed implementation schedule would be updated to account for the deviation. Further, the Clearing Agencies recognize that deviating from the proposed transition schedule would necessitate a separate analysis to determine whether such deviation could materially affect the nature or level of risk posed by each of the Clearing Agencies.

Even though certain on-premises infrastructure components would be decommissioned after applications are moved to Cloud, the Clearing Agencies' private cloud, mainframe services, and data-center facilities would remain available for no less than five more years to help facilitate exit plans from Cloud that rely on an on-premises option. However, to be clear, the on-premises option would not be available to address short-term disruptions, where the Cloud is temporarily unavailable. Management of such disruptions is discussed in Section II.B, further below.

II. Expected Effects on Risks to the Clearing Agencies, Their Participants, or the Market

Although the Clearing Agencies are not proposing to transition all Core C&S Systems to Cloud for the reasons described in Sections I.A and D, above, transitioning the proposed subset of Core C&S Systems from an on-premises infrastructure supported by a consolidating industry, as described in Section I.B.1, above, to a new Cloud Infrastructure maintained by an industry-leading CSP provides numerous advantages, as described in Sections I.B.2–4 and C, above. However, such transition is not without risk, as discussed below.

A. Risks Presented by the Cloud Proposal

1. Concentration Risk

The Clearing Agencies appreciate that reliance on a single CSP for hosting the subset of Core C&S Systems that are the subject of this proposal creates concentration risk, particularly in the event of the CSP choosing to terminate its services (*i.e.,* commercial risk) or is unexpectedly unavailable (*i.e.,* operational risk). The Clearing Agencies also appreciate that they would have some reliance on the CSP to help meet certain regulatory obligations of the Clearing Agencies (*i.e.,* regulatory risk), thus introducing the familiar concept of concentration risk in a relatively new

[30] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the DTCC Global Business Continuity and Resilience Policy and Standards, which defines the governance structure, high-level roles and responsibilities, and the framework for business continuity and resilience processes at the Clearing Agencies. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[31] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the DTCC System Delivery Policy. The System Delivery Policy defines requirements that support adherence to the System Delivery Process for application development projects. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[32] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the IT Architecture Policy (''ITA Policy''). The ITA Policy provides a set of controls that must be followed to adequately address applicable risks. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[33] The Clearing Agencies also have separately submitted a request for confidential treatment to the Commission regarding the New Initiatives Policy. The New Initiatives Policy provides the governance and oversight structure for the Clearing Agencies to bring initiatives to market timely and efficiently while minimizing risk. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[34] Such reviews and decisions are based on high-level architectural principles that may be applicable to more than one application.

[35] 17 CFR 242.1003, *et seq.*

context. However, concentration risk exists today as the Clearing Agencies are dependent on a single mainframe provider, a single database provider for the mainframe, and a single virtualization provider for private cloud. Moreover, the Clearing Agencies believe that they have adequately addressed these risks, as discussed throughout Sections II.B.1–4., below.

2. Cloud Management Risk

Managing the applicable subset of Core C&S Systems hosted on a Cloud Infrastructure presents different risks and challenges than managing such systems hosted on-premises because many activities and services previously provided by the Clearing Agencies would now be provided by the CSP. For example, the Clearing Agencies would be dependent upon the CSP for fulfilling all of its contractual obligations, including security of the Cloud, proper capacity planning, and protection of Cloud services from prolonged operational outages. As such, overseeing the CSP becomes a critical activity to ensure the CSP is delivering services that meet or exceed the Clearing Agencies' requirements for operating those select Core C&S Systems. As discussed in Sections II.B.1–4, below, the Clearing Agencies believe that they have adequately addressed this risk.

B. Management and Mitigation of Identified Risks

1. Cloud Agreement

The Clearing Agencies believe that the Cloud Agreement, including all its amendments and addendums, is a strong tool in helping to effectively mitigate the commercial and regulatory risks borne from the concentration risk, as described in Section II.A.1, above, as well as risks in managing the CSP that would host the subset of selected Core C&S Systems in the Cloud, as described in Section II.A.2, above. Following is a summary of some of the key terms and conditions covered in the agreement and how they help mitigate these risks.

i. Adequate Notice

Under the Cloud Agreement, the CSP may not unilaterally terminate the relationship with the Clearing Agencies absent good cause or without sufficient notice to allow the Clearing Agencies to transition their applications elsewhere. Specifically, the CSP must provide an extensive notice if it wishes to terminate the Cloud Agreement for convenience or if it wishes to terminate an individual CSP service offering or lower an existing SLA on which the Clearing Agencies rely.[36]

The CSP is permitted to terminate the Cloud Agreement with shorter notice periods in the event of a critical breach [37] or an uncured material breach [38] [39] of the Cloud Agreement. In the highly unlikely event that a critical breach or uncured material breach occurs, the Clearing Agencies would have sufficient notice to shift their operations away from the CSP. Contract provisions that allow a party to terminate for uncured material breaches are designed to limit the types of actions that could lead to contract termination and to establish a period of time to resolve an aggrieved party's claim (often 30 days) followed by an additional extended period in which to remediate the claim. This gives the parties time and incentive to address the problem without having to resort to termination. In other words, even if the CSP notifies the Clearing Agencies of an alleged breach (material or critical), termination of services is not immediate. Additionally, regardless of the need to shift operations elsewhere—convenience or breach—the Cloud Agreement provides for the parties to work together and for the CSP to provide professional services to assist with such a shift.[40]

The Clearing Agencies believe the risk of termination under the above-discussed shorter notice period is minimal. In all cases of an alleged breach, the CSP must notify the Clearing Agencies in writing and provide time for them to cure the alleged breach (''Notice Period'').[41] With respect to an alleged material breach, which requires the CSP to extend the Notice Period if the Clearing Agencies demonstrate a good faith effort to cure the alleged material breach, the Clearing Agencies would use the Notice Period to attempt to cure the alleged material breach while also preparing to transition elsewhere. As a result, it is highly unlikely that a critical breach or a material breach would remain uncured beyond the Notice Period. If one does remain uncured, however, the CSP can only terminate the rights or accounts associated with the breach, not the entire Cloud Agreement;[42] meanwhile, and the Clearing Agencies would have ample notice to shift operations to avoid a disruption to Core C&S Systems, if needed.

As explained above, adequate notice under the Cloud Agreement plays an important role in managing concentration risk by providing the Clearing Agencies with advance warning of potential disruptions or changes in the agreement or services thereunder, which would allow the Clearing Agencies to take proactive measures in mitigating the potential impact of commercial and regulatory risk, thereby reducing concentration risk.

ii. Regulatory Compliance and CSP Oversight

The Clearing Agencies' transition to Cloud does not alter their responsibility to maintain compliance with applicable regulations. Consistent with FFIEC Guidance (as defined and discussed further below), the Clearing Agencies' will continue to fully comply with all applicable regulatory obligations, particularly Reg. SCI.[43]

The Clearing Agencies believe the combination of the following would provide them with reasonable assurance that the proposed transition to Cloud

[36] The Cloud Agreement permits an exception to this sufficient notice provision in the event the CSP must terminate the individual service offering if necessary to comply with the law or requests of a government entity or to respond to claims, litigation, or loss of license rights related to third-party intellectual property rights. In this event, the CSP must provide reasonable notice to the Clearing Agencies of the termination of the individual service offering. *See* Reg. SCI Addendum, Section 10 *Termination.* The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[37] Critical breaches are material breaches (i) for which the Clearing Agencies knew their behavior would cause a material breach (such as a willful violation of Cloud Agreement terms); (ii) that cause ongoing material harm to the CSP, its services, or its customers (*e.g.,* criminal misuse of the services); or (iii) for undisputed non-payment under the Cloud Agreement. *See* Reg. SCI Addendum, Section 10 *Termination.* The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[38] Typically, a breach is considered material only if it goes to the root of the agreement between the parties or is so substantial that it defeats the object of the parties in making the contract. *See* Reg. SCI Addendum, Section 10 *Termination.* The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[39] *See* Reg. SCI Addendum, Section 10 *Termination.* The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[40] *See* Reg. SCI Addendum, Section 11 *Post-Termination Services.* The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[41] *See* Reg. SCI Addendum, Section 10 *Termination.* The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[42] *See* Amendment 1 Section 8 *Temporary Suspension,* of the Cloud Agreement. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[43] Reg. SCI imposes certain information security and incident reporting standards on the Clearing Agencies and requires them to adopt an information technology governance framework reasonably designed to ensure that ''SCI systems,'' and for purpose of security, ''indirect SCI systems,'' have adequate levels of capacity, integrity, resiliency, availability, and security. 17 CFR 242.1000 *et seq.*

would enable them to continue to fully satisfy their regulatory obligations, including Reg. SCI, thus helping to mitigate the regulatory risk highlighted in Section II.A.1, above: (i) the Cloud Agreement; (ii) the CSP's compliance programs as described in its whitepapers [44] and publicly available policies (*e.g.,* its Penetration Testing Policy),[45] [46] [47] [48] and user guides; (iii) the CSP's SLAs; [49] [50] [51] (iv) the CSP's Systems Organization Controls reports (*e.g.,* SOC 1, SOC 2, SOC 3) [52] and International Organization for Standardization (''ISO'') certifications (*e.g.,* ISO 27001); [53] (v) the CSP's size, scale, and ability to deploy extensive resources to protect and secure its facilities and services; and (vi) the CSP's commercial incentive to perform.

Moreover, as noted in Section II.B.ii., above, oversight of the CSP relationship and services has become a standing practice of the Clearing Agencies to ensure that the CSP is meeting or exceeding its contractual obligations, including helping the Clearing Agencies demonstrate their regulatory compliance. Such oversight, which also helps mitigate the cloud management risk raised in Section II.A.2, above, would include a strong relationship between the CSP and the Clearing Agencies, including between their senior management. Within the Cloud Agreement itself, there are established obligations on the CSP to provide the Clearing Agencies' information necessary for the Clearing Agencies to satisfy certain compliance and regulatory requirements, particularly Reg. SCI. For example, the Cloud Agreement obligates the CSP to provide the Clearing Agencies with immediate notification where a systems intrusion by an unauthorized party or a systems disruption is suspected.[54] The agreement also provides for detailed quarterly briefing meetings between the Clearing Agencies and the CSP, during which the Clearing Agencies would be provided information on and could review service level performance, material systems changes, capacity management, SLA updates, and important security notices.[55]

The Cloud Agreement permits the Clearing Agencies to perform an annual review of the CSP's documentation and services to gain comfort that the CSP is meeting its contractual requirements and that the notification procedures are in place to allow the Clearing Agencies to meet their regulatory requirements, particularly Reg. SCI. The agreement also allows a regulator of the Clearing Agencies to receive information about the Clearing Agencies' usage of the CSP services, and it allows the regulator to perform its own on-site review, if requested.[56]

2. Cloud Architecture

To mitigate operational risk associated with the concentration risk from relying on a single CSP, the Clearing Agencies would architect the Cloud Infrastructure hosting their Core C&S Systems to be highly resilient, improving the availability of such systems and related Clearing Agency services during any degradation in CSP services:

- *Use of multiple availability zones per region.* The Clearing Agencies would use at least three availability zones, in each of the two CSP regions, with each availability zone made up of multiple data centers.
- *Multi-regions.* In the event of a primary region outage, the Clearing Agencies would recover in the secondary region. Out-of-region recovery would be tested annually by the Clearing Agencies, and a primary/secondary (*i.e.,* hot/warm) model would be used to ensure continuous data replication and recovery is achieved.[57] Recovery exercises of non-Core C&S Systems currently hosted in cloud demonstrate the ability to recover applications within required recovery time objectives, including meeting a 2-hour recovery time objective for relevant applications in the event of an out-of-region recovery.
- *Multi-node, high availability clusters across availability zones.* Clusters (*i.e.,* three or more servers or nodes) protect against local hardware and service failures providing uninterrupted operations. Each cluster would be distributed across three availability zones. Clusters synchronously replicate data across all nodes to protect against data loss and provide continuous availability.
- *Static stability and static capacity models.* Static capacity would be pre-provisioned for compute, storage, and memory for applications based on capacity stress testing results and capacity requirements. The Clearing Agencies would pre-provision capacity

[44] *Supra* note 25.

[45] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the Operational & Technology Risk Technology Risk Management (''OTR CS&TRM'') Procedure—Application Penetration Test which describes the application penetration test procedures for the Clearing Agencies' web applications and supports compliance with the Information Systems Acquisition Policy, Development and Maintenance Policy Security Control Standards, and Ethical Application Penetration Testing (''EAPT'') Control Standards. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[46] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the EAPT Control Standards. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[47] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the DTCC Information Security—Systems Acquisition Development and Maintenance Policy and Control Standards, which governs the security aspects of information systems acquisition, development, and maintenance for DTCC and its subsidiaries. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[48] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the DTCC Information Security—Communications and Operations Policy and Control Standards, which helps ensure the correct and secure operation of information processing facilities. The Clearing Agencies have provided this document in confidential Exhibit 3 The Clearing Agencies have provided this document in confidential Exhibit 3to this advance notice filing.

[49] The Clearing Agencies have provided the CSP's SLAs in confidential Exhibit 3 to this advance notice filing.

[50] Amendment 2, Section 2.2 *To the Service Level Agreements* of the Cloud Agreement provides that the CSP may change its SLAs from time to time but must provide prior notice to the Clearing Agencies before material reducing the benefits offered under the SLAs. The Clearing Agencies have provided Cloud Agreement in confidential Exhibit 3 to this advance notice filing.

[51] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the DTCC Legal Review of Third Party Vendor Contracts Policy, which (1) defines the scope of Vendor Contracts, (2) clarifies what agreements fall outside the scope and are excluded from the definition of Vendor Contracts, (3) details the process the Clearing Agencies follow when receiving requests to review Vendor Contracts and related materials from CPS Contracts, and (4) establishes the requirements around the creation, maintenance, update, review, and use of contract templates and negotiation guidelines for third party relationships. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[52] The FFIEC Guidance provides that the Clearing Agencies may obtain SOC reports, other independent audits, or ISO certification reports to gain assurance that the CSP's controls are operating effectively. *See* FFIEC, Security in a Cloud Computing Environment at 7. The Clearing Agencies review the CSP's SOC–2 on an annual basis.

[53] The CSP has certifications for the following frameworks: NIST, Cloud Security Alliance, Control Objectives for Information and Related Technology (''COBIT''), ISO, and the Federal Information Security Management Act (''FISMA'').

[54] *See* Reg. SCI Addendum, Sections 8.1 *Systems Intrusion Notification* and 4 *Briefing Meetings.* The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[55] *Id.*

[56] *See* Reg. SCI Addendum, Sections 3 *Customer Right of Access and Audit* and 4 *Briefing Meetings.* The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[57] *See* Reg. SCI Addendum, Section 5 *Customer Testing of CSP Systems.* The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

needed for applications and services and would not rely on capacity on-demand models, thus reducing the risk of running out of capacity.

• *Exit plans.* The Clearing Agencies' existing policies require that all applications hosted in Cloud have documented exit plans, with each plan updated annually.[58] The Clearing Agencies' Cloud architecture also reduces ''vendor lock-in'' by using capabilities such as ''containers'' [59] that can exist in both the public and private cloud, where appropriate and applicable. For the foreseeable future, the Clearing Agencies plan to continue to own or lease private data center space to host private cloud and mainframe capabilities. The Clearing Agencies private, on-premises data centers help enable a long-term exit plan from Cloud, if needed. However, such data centers would not be a means to address a short-term incident at the CSP. Additionally, for the second CSP that the Clearing Agencies already have contracted and connected with for hosting non-Core C&S Systems, they are now working on the contractual and operational requirements that would be necessary to possibly host Core C&S Systems in its Cloud to further enable exit plans from the primary CSP.

• *Regional Isolation Architecture.* A cross-regional outage is highly unlikely at the CSP, as the CSP has designed and implemented a series of controls to ensure that defects cannot be introduced to more than a single region at a time.[60] Services are regionally isolated with a single exception—the IAM service. The IAM service is not regionally isolated and depends on a single region. If the primary region for the IAM service fails, the service will continue to operate but as read-only. To mitigate this risk, the Clearing Agencies would architect applications and infrastructure services in such a manner that they would not require updates (*i.e.,* writes) to the IAM service in order to rotate out of region.

In summary, cloud architecture helps mitigate operational risk borne from concentration risk, as raised in Section II.A.1, above, by providing resilient infrastructure, scalable resources, robust security measures, and disaster recovery capabilities, all of which assist in minimizing the impact of disruptions.

[58] *Supra* note 29.

[59] A container is a standard unit of software that packages up code and all its dependencies, so the application runs reliably from one computing environment to another (*e.g.,* public and private clouds).

[60] The CSP owns the control and has provided documentation of the control to the Clearing Agencies.

3. Standing Risk Management Practices

The Clearing Agencies' standing risk management practices also help minimize operational risk by systemically identifying, assessing, mitigating, monitoring, and responding to risk. For example, the Clearing Agencies have considered the possibility of the CSP being completely and unexpectedly unavailable, whether due to technical issues or other reasons. The parallel risk exists today with respect to the Clearing Agencies' existing infrastructure. Just like with the CSP, it is possible that the Clearing Agencies' two existing data centers—one primary and one backup—become completely and unexpectedly unavailable. In fact, it is more likely that those two data centers become unavailable than the CSP's data centers because the CSP has so many more data centers for each availability zone, in both its primary and secondary regions, with each data center, not just the associated region or availability zone, having its own physical infrastructure, staff, power, backup power, mechanical services, and network connectivity, as discussed in Section I.B.2, above. Even for the CSP's IAM service that runs cross regions, the applications in each region operate off read-only versions of the IAM roles and responsibilities, such that loss of the primary would not affect operation of those applications. Nevertheless, to help manage a crisis event, such as the Clearing Agencies' or the CSP's data centers becoming unavailable, the Clearing Agencies have standing risk management plans and practices already in place, as described below.[61]

In the very unlikely event of an unexpected single- or multi-region outage in which the Clearing Agencies operate, or a complete and unexpected CSP outage, the Clearing Agencies would initiate the existing Major Incident Management (''MIM'') process, which is an existing process that involves evaluating the technical impact of the event, and if the event is deemed to have a material impact to the business, the Business Incident Management System (''BIMS'') [62] would be activated. Depending on the severity of the event, the DTCC Global Business Continuity and Resilience (''BCR'') Policy would provide a predictable structure to be utilized during crises and could be leveraged to address, respond to, and manage an outage.[63] In addition to internal risk management practices, the Clearing Agencies have plans to help address various outage scenarios and the potential effects of an outage.[64]

The BCR Policy and Standards is structured to employ existing DTCC and Clearing Agency teams and committees, which become the tactical leadership to react, respond, and manage a crisis situation.[65] The teams are comprised of the following:

• *Crisis Management Team.* Comprised of the Management Committee, site General Managers, Head of the Board Risk Committee,[66] and other SMEs, as needed.

• *Crisis Response Teams.*

[61] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the Operational Response Capabilities Matrix. The Clearing Agencies have provided these documents in confidential Exhibit 3 to this advance notice filing.

[62] MIM is part of the IT organization that manages technology specific incidents at the Clearing Agencies that are typically resolved at the application or hardware level with support from the appropriate subject matter experts (''SMEs''). Incidents that have a business impact are escalated to BIMS and appropriate SMEs are added to manage the impact, which includes Business Continuity and Resilience. BIMS participants can request the Crisis Management Team be activated if the incident requires discussion or has escalated to a potential disaster that may require a declaration of disaster.

[63] The Clearing Agencies are taking into consideration the forthcoming requirements of adopted and effective Rule 17ad–25(i) under the Exchange Act, 17 CFR 240.17ad–25(i), and anticipate that the Clearing Agencies' approach in managing the risk presented by a CSP outage for Core C&S Systems would be consistent with those requirements.

[64] For example, there is an existing plan to manage a Fedwire protracted outage. A Fedwire protracted outage is an interruption or outage of Federal Reserve Bank hardware or software that prevents the bank from processing payment orders online and that is not expected to be resolved before the bank's next Fedwire Funds Service Funds Transfer Business Day. In the event of such an outage, the Clearing Agencies will assess the situation and employ, as needed and applicable, the steps outlined in the BCR Policy and Standards, the Federal Reserve Banks Operating Circulars (*see, e.g.,* Operating Circular No. 6, *available at https://www.frbservices.org/binaries/content/assets/crsocms/resources/rules-regulations/070123-operating-circular-6.pdf*), and any other regulatory guidance.

[65] The Clearing Agencies have established a list of situations that are covered under the BCR Policy and Standards, any of which could escalate to a disaster and trigger use of the Standards. The technology events include (i) infrastructure outage, (ii) external hosting provider service outage, and (iii) loss of logical access to a Clearing Agency facility. The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the BCR Policy and Standards which define the governance structure, high-level roles and responsibilities, and the framework for business continuity and resilience processes at the Clearing Agencies. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[66] The Board Risk Committee is a Board level committee established by the Boards of the Clearing Agencies to assist their respective Boards in fulfilling their responsibilities for oversight of risk management activities at the Clearing Agencies. This includes oversight of credit, market, liquidity, operational, and systemic risks.

○ *Business Continuity Coordinators and Plan Approvers*—These are individuals who manage business continuity at a plan level.

- *Fair and Orderly Markets Groups*—These are crisis teams comprised of internal stakeholders and top executives from external firms deemed necessary to ensure a fair and orderly market. They would be activated (based on impact to the legal entity) to gather information during a large systemic event when operational coordination is required with clients and the sector.
- *IT Management Team*—Comprised of Information Technology managing directors and SMEs.
- *Management Risk Committee*—Comprised of senior members across the enterprise.
- *Senior Site Management Team (''SSMT'')*—Each DTCC office with a facility level resilience plan (''FLRP'') has an SSMT, that is comprised of senior leadership from the site.
- *Site Assessment Team (''SAT'')*—Sites with an FLRP have a SAT that responds to site-specific events. This team is comprised of a primary/back-up site General Manager and representatives from BCR, IT, Workplace Design and Service, Global Security Management, and Human Resources. A Data Center Services representative also is added for sites that have a data center.
- *MIM and BIMS Teams*—Part of the IT organization that manages technology specific and are typically resolved at the application or hardware level with support from the appropriate SMEs.
- *Crisis Communication Team.* The Crisis Communication Team is comprised of officer-level members from Marketing and Communication, Human Resources, General Counsel's Office, and Regulatory Relations, as well as members of their staffs, as applicable.

The Clearing Agencies believe that these standing risk management practices are key to managing the operational risk borne from concentration risk outlined in Section II.A.1, above, by helping to promote proactive risk management culture, enhancing operational resilience, and enabling the Clearing Agencies to better navigate uncertainties and maintain business continuity.

4. Industry Standards for Cloud Management

i. Cloud Management: Federal Financial Institutions Examination Council Cloud Computing Guidance (''FFIEC'')

On April 30, 2020, FFIEC[67] issued a joint statement to address the use of Cloud computing services and security risk management principles in the financial services sector (''FFIEC Guidance'').[68] While the FFIEC Guidance does not contain regulatory obligations, it highlights risk management practices that financial institutions should adopt for the safe and sound use of Cloud computing services in five broad areas (''FFIEC Risk Management Categories''): Governance, Cloud Security Management, Change Management, Resilience and Recovery, and Audit and Control Assessment. As discussed below, the Clearing Agencies would implement practices consistent with the FFIEC Risk Management Categories for Core C&S Systems operated in Cloud to help address cloud management risk, as highlighted in Section II.A.2, above, by providing frameworks, guidelines, and best practices, that enhance transparency, reliability, and security.

(a) Governance

The Clearing Agencies and the CSP rely on a shared responsibility model that differentiates between security ''of'' the Cloud and security ''in'' the Cloud.[69] This model is not specific to the agreement between the Clearing Agencies and the CSP; rather, it is a more universally followed model for public cloud services. Under the model, the CSP maintains sole responsibility and control over the security and resiliency ''of'' the Cloud, and their customers are responsible for the security and resiliency ''in'' the Cloud (*i.e.,* security and resiliency of hosted applications and data). This means that the Clearing Agencies must manage their own application architectures, data backups, change management controls, network configurations within applications, and response to application failures. In addition, the Clearing Agencies must manage their own data usage and data-at-rest encryption configuration, IAM access policies and roles, operating system upkeep, security group configurations, and network traffic encryption in transit configurations. The Clearing Agencies also manage how they place workloads onto the CSP's platform.

Meanwhile, the CSP must manage backend hardware services for Compute, Storage, Networking, database, and global architectures such as regions, availability zones, data centers, power, and HVAC, as well as backend security services that protect core infrastructures. The CSP manages the underlying infrastructure and upkeep, so that the Clearing Agencies (and other customers) can place workloads on the CSP platform with proper security and separation without having to manage these traditional data center tasks. The Clearing Agencies review the CSP's policies and procedures for these functions during the quarterly reviews and during annual risk assessments.

When looking more closely at hardware management, the Clearing Agencies believe there are benefits in how the CSP manages hardware for Cloud compared to how the Clearing Agencies manage hardware for their own data centers. For example, with on-premises data centers, the Clearing Agencies must oversee a multifaceted supply chain, involving many vendors to obtain and administer physical Compute, Storage, and Network capacity. Delivery times may fluctuate, and scarcities can affect project outcomes, as seen during the Covid–19 pandemic. In contrast, with the proposed Cloud Infrastructure, the CSP controls the hardware supply chain and even partakes in key areas of the manufacturing process to circumvent typical problems such as chip shortages. Moreover, the Clearing Agencies get to review the CSP's equipment forecast for each upcoming quarter, affording the Clearing Agencies the opportunity to address potential supply chain difficulties, if any, without jeopardizing their access to adequate capacity, by leveraging capabilities such as reserved capacity. Altogether, the Clearing Agencies believe the CSP's management of Cloud hardware will be a benefit to them.

The CSP would perform its own risk and vulnerability assessments of the CSP infrastructure on which the Clearing Agencies would run their Core C&S Systems. In published

[67] FFIEC is a formal interagency body empowered to prescribe uniform principles, standards, and report forms for the federal examination of financial institutions by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Consumer Financial Protection Bureau, and to make recommendations to promote uniformity in the supervision of financial institutions.

[68] Available at *https://www.ffiec.gov/press/pr043020.htm.*

[69] ''Shared responsibility'' conveys the responsibility of the Clearing Agencies and the CSP vis-à-vis each other from a business operations perspective. It does not mean that the CSP has taken on or that the Clearing Agencies have relinquished any of their Reg. SCI compliance requirements.

documentation and in meetings conducted with the CSP, the CSP asserts that it maintains an industry-leading automated test system, with strong executive oversight, and conducts full-scope assessments of its hardware, infrastructure, internal threats, and application software. The CSP asserts that it has an aggressive program for conducting internal adversarial assessments (''Red Team'') designed not only to evaluate system security but also the processes used to monitor and defend its infrastructure. The CSP also uses external, third-party assessments as a cross-check against its own results and to ensure that testing is conducted in an independent fashion. Pursuant to the CSP's documentation, results of these processes are reviewed weekly by the CSP's Chief Information Security Officer and the Chief Executive Officer with senior CSP leaders to discuss security and action plans.[70]

The Clearing Agencies have the responsibility to perform risk assessments and technical security testing, including control validation, penetration testing, and adversarial testing of their applications running on the Cloud Infrastructure. This includes testing of the application interface layer of some CSP provided services such as storage and key management.

As mentioned, the Clearing Agencies' testing includes assessing the configuration of the CSP provided services. The Clearing Agencies' Technology Risk Management staff would work with the Clearing Agencies' Information Technology staff to ensure that the CSP tools are configured to appropriately manage and mitigate potential sources of risk and will assess the effectiveness of those configurations.[71] The Technology Risk Management staff has developed an application, Cloud Governance Insights (''CGI''), to continuously monitor all Cloud Infrastructure for alignment to security baselines and configurations best practices.[72] The CGI dashboard allows Information Technology and Technology Risk Management staff to understand the environment risk posture and reporting of key risk indicators (''KRIs''). The Clearing Agencies' Red Team would operate freely ''in the Cloud,'' attempting to subvert or circumvent controls.[73] The testing would include probing of the CSP provided services to look for weaknesses in the Clearing Agencies' deployment of those tools.

Technology Risk Management staff would routinely report test results to the Technology Risk Management Steering Committee and the Management Risk Committee, appropriate functional Operations and Information Technology management, senior management, and the Board of Directors of the Clearing Agencies.[74] [75] Automated vulnerability scanning reports, source code analysis, and results of specific assessments would be risk-rated and assigned a priority for remediation in accordance with Clearing Agency Information Security Program requirements.[76] [77]

Management and oversight of the Cloud implementation follows the Clearing Agencies' standard governing principles for large information technology projects.[78] To maintain accountability over the CSP's performance, regular reporting to the Boards of the Clearing Agencies by senior management is essential and required, pursuant to the DTCC Third Party Risk Procedures.[79] Such reporting helps ensure that senior management takes appropriate actions to address significant performance deterioration, changing risks, or material issues identified through ongoing monitoring, thereby helping to ensure proactive risk management and continuous improvement.[80] The Clearing Agencies' Board of Directors has established a Technology and Cyber Committee to assist the Board of Directors in overseeing information technology and cybersecurity strategy and capabilities.

Information Technology and the Enterprise Program Management Office (''EPMO'') are responsible for the identification, management, monitoring, and reporting on the risks associated with the modernization and migration of applications to Cloud. To that end, reports on the status and progress of these efforts are reported to applicable Clearing Agency committees based on escalation criteria in the EPMO Procedure.[81] These reports include overall risk and issue summaries and analysis of key risk indicators for the migration of applications to the public cloud.

Finally, the Clearing Agencies' Internal Audit Department (''IAD''), as the independent third line of defense, is responsible for assessing and challenging the firm's control environment and risk management and control frameworks, which include those related to the Cloud, including, but not limited to, security controls and configurations, and report the results of

[70] The CSP does not provide assessment results to its customers, as doing so would constitute a breach of generally accepted security best practices. Instead, the CSP provides its customers with industry-standard reports—such as SOC2 Type II—prepared by an independent third-party auditor to provide relevant contextual information to its customers. The CSP also conducts periodic audit meetings specifically designed to discuss security concerns with its customers discussed later during the ''CSP Audit Symposium.'' Additionally, the Clearing Agencies have certain audit rights (pursuant to Section 3 *Customer Rights of Access and Audit* of the Reg. SCI Addendum) to review information about the nature and scope of the CSP's vulnerability management program.

[71] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the OTR TRM Core Process Procedure—Security Configuration Violation Rules, which is used to manage enterprise information security risk by ensuring a consistent configuration violation scoring process that provides timely identification of configuration violations and their severity ratings. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[72] CGI is the Clearing Agencies' internally developed solution to perform Cloud Security Posture Management and assess Cloud Infrastructure compliance against TRM Control Standards and Security Baselines in near real-time.

[73] *Supra* note 47.

[74] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the DTCC Information Security—Information Security Management Policy and Control Standards, which defines the roles, responsibilities, and accountabilities for DTCC's security practices and organization structure suited to protect DTCC's critical systems and business assets. Information Security Management evaluates DTCC's information security program's overall effectiveness, and establishes, maintains, communicates, and periodically reassesses information security policies and a comprehensive information security program that are approved by management. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[75] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the DTCC Information Security—Risk Management Policy and Control Standards, which provides (i) requirements for establishing, implementing, maintaining, and continually improving the information risk management program, (ii) a governance structure utilized for the escalation of information risks to an appropriate management level, and (iii) organizational roles and responsibilities for the delivery of comprehensive information security and technology risk management program. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[76] *Supra* note 46.

[77] *Supra* note 47.

[78] *Supra* note 32.

[79] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the DTCC Third Party Risk Procedures, which establish the standards and practices to be used by certain business line departments and/or functional units to manage the potential risks associated with engaging with an external service provider. The Clearing Agencies have provided these documents in confidential Exhibit 3 to this advance notice filing.

[80] *Supra* note 62.

[81] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the Enterprise Program Management Office Procedure, which outlines the minimum standards and practices the Clearing Agencies use to manage, measure, and monitor the performance of key processes aligned to the Enterprise Program Management Office Policy. The Clearing Agencies have provided these documents in confidential Exhibit 3 to this advance notice filing.

those assessments to management and the Audit Committee of the Board.[82]

Ultimately, there is no primary/secondary relationship, as the Clearing Agencies and the CSP each have their own set of responsibilities which, when combined, address the entire risk space.

(b) Cloud Security Management

The Clearing Agencies have established a robust Cloud security program to (i) manage the security of the Core C&S Systems that would be running on the Cloud Infrastructure hosted by the CSP, and (ii) assess and monitor the CSP management of security of the Cloud Infrastructure that it operates. The security program is built upon Clearing Agency Information Security Policies and Control Standards that establish requirements that apply to any technology system as well as any tool that provides technology services.[83] [84] [85] [86] Below describes elements of the Clearing Agencies' Cloud security management in the areas of (i) IAM controls (*i.e.,* determining who is accessing the systems, granting access to the applications, and then controlling what information they can access); (ii) security governance and controls for sensitive data; (iii) security configuration, provisioning, logging, and monitoring; and (iv) security testing.

(1) Network and IAM Controls

The Clearing Agencies recognize that robust network security configuration and IAM would provide reasonable assurance that users—including Clearing Agency employees, market participants, and service accounts for systems [87]—are granted least-privileged access [88] to the network, applications, and data in the Cloud. The Clearing Agencies would use third-party tools to automate appropriate role-based access to the Core C&S Systems running in the Cloud. By enforcing strict separation of duties and least-privileged access for infrastructure, applications, and data, the Clearing Agencies would protect the confidentiality, availability, and integrity of the data in the Cloud.

The Clearing Agencies have established IAM requirements that build upon the least-privileged model.[89] As part of the IAM program, all users must be assigned an appropriate enterprise identification. Additionally, the Clearing Agencies have established Highly Privileged Access Management capabilities and policies to further restrict highly privileged access to be used only in pre-determined scenarios that must be tied to a change, incident, request, or release records.[90]

Cloud users would be granted access to systems via a standardized and auditable approval process. The user identifications and granted access would be managed through their full lifecycle from a centralized IAM system maintained and administered by the Clearing Agencies. Role-, attribute-, and context-based access controls would be used as defined by internal standards [91] consistent with industry recommended practices to promote the principles of least-privileged access and separation of duties.[92]

The Clearing Agencies would use and manage third-party tools not otherwise provided by nor managed by the CSP for single sign-on and least-privileged access.[93] The network also would include hardware and software to limit and monitor ingress and egress traffic, encrypt data in transmission, and isolate traffic between the Clearing Agencies and the Cloud.[94] Since the Clearing Agencies would continue to provide cryptographic services, including key management, the CSP and other network service providers would not be able to decrypt Clearing Agency data either at rest or while in transit.

(2) Security Governance and Controls for Sensitive Data

The Clearing Agencies' data governance framework that would apply to Cloud implementation is identified within the Clearing Agency Information Security Policies and Control Standards.[95] The Clearing Agency Information Security Policies and Control Standards address data moving between systems within the Cloud as well as data transiting and traversing both trusted and untrusted networks. For example, the Clearing Agencies' Information Security Policies and Control Standards require a system or Software as a Service (*i.e.,* SaaS) to (i) store data and information, including all copies of data and information in the system, in the U.S., throughout its lifecycle; (ii) be able to retrieve and access the data and information throughout its lifecycle; (iii) for data in the system hosted in the Cloud, encrypt such data with key pairs kept and owned by the Clearing Agencies; (iv) comply with U.S. federal and applicable state data regulations regarding data location; and (v) enable secure disposition of non-records in accordance with the Clearing Agencies' Information Governance Policy.[96]

Furthermore, the Clearing Agencies' policies establish the overall data governance framework applied to the management, use, and governance of Clearing Agency information to include digital instantiations, storage media, or whether the information is located, processed, stored, or transmitted on the Clearing Agencies' information systems and networks; public, private, or hybrid

[82] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the Internal Audit Department Policies and Procedures, which contains the policies and guidance that direct the activities of the Clearing Agencies' IAD. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[83] *Supra* notes 46–47, 73–74.

[84] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the DTCC Information Security—Asset Security Policy and Control Standards, which governs management of security for the information assets of the Clearing Agencies. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[85] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the DTCC Information Security—Monitoring and Incident Management Policy and Control Standards, which governs DTCC's information security monitoring and incident management and specifies requirements for (i) detecting unauthorized information processing activities, (ii) ensuring information security events and weaknesses associated with information systems are communicated in a manner allowing timely corrective action to be taken, and (iii) ensuring a consistent and effective approach is applied to the management of information security incidents. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[86] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the DTCC Information Security—Asset Access Control Policy and Standards, which governs management of security for the information assets of the DTCC and its subsidiaries. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[87] Service accounts are non-interactive accounts that permit application access to support activities such as monitoring, logging, or backup. Service accounts are also used for machine-to-machine communications.

[88] Least-privileged access means users only have the permission needed to perform their work, and no more.

[89] *Supra* note 85.

[90] *Id.*

[91] *Id.*

[92] (1) ISO/IEC 27002:2013—Information technology—Security techniques—Code of practice for information security controls; (2) NIST Cybersecurity Framework (CSF) Version 1.1; (3) NIST Special Publication 800–53 Revision 4—Security and Privacy Controls for Federal Information Systems and Organizations.

[93] For example, the Clearing Agencies currently use Bravura Security Privileged Access Management (a/k/a PAM) for highly privileged access management.

[94] *Supra* notes 47, 84–85.

[95] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the DTCC Data Risk Management Policy, which establishes requirements for the sound management of data risk across the data lifecycle. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[96] *Supra* note 85.

cloud infrastructures; third-party data centers and data repositories; or SaaS applications.[97] The Information Classification and Handling Policy [98] classifies the Clearing Agencies' information into categories. System owners of technology that enable classification and/or labeling of information are responsible for ensuring the correct classification level is designated in the system of record and the applicable controls are enforced. All information requiring disposal is required to be disposed of securely in accordance with all applicable procedures. Sensitive data must be handled in a manner consistent with requirements in the Information Classification and Handling Policy.

The Clearing Agencies would implement key security components, namely ubiquitous authentication, and encryption via use of an automated public key infrastructure, coupled with responsive, highly available authentication, authorization tools, and key management strategies to ensure appropriate industry standard security controls are in place for sensitive data both in transit to and at rest in Cloud.[99]

External connectivity to the Clearing Agencies' systems hosted by the CSP would be provided, as it is now, through dedicated private circuits or over encrypted tunnels through the internet. These network links also would have additional security controls, including encryption during transmission and restrictions on network access to and from the Cloud. Additionally, the Clearing Agencies would use dedicated redundant private network connections between the Clearing Agencies data centers and the CSP infrastructure. The Clearing Agencies currently maintains two data centers and will do so in the near term to provide redundant, geographically diverse connectivity for market participants.

All network communications between the Clearing Agencies and the Cloud Infrastructure would rely on industry standard encryption for traffic while in transit. Data at rest would be safeguarded through pervasive encryption. The Clearing Agencies' Encryption Standards [100] describe requirements for implementation of the minimum required strengths, encryption at rest, and cryptographic algorithms approved for use in cryptographic technology deployments across the Clearing Agencies. All Clearing Agency identifying data is encrypted in transit using industry standard methods. The Key Management Service (''KMS'') Strategy [101] dictates that all CSP endpoints support HTTPS for encrypting data in transit. The Clearing Agencies also secure connections to the endpoint service by using virtual private computer endpoints and ensures client applications are properly configured to ensure encapsulation between minimum and maximum Transport Layer Security versions pursuant to the Clearing Agencies' encryption standard.

The Clearing Agencies would have exclusive control over the encryption keys; only Clearing Agency authorized users and approved third parties would be able to access Clearing Agency data. The CSP systems and staff would not have access to the Clearing Agencies' certificates or keys.[102] The Clearing Agencies would be responsible for the application architecture, software, configuration, and use of the CSP services, and for the maintenance of the environment, including ongoing monitoring of the application environment to achieve the appropriate security posture. To do this, the Clearing Agencies would follow (i) existing security design and controls; (ii) Cloud-specific information security controls defined in the Clearing Agencies' Information Security Policies and Control Standards; [103] and (iii) regulatory compliance requirements detailed in sources or information technology practices that are widely available and issued by an authoritative body that is a U.S. governmental entity or agency including NIST–CSF,[104] COBIT,[105] and the FFIEC Guidelines.[106]

The Clearing Agencies would use third-party and custom developed tools for CSP security compliance monitoring, security scanning, and reporting. Alerts and all API-level actions would be gathered using both CSP provided, Clearing Agency developed, and third-party monitoring tools. The CSP provided monitoring tool would be enabled by default at the organization level to monitor all CSP services activity. Centralized logging provides near real-time analysis of events and contains information about all aspects of user and role management, detection of unauthorized, security relevant configuration changes, and inbound and outbound communication.

As discussed just above, the Clearing Agencies would use a KMS Strategy to encrypt data in transit and at rest in the Cloud. KMS is designed so that no one, including CSP employees, can retrieve customer plaintext keys and use them. The Federal Information Processing Standards 140–2 validated Host Security Modules (''HSMs'') in KMS protect the confidentiality and integrity of Clearing Agency customer keys.[107] Customer plaintext keys are not written to disk and are only used in protected, volatile memory of the HSMs for the time needed to perform the customer's requested cryptographic operation. KMS keys are not transmitted outside of Cloud regions in which they were created. Updates to the KMS HSM firmware will be controlled by quorum-based access control [108] that is audited and reviewed by an independent group within the CSP.

(3) Security Configuration, Provisioning, Logging, and Monitoring

Automated delivery of business and security capability via the use of ''Infrastructure as Code'' and continuous integration/continuous deployment pipeline methods would permit security controls to be consistently and transparently deployed on-demand. The Clearing Agencies would provision Cloud Infrastructure using pre-established system configurations that are deployed through Infrastructure as Code, then scanned for compliance to secure baseline configuration standards. The Clearing Agencies also would employ continuous configuration monitoring and periodic vulnerability scanning. The Clearing Agencies would perform regular reviews and testing of Clearing Agency systems running in Cloud while relying upon information provided by the CSP through the CSP's SOC2 and Audit Symposiums. Finally, configuration, security incident, and event monitoring would rely on a blend of CSP native and third-party solutions.

The Clearing Agencies also plan to use tools offered by the CSP, developed by the Clearing Agencies, and third parties to monitor the Core C&S Systems

[97] *Supra* note 46.

[98] *Supra* note 83.

[99] *Supra* note 47.

[100] *Supra* note 91.

[101] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the DTCC Information Security—Public Key Infrastructure Policy and Control Standards, which governs the public key infrastructures implemented and used within DTCC and its subsidiaries. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[102] Certificate management is the process of creating, monitoring, and handling digital keys (certificates) to encrypt communications.

[103] *Supra* note 91.

[104] NIST Cybersecurity Framework Version 1.1.

[105] *COBIT 2019 Framework: Governance and Management Objectives.*

[106] FFIEC Information Technology Examination Handbook—Information Security (September 2016).

[107] The HSM is analogous to a safe to which only the Clearing Agencies have the combination and the ability to access the keys to locks stored within.

[108] A quorum-based access mechanism requires multiple users to provide credentials over a fixed period in order to obtain access.

running in Cloud. The Clearing Agencies would track metrics, monitor log files, set alarms, and have the ability to act on changes to Core C&S Systems and the environment in which they operate. The CSP would provide a dashboard to reflect-general health (*e.g.,* up/down status of a region and CSP provided services running in that region) but would not give additional insights into performance of services and applications which run on those services. The Clearing Agencies' centralized logging system would provide for a single frame of reference for log aggregation, access, and workflow management by ingesting the CSP's logs coming from native detective tools and the Clearing Agencies' instrumented controls for logging, monitoring, and vulnerability management. This instrumentation would give the Clearing Agencies a real-time view into the availability of Cloud services as well as the ability to track historical data. By using the enterprise monitoring tools that the Clearing Agencies have in place, the Clearing Agencies would be able to integrate the availability and capacity management of Cloud into the Clearing Agencies' existing processes, hosted in Cloud, to respond to issues in a timely manner.

The Clearing Agencies also would use specialized third-party tools, as discussed just above, to programmatically configure Cloud services and securely deploy infrastructure. This automation of configuration and deployment would help ensure that Cloud services are repeatably and consistently configured securely and validated. Change detection tools providing event logs into the incident management system also are vital for reacting to and investigating unexpected changes to the environment.

The Clearing Agencies would implement tools for the Core C&S Systems and back-office environments that would be hosted on the Cloud Infrastructure, notably, IAM, monitoring and Security Information and Event Management systems, the workflow system of record for incident handling, KMS, and enterprise Data Loss Prevention.

Finally, the CSP prioritizes assurance programs and certifications, underscoring its ability to comply with financial services regulations and standards and to provide the Clearing Agencies with a secure Cloud Infrastructure.[109]

[109] The CSP has certifications for the following frameworks: NIST, Cloud Security Alliance, COBIT, ISO, and FISMA.

(4) Security Testing and Verification

Security testing is integrated into business-as-usual processes as outlined in relevant policy and procedures.[110] These documents define how testing is initiated, executed, and tracked.

For new assets and application (or code) releases, Technology Risk Management determines whether and what type of security testing is required through a risk-based analysis.[111] If required, testing would be conducted prior to implementation. The different testing techniques are outlined below:

- *Automated Security Testing.* Using industry standard security testing tools and/or other security engineering techniques specifically configured for each test, the Clearing Agencies would test to identify vulnerabilities and deliver payloads with the intent to break, change, or gain access to unauthorized areas within an application, data, or system.
- *Manual Penetration Testing.* Using information gathered from automated testing and/or other information sources, the Clearing Agencies would manually test to identify vulnerabilities and deliver payloads with the intent to break, change, or gain access to the unauthorized area within an application or system.
- *Blue Team Testing.* The Blue Team identifies security threats and risks in the operating environment and analyzes the network, system, and SaaS environments and their current state of security readiness. Blue Team assessment results guide risk mitigation and remediation, validate the effectiveness of controls, and provide evidence to support authorization or approval decisions. Blue Team testing ensures that the Clearing Agencies' networks, systems, and SaaS solutions are as secure as possible before deploying to a production environment.

The results of the Clearing Agencies' security controls testing are risk-rated and managed to remediation via two separate control standards.[112]

(c) Change Management: Software Development and Release Process

Consistent with FFIEC Guidance, the Clearing Agencies' use of Cloud would have sufficient change management controls in place to effectively transition systems and information assets to Cloud and would help ensure the security and reliability of applications in Cloud.[113] The Clearing Agencies' enterprise software development lifecycle processes[114] would help ensure the same control environment for all Clearing Agency resources. The Clearing Agencies would establish baselines for design inputs and control requirements and enforce workload isolation and segregation through Cloud using existing Cloud native technical controls and added new tools. The Clearing Agencies also would plan to use other specialized platform monitoring tools for logging, scanning of configuration, and systems process scanning. The Clearing Agencies also would have oversight as the code owner and would have final review and approval for related changes and code merges before deployment into production. Finally, the Clearing Agencies would periodically conduct static code scanning and perform vulnerability scanning for external dependencies prior to deployment in production, along with manual penetration testing of the provided application code. In addition, the Clearing Agencies would perform routine scans of Compute resources with the existing enterprise scanning tools. Any identified vulnerabilities would be reviewed for severity, prioritized, and logged for remediation tracking in upcoming development releases.

The Clearing Agencies would create a ''user acceptance plan'' prior to promoting code to Cloud production. This user acceptance plan would include tests of all major functions, processes, and interfacing systems, as well as security tests. Through acceptance tests, the Clearing Agencies' users would be able to simulate complete application functionality of the live environment. The change would move to the next stage of the Clearing Agencies' delivery model only after satisfying the criteria for this phase.[115]

The Clearing Agencies would have internal projects that would address change management of the various applications and services. In particular, the Clearing Agencies would run a suite of supporting services that enable building, running, scaling, and monitoring of the Clearing Agencies' business applications in Cloud, in an automated, resilient, and secure manner.[116] The application platform relies on various CSP and third-party tools for different components, including IaaS, Infrastructure as Code, CI/CD, Container as a Service,

[110] *Supra* note 46.

[111] *Supra* note 30.

[112] *Supra* notes 46–47.

[113] *Supra* note 30.

[114] *Id.*

[115] The ''user acceptance plan'' represents only one aspect of the overall change management program at the Clearing Agencies.

[116] *Supra* note 30.

Continuous Delivery, and Platform Monitoring.

With respect to software development in Cloud, the Clearing Agencies would establish a closed, non-production Cloud environment that would enable the Clearing Agencies to develop, test, and integrate new capabilities, including those related to security capabilities. This non-production Cloud environment would focus on the foundational security, operations, and infrastructure requirements with the intent to take lessons learned to implement into future production. The Clearing Agencies would maintain a Cloud Reference Architecture that defines necessary capabilities and controls required to securely host Core C&S Systems. The minimum foundational security requirements would be based on the NIST–CSF and CIS benchmarks and include the design and implementation requirements of a secure Cloud account structure within a multi-region Cloud environment. The Clearing Agencies would maintain enterprise security requirements that provide structure for current and future development. As the Cloud environment is further developed and expanded, there would be a comprehensive process to identify any incremental risks and develop and implement controls to manage and mitigate those risks.

(d) Resilience and Recovery

As noted earlier, given the Clearing Agencies' roles as systemically important financial market utilities, it is vital that operations moved to the Cloud have appropriately robust resilience and recovery capabilities. As discussed in Section II.B.ii.2, above, the Cloud Infrastructure would be architected to include (i) two autonomous and geographically diverse regions; (ii) three availability zones per region, with each availability zone comprised of multiple data centers; (iii) multi-node, high availability clusters across each availability zone; (iv) static stability and static capacity models; and (v) regional isolation, all to help ensure the persistent availability of Compute, Storage, and Network capabilities in Cloud.

Additionally, the CSP's practice in deploying service updates to Cloud would help ensure that the consequences of any incidents would be limited to the fullest extent possible.[117] The CSP achieves this by (i) fully automating the build and deployment process and (ii) deploying services to production in a phased manner.

CSP service updates are first deployed to cells, which minimizes the chance that a disruption from a service update in one cell would disrupt other cells. Following a successful cell-based deployment, service updates are next deployed to a specific availability zone, which limits any potential disruption to that zone. Following a successful availability zone deployment, service updates are then deployed in a staged manner to other availability zones, starting with the same region and later within other regions until the process is complete.

The Clearing Agencies would meet regularly with the CSP, in addition to formal quarterly briefing meetings with the CSP, as described in the Reg. SCI Addendum.[118] The informal discussions and quarterly briefing meetings would permit the Clearing Agencies to gather information in advance of the quarterly systems change report. Most reportable systems changes would continue to occur based on changes to Compute, Storage, Network, or applications controlled by the Clearing Agencies.

(e) Audit Controls and Assessment

The Clearing Agencies would regularly test security controls and configurations, including by monitoring the CSP's technical, administrative, and physical security controls that support the Clearing Agencies' systems in the Cloud Infrastructure.

(1) Internal Risk Assessments

As part of their existing third-party vendor risk activities, the Clearing Agencies' Third-Party Risk department (''TPR'') would assess the operational risks of the CSP as a critical vendor annually.[119] [120] [121] Additionally, as a critical vendor, the CSP is subject to heightened risk management requirements, as defined in the DTCC Third Party Risk CriticalPlus Program Procedures,[122] which include an executive sponsor that must be at the Managing Director level or higher, documented annual meetings, quarterly reporting, and monthly notifications. Issues rated moderate or above, negative news, performance concerns or remediations are directly escalated to the Management Risk Committee monthly.[123]

(2) Internal Audit Department

As mentioned in Section II.B.ii.4.(a), above, the Clearing Agencies' IAD, as the third line of defense, is independent from the Clearing Agencies' business lines, support areas, and controls functions, and promotes resiliency and security through the assessment of risk management and control frameworks to raise awareness of control risks and changes for improving controls and governance processes.

IAD assesses the risks of the Clearing Agencies, at least annually, as part of the development of the risk-based audit plan, which is reviewed and refreshed, as needed, on a quarterly basis.[124] The development of the audit plan includes the consideration of IADs risk assessment results, which informs cycle coverage requirements for Cloud. Additional considerations include, but are not limited to, regulatory requirements and expectations, initiatives, and institutional and industry risk trends, including risks associated with technology and cloud-based processes.

IAD's specific reviews of Cloud Infrastructure have not identified any material deficiencies and the scope of the reviews have included, but are not limited to, consideration of governance and oversight, contagion risk and logical separation, access management, security configuration and monitoring,

[117] The Clearing Agencies would continue to retain responsibility for patching, configuration, and monitoring of the operating systems and applications in Cloud.

[118] *See* Reg. SCI Addendum, Section 4 *Briefing Meetings*. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[119] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the DTCC Third Party Risk Governance & Monitoring Procedures, which describes the minimum requirements for practices and standards to be used by business owners to monitor and manage third party relationships for DTCC and its subsidiaries. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[120] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the DTCC Third Party Risk Policy and the DTCC Third Party Risk Procedures, which establish the standards and practices to be used by certain business line departments and/or functional units to manage the potential risks associated with engaging with an external service provider. The Clearing Agencies have provided these documents in confidential Exhibit 3 to this advance notice filing.

[121] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the Third Party Risk—Technology and Resilience Procedure, which supplements the ''DTCC Third Party Risk Policy'', ''DTCC Third Party Risk Procedures'', and ''DTCC Third Party Risk Governance and Monitoring Procedures'' and covers the following: standard technology risk assessments (*e.g.,* due diligence), fourth party reviews, NYDFS cyber security assessments, and onsite assessments. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[122] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the DTCC Third Party Risk CriticalPlus Program Procedures. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[123] *Supra* note 62.

[124] *Supra* note 81.

concentration risk, exit strategy, business continuity and disaster recovery. IAD also has assessed the design of controls for a cloud platform scheduled for use in 2024 and is proposing a Cloud Security audit for 2024.[125]

(3) Key Risk and Key Performance Indicators [126]

The Clearing Agencies have established processes to evaluate the Clearing Agencies' management of CSPs. Cloud vendors are rated through a quarterly TPR survey. If a survey results in a poor rating, then it is reported to the Management Risk Committee (''MRC'').[127] TPR is responsible for the timely reporting and escalation of third-party risks. On a regular basis, TPR will review all active assessments to identify any high risks or potential issues that may require further discussion or escalation to senior management, Corporate Procurement Services (''CPS''), or internal stakeholders. The DTCC Third Party Risk Procedures provide a list of events that must be presented to the MRC.[128]

The Clearing Agencies have developed key performance indicators (''KPIs'') for Cloud and socialized these KPIs internally. The KRIs already exist for Core C&S Systems and are aligned to overall systems availability, capacity, data integrity, and security.[129] The CSP KPIs would feed into existing KRIs and would be used to evaluate the CSP's performance after Cloud implementation. KPIs would be added to monitor the performance and risks of the CSP services for which the Clearing Agencies have contracted. These post-Cloud implementation KRIs and KPIs would allow the Clearing Agencies to assess their ongoing use of the CSP against their operational and security requirements and would help demonstrate the effectiveness of risk controls and the CSP's performance against commitments in the SLAs, and will be reported on a regular basis to the Clearing Agencies' Management Committee, Board of Directors, and Technology and Risk Committees of the Board of Directors.

(4) Auditing the CSP and Access Rights [130]

The CSP hosts an annual Audit Symposium. The Cloud Agreement gives the Clearing Agencies the right to attend the symposium so that the Clearing Agencies may inspect and verify evidence of the design and effectiveness of the CSP's control environment.[131] The CSP also hosts an annual Cloud security conference focused on security, governance, risk and compliance, which the Clearing Agencies would attend. Through preparation for and attendance at these events, the Clearing Agencies could provide feedback and make requests of the CSP for future modifications of its control environment.

The Clearing Agencies' Information Technology staff currently meets with CSP representatives weekly to focus on technical issues related to the Clearing Agencies' proposed Cloud environment. As required under the Cloud Agreement, the Clearing Agencies hold quarterly compliance briefings with the CSP, wherein the Clearing Agencies receive information, including any necessary documentation, from the CSP to help assure the Clearing Agencies that the CSP is meeting its obligations.[132] The information provided includes updates to services and SLAs, CSP performance, and details that help the Clearing Agencies meet their reporting obligations under Section 1003(a)(1) of Reg. SCI. The Clearing Agencies' management, including Security, Information Technology, TPR, and the Internal Audit Department, coordinate to ensure appropriate representation during such briefings. The CSP is required under Cloud Agreement to maintain records showing its compliance with the agreements for a period of five years.[133]

The CSP would be required to maintain an information security program, including controls and certifications, that is as protective as the program evidenced by the CSP's SOC–2 report. The CSP must make available on demand to the Clearing Agencies its SOC–2 report as well as the CSP's other certifications from accreditation bodies and information on its alignment with various frameworks, including NIST–CSF, and ISO.[134]

As part of the annual risk assessment of the CSP, TPR collects risk and control related assurance documents from the CSP and coordinates review with the Clearing Agencies' respective subject matters specialists. TPR, Security, and Business Continuity would determine the adequacy and reasonableness of the documentation received to complete the Third-Party Risk Assessment. Finally, the Cloud Agreement provides that the Clearing Agencies' and their regulators may visit the facilities of the CSP under specified conditions. TPR would help coordinate bi-annual visits of the data centers.[135]

The Clearing Agencies plan to use the CSP's services combined with additional third-party tools to monitor systems deployed by ingesting logs into a security incident and event monitoring tool to provide a ''single pane of glass'' view into the Cloud Infrastructure. When incidents are detected, the Clearing Agencies would follow their existing incident response governance to identify, detect, contain, eradicate, and recover from incidents.

III. Consistency With the Clearing Supervision Act

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 and strengthening the liquidity of systemically important financial market utilities.[136] Section 805(a)(2) of the Clearing Supervision Act [137] also authorizes the Commission to prescribe risk management standards for the

[125] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the Clearing Agencies' Cloud Platform Internal Audit Report. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[126] *Supra* note 62.

[127] *Supra* note 119.

[128] *Supra* note 78.

[129] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the IT–Q4 2023 Risk Tolerance. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[130] *Supra* note 62.

[131] *See* Reg. SCI Addendum, Section 3 *Customer Right of Access and Audit.* The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[132] *Supra* note 117.

[133] *See* Reg. SCI Addendum, Section 7.3 *CSP Records.* The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[134] The FFIEC Guidance provides that the Clearing Agencies may obtain SOC reports, other independent audits, or ISO certification reports to gain assurance that the CSP's controls are operating effectively. *See* FFIEC, Security in a Cloud Computing Environment, at 7. The Clearing Agencies review the CSP's SOC–2 on an annual basis. *See* Reg. SCI Addendum, Section 2 *CSP Information Security Program.* The SOC reports, along with other artifacts showing compliance with these sections, are available to the Clearing Agencies on demand. In addition, during each Briefing Meeting (*See* Reg. SCI Addendum Section 4 *Briefing Meetings*), updates are provided on any material changes to certification standards, policies, procedures, controls or security standards at the CSP. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[135] *See* Reg. SCI Addendum, Sections 3 *Customer Right of Access and Audit* and 9 *Regulatory Supervision.* The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[136] 12 U.S.C. 5461(b).

[137] 12 U.S.C. 5464(a)(2).

payment, clearing and settlement activities of designated clearing entities, like the Clearing Agencies, for which the Commission is the supervisory agency. Section 805(b) of the Clearing Supervision Act [138] states that the objectives and principles for risk management standards prescribed under Section 805(a) shall be to:

- promote robust risk management;
- promote safety and soundness;
- reduce systemic risks; and
- support the stability of the broader financial system.

The Commission adopted Rule 17ad–22 under Section 805(a)(2) of the Clearing Supervision Act and the Exchange Act in furtherance of these objectives and principles.[139] Rule 17ad–22 under the Exchange requires covered clearing agencies, like the Clearing Agencies, to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing basis.[140]

The Clearing Agencies believe that the Cloud Proposal is consistent with Section 805(b)(1) of the Clearing Supervision Act [141] and the requirements of Rules 17ad–22(e)(17)(ii) under the Exchange Act.[142]

A. Consistency With Section 805(b)(1) of the Clearing Supervision Act

Promote Robust Risk Management. As described above, the Clearing Agencies believe that the Cloud Proposal promotes robust risk management, specifically operational risk management, by providing scalable and secure infrastructure for hosting Core C&S Systems. The Cloud Proposal would add additional security capabilities, allow for regular updates and maintenance of applications, and reduce the risk of data breaches while also ensuring compliance with industry standards. Additionally, transitioning to Cloud would offer flexibility in scaling resources, which can enable the Clearing Agencies to adapt quickly to changing security needs and allocate resources more efficiently.

Today, the Clearing Agencies' ability to risk manage extreme market events is directly tied to their ability to scale their on-premises resource during such events, which is directly tied to the Clearing Agencies having previously expended enough capital to build enough capacity based on earlier performance testing of their applications to withstand such extreme market events. Although the Clearing Agencies would continue to performance test their applications regardless of where the applications are hosted, by hosting the applications in Cloud, the number of scalable resources is already available, when needed, without the Clearing Agencies having to pre-purchase it or build it. This level of nearly unbounded, on-demand scalability provides a much-welcomed risk-management feature for extreme events, such as a global pandemic as noted above.

Overall, risk management is inherently strengthened by hosting in Cloud through advanced security features, real-time monitoring, on-demand scalability, and compliance standards implemented by the CSP. By leveraging these capabilities, the Clearing Agencies can better proactively identify and address risks, ensuring data integrity and regulatory compliance.

Promote Safety and Soundness. The Clearing Agencies also believe that the Cloud Proposal promotes safety and soundness. As discussed above, transitioning to Cloud provides centralized management and improved scalability. The CSP provides cloud-specific security capabilities, including encryption, access controls, and regular updates, reducing the risk of security breaches. Centralized monitoring allows for better visibility into potential threats, enabling quick response and mitigation. The agility afforded by Cloud would allow the Clearing Agencies to respond to performance challenges more efficiently and effectively. For instance, as noted above, in the face of unexpected surges in demand, Cloud scalability would allow the Clearing Agencies to seamlessly adjust resources, helping to prevent service disruptions and loss of operations. Such agility not only enhances the effectiveness of operations but also mitigates the risks associated with unexpected fluctuations in workload performance. These benefits improve the Clearing Agencies abilities to maintain operational continuity and resilience, which help promote safety and soundness.

Reduce Systemic Risk. The Clearing Agencies also believe that the Cloud Proposal would reduce systemic risk by improving overall resilience and security. As described above, hosting Core C&S Systems in Cloud would provide distributed infrastructure and data redundancy (*i.e.,* multiple availability zones, supported by many data centers, across two regions), making the systems less susceptible to single points of failure. Moreover, disaster recovery would be streamlined, minimizing the effect of potential disruptions, while automatic backup systems, geographic redundancy, and faster data recovery mechanisms would all contribute to a more resilient infrastructure. In the event of a localized issue, the distributed nature of Cloud would help prevent widespread disruptions.

Production resiliency also is greatly improved in Cloud compared to the Clearing Agencies' on-premises capabilities, where a single location hosts an application, on a single copy of primary storage. Instead, Cloud would host an application across three primary availability zones, made of up of many data centers, each of which contain actively running instances and synchronous copies of the data. If the Clearing Agencies' primary, on-premises data center fails, an out of region recovery will be necessary and will likely result in approximately two hours of downtime. By comparison, in Cloud, even if an entire availability zone fails (meaning the failure of multiple data centers), Core C&S Systems would continue to operate within the region, thus avoiding an out of region recovery and any downtime.

The Clearing Agencies would employ meaningful security capabilities and measures provided by the CSP and third-party tools to further enhance the security of the Clearing Agencies' Core C&S Systems. This approach to security would help reduce systemic risks associated with operational outages and significantly reduce the risk associated with data loss or downtime. Additionally, the Cloud environment facilitates regular updates and patch management, ensuring that security measures stay current. This proactive maintenance helps mitigate vulnerabilities that could otherwise contribute to systemic risk. Overall, the adoption of Cloud enhances the stability and security of IT infrastructure, contributing to a reduction in systemic risks.

Altogether, the Clearing Agencies believe that the benefits afford from operating in a Cloud Infrastructure would help the Clearing Agencies reduce systemic risk.

Support the Stability of the Broader Financial System. The Clearing Agencies believe that the Cloud Proposal supports the stability of the broader financial system by enhancing efficiency, resilience, and security of the

[138] 12 U.S.C. 5464(b).

[139] 17 CFR 240.17ad–22. Exchange Act Release Nos. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7–08–11) (Clearing Agency Standards); 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7–03–14) (Standards for Covered Clearing Agencies).

[140] 17 CFR 240.17ad–22.

[141] 12 U.S.C. 5464(b)(1).

[142] 17 CFR 240.17ad–22(e)(17)(ii).

Clearing Agencies' Core C&S Systems. Cloud services would provide the Clearing Agencies with scalable and flexible infrastructure, allowing for more efficient resource allocation and cost management, which supports operational resiliency and stability. With the ability to rapidly deploy new applications and services, the Clearing Agencies would become more agile in adapting to market trends and participant and customer needs.

In terms of resilience, the Cloud Infrastructure offers distributed data storage and failover solutions, reducing the impact of localized disruptions and improving recovery capabilities. This resilience is crucial for the Clearing Agencies' Core C&S Systems to continue functioning even in the face of unforeseen events. Moreover, the CSP's strengthened security capabilities help protect sensitive data, mitigating the risk of cyberattack or data breaches that could undermine the stability of the financial system. Overall, the transition to Cloud fosters improved operational efficiency, resilience, and robust security practices, contributing to the stability of the broader financial system.

Accordingly, the proposed changes provided in this Cloud Proposal are consistent with (i) promoting robust risk management; (ii) promoting safety and soundness; (iii) reducing systemic risks; and (iv) promoting the stability of the broader financial system, all in support of the objectives and principles of Section 805(b) of the Clearing Supervision Act.[143]

B. Consistency With Rule 17ad–22(e)(17)(ii) Under the Exchange Act

Rule 17ad–22(e)(17)(ii) requires the Clearing Agencies to establish, implement, maintain, and enforce written policies and procedures reasonably designed to manage the Clearing Agencies' operational risk by ''ensuring that systems have a high degree of security, resiliency, operational reliability, and adequate, scalable capacity.'' [144]

Security. As described above and in policies and procedures confidentially filed, the Clearing Agencies have established a robust Cloud security program to manage the security of the Core C&S Systems that would be running in Cloud and to monitor the CSP's management of security of the Cloud Infrastructure that it operates. Processes are formally defined, automated to the fullest extent, repeatable with minimal variation, accessible, adhered to, and timely. The enterprise security program encompasses all of the Clearing Agencies' assets existing in the Clearing Agencies' offices, data centers, and within the Cloud Infrastructure, and IAM controls ensure least-privileged user access to applications in Cloud. The Clearing Agencies have appropriate controls in place to help ensure the security of confidential information in-transit between the Clearing Agencies' data centers and the Cloud Infrastructure, between systems within the Cloud Infrastructure, and at-rest. All network communications between the Clearing Agencies and Cloud would rely on industry standard encryption for traffic while in transit, and data at rest would be safeguarded through pervasive encryption. Finally, automated delivery of business and security capability via the use of the Infrastructure as Code, Cloud agnostic tools, and continuous integration/continuous deployment pipeline methods help ensure security controls are consistently and transparently deployed.

Resiliency and Operational Reliability. As stated above, resiliency and operational reliability of the Cloud Infrastructure is built into the system with functionality for the Clearing Agencies' Core C&S Systems to run in multiple availability zones within multiple regions. Regions are segregated from one another and are designed to minimize the possibility of a multi-region outage. The Clearing Agencies have designed their Cloud Infrastructure to have primary (hot)/secondary (warm) regions, at all times, ensuring Compute, Storage, and Network resources would be available in a new redundant region in the event of a primary region failure. As a result, the Cloud Infrastructure offers the Clearing Agencies multiple redundancies within which to run Core C&S Systems, while simultaneously restricting the effect of an incident at the CSP to the smallest footprint possible.

Scalability. As described above, since additional computing power can be launched on demand, the scalability in a Cloud computing environment is considerable and instantaneous. The Clearing Agencies could provision or de-provision Compute, Storage, and Network resources to meet demand at any given point in time. In the current on-premises environment, immediate scalability is limited by the capacity of the on-premises hardware. Additional physical servers and network equipment would be needed to scale beyond the limits of the on-premises hardware, potentially affecting the ability to quickly adapt to evolving market conditions, including spikes in trading volume.

For these reasons, the Clearing Agencies believe that the Cloud Proposal would help ensure that the Clearing Agencies' systems have a high degree of security, resiliency, operational reliability, and adequate, scalable capacity, consistent with Rule 17ad–22(e)(17)(ii) under the Exchange Act.[145]

III. Date of Effectiveness of the Advance Notice

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date the proposed change was filed with the Commission or (ii) the date any additional information requested by the Commission is received.[146] The clearing agency shall not implement the proposed change if the Commission has any objection to the proposed change.[147]

The clearing agency shall post notice on its website of proposed changes that are implemented. The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number NSCC–2024–801 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–NSCC–2024–801. 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

[143] 12 U.S.C. 5464(b).

[144] 17 CFR 240.17ad–22(e)(17)(ii). The Clearing Agencies maintain several policies specifically designed to manage the risks associated with maintaining adequate levels of system functionality, confidentiality, integrity, availability, capacity, and resiliency for systems that support core clearing, risk management, and data management services.

[145] 17 CFR 240.17ad–22(e)(17)(ii).

[146] 12 U.S.C. 5465(e)(1)(G).

[147] 12 U.S.C. 5465(e)(1)(F).

post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the advance notice that are filed with the Commission, and all written communications relating to the advance notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NSCC and on DTCC's website (*dtcc.com/legal/sec-rule-filings*). Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–NSCC–2024–801 and should be submitted on or before September 25, 2024.

V. Date of Timing for Commission Action

Section 806(e)(1)(G) of the Clearing Supervision Act provides that NSCC may implement the changes if it has not received an objection to the proposed changes within 60 days of the later of (i) the date that the Commission receives the Advance Notice or (ii) the date that any additional information requested by the Commission is received,[148] unless extended as described below.

Pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act, the Commission may extend the review period of an advance notice for an additional 60 days, if the changes proposed in the advance notice raise novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension.[149]

Here, as the Commission has not requested any additional information, the date that is 60 days after NSCC filed the Advance Notice with the Commission is October 13, 2024. However, the Commission believes that the changes proposed in the Advance Notice raise novel and complex issues. The Commission finds the issues novel because NSCC proposes a gradual migration of a specified set of Core C&S Systems to a public cloud infrastructure hosted by a single, third-party service provider. The Commission also finds the issues raised by the Advance Notice complex because the selection of the subset of applications proposed for migration involves a detailed governance review process that would require careful scrutiny and consideration of its associated risks. Therefore, the Commission finds it appropriate to extend the review period of the Advance Notice for an additional 60 days under Section 806(e)(1)(H) of the Clearing Supervision Act.[150]

Accordingly, the Commission, pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act,[151] extends the review period for an additional 60 days so that the Commission shall have until December 12, 2024 to issue an objection or non-objection to advance notice SR–NSCC–2024–801.

All submissions should refer to File Number SR–NSCC–2024–801 and should be submitted on or before September 25, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[152]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–19761 Filed 9–3–24; 8:45 am]

BILLING CODE 8011–01–P

[148] 12 U.S.C. 5465(e)(1)(G).

[149] 12 U.S.C. 5465(e)(1)(H).

[150] *Id.*

[151] *Id.*

[152] 17 CFR 200.30–3(a)(91).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100866; File No. SR–GEMX–2024–29]

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

August 28, 2024.

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

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

The Exchange proposes to establish fees for Industry Members[3] related to reasonably budgeted CAT costs of the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'') for the period from July 16, 2024 through December 31, 2024, as described further below.

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

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

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

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

1. Purpose

On July 11, 2012, the Commission adopted Rule 613 of Regulation NMS, which required the self-regulatory organizations (''SROs'') to submit a national market system (''NMS'') plan to create, implement and maintain a consolidated audit trail that would capture customer and order event information for orders in NMS securities across all markets, from the time of order inception through routing, cancellation, modification or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

execution.[4] On November 15, 2016, the Commission approved the CAT NMS Plan.[5] Under the CAT NMS Plan, the Operating Committee has the discretion to establish funding for CAT LLC to operate the CAT, including establishing fees for Industry Members to be assessed by CAT LLC that would be implemented on behalf of CAT LLC by the Participants.[6] The Operating Committee adopted a revised funding model to fund the CAT (''CAT Funding Model''). On September 6, 2023, the Commission approved the CAT Funding Model after concluding that the model was reasonable and that it satisfied the requirements of Section 11A of the Exchange Act and Rule 608 thereunder.[7]

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

Under the CAT Funding Model, Participants, CEBBs and CEBSs are subject to fees designed to cover the ongoing budgeted costs of the CAT, as determined by the Operating Committee. ''The Operating Committee will establish fees ('CAT Fees') to be payable by Participants and Industry Members with regard to CAT costs not previously paid by the Participants ('Prospective CAT Costs').'' [9] In establishing a CAT Fee, the Operating Committee will calculate a ''Fee Rate'' for the relevant period. Then, for each month in which a CAT Fee is in effect, each CEBB and CEBS would be required to pay the fee for each transaction in Eligible Securities executed by the CEBB or CEBS from the prior month as set forth in CAT Data, where the fee for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate.[10]

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

CAT LLC proposes to charge CEBBs and CEBSs (as described in more detail below) CAT Fee 2024–1 to recover the reasonably budgeted CAT costs for July 16, 2024 through December 31, 2024, in accordance with the CAT Funding Model. To implement this fee on behalf of CAT LLC, the CAT NMS Plan requires the Participants to ''file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves, and such fees shall be labeled as 'Consolidated Audit Trail Funding Fees.' '' [17] The Plan further states that ''[o]nce the Operating Committee has approved such Fee Rate, the Participants shall be required to file with the SEC pursuant to Section 19(b) of the Exchange Act CAT Fees to be charged to Industry Members calculated using such Fee Rate.'' [18] Accordingly, the purpose of this filing is to implement a CAT Fee on behalf of CAT LLC for Industry Members, referred to as CAT Fee 2024–1, in accordance with the CAT NMS Plan.

(1) CAT Executing Brokers

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

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

The following fields of the Participant Technical Specifications indicate the CAT Executing Brokers for the transactions executed on an exchange:

[4] Securities Exchange Act Rel. No. 67457 (July 18, 2012), 77 FR 45722 (Aug. 1, 2012).

[5] Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (''CAT NMS Plan Approval Order'').

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

[7] Securities Exchange Act Rel. No. 98290 (Sept. 6, 2023), 88 FR 62628 (Sept. 12, 2023) (''CAT Funding Model Approval Order'').

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

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

[10] In approving the CAT Funding Model, the Commission stated that, ''[t]he proposed recovery of Prospective CAT Costs is appropriate.'' CAT Funding Model Approval Order at 62651.

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

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

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

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

[15] CAT Funding Model Approval Order at 62659.

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

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

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

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

[20] Section 1.1 of the CAT NMS Plan. Note that CEBBs and CEBSs may, but are not required to, pass-through their CAT Fees to their clients, who may, in turn, pass their fees to their clients until they are imposed ultimately on the account that executed the transaction. *See* CAT Funding Model Approval Order at 62649.

EQUITY ORDER TRADE (EOT) [21]

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

OPTION TRADE (OT) [22]

No.	Field name	Data type	Description	Include key
16.*n*.13/17.*n*.13	member	Member Alias	The identifier for the member firm that is responsible for the order ..	R

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

TRF/ORF/ADF TRANSACTION DATA EVENT (TRF) [23]

No.	Field name	Data type	Description	Include key
26	reportingExecutingMpid	Member Alias	MPID of the executing party	R
28	contraExecutingMpid	Member Alias	MPID of the contra-side executing party	C

(2) Calculation of Fee Rate 2024–1

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

(A) CAT Fee 2024–1 Period

CAT LLC proposes to implement CAT Fee 2024–1 as the first CAT Fee related to Prospective CAT Costs. CAT LLC proposes to commence CAT Fee 2024–1 during the year, rather than at the beginning of the year. Accordingly, CAT Fee 2024–1 ''would be calculated as described in paragraph II'' of Section 11.3(a)(i)(A) of the CAT NMS Plan, which states that ''[d]uring each year, the Operating Committee will calculate a new Fee Rate by dividing the reasonably budgeted CAT costs for the remainder of the year by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for the remainder of the year.'' [25] For CAT Fee 2024–1, the reasonably budgeted CAT costs for ''the remainder of the year'' are the reasonably budgeted CAT costs from July 16, 2024 through December 31, 2024. This period is referred to as the CAT Fee 2024–1 Period. Such costs would be recovered over a four-month period, where the first invoices are sent in October 2024 based on transactions in September 2024.

(B) Executed Equivalent Shares for Transactions in Eligible Securities

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

(C) Budgeted CAT Costs 2024–1

The CAT NMS Plan states that ''[t]he budgeted CAT costs for the year shall be comprised of all reasonable fees, costs and expenses reasonably budgeted to be incurred by or for the Company in connection with the development, implementation and operation of the CAT as set forth in the annual operating budget approved by the Operating Committee pursuant to Section 11.1(a) of the CAT NMS Plan, or as adjusted during the year by the Operating

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

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

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

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

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

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

Committee.'' [27] Section 11.1(a) of the CAT NMS Plan describes the requirement for the Operating Committee to approve an operating budget for CAT LLC on an annual basis. It requires the budget to ''include the projected costs of the Company, including the costs of developing and operating the CAT for the upcoming year, and the sources of all revenues to cover such costs, as well as the funding of any reserve that the Operating Committee reasonably deems appropriate for the prudent operation of the Company.'' Section 11.1(a)(i) of the CAT NMS Plan further states that:

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

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

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

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

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

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

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

Budget category	Budgeted CAT costs 2024–1 *
Capitalized Developed Technology Costs **	$4,101,990
Technology Costs:	99,728,258
Cloud Hosting Services	76,278,426
Operating Fees	14,008,947.50
CAIS Operating Fees	9,278,384.50
Change Request Fees	162,500
Legal	4,484,554.50
Consulting	652,623
Insurance	1,342,345
Professional and administration	428,544.50
Public relations	43,225
Subtotal	110,781,540
Reserve	27,695,385
Total Budgeted CAT Costs 2024–1	138,476,925

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

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

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

(i) Technology Costs—Cloud Hosting Services

(a) Description of Cloud Hosting Services Costs

Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the cloud hosting services costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $76,278,426 in technology costs for cloud hosting services for the CAT Fee 2024–1 Period. The technology

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

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

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

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

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

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

costs for cloud hosting services represent costs reasonably budgeted to be incurred for services provided by the cloud services provider for the CAT, Amazon Web Services, Inc. (''AWS''), during the CAT Fee 2024–1 Period.

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

The cost for AWS cloud services for the CAT is a function of the volume of CAT Data. The greater the amount of CAT Data, the greater the cost of AWS services to CAT LLC. During the CAT 2024–1 Period, it is expected that AWS will provide cloud hosting services for volumes of CAT Data far in excess of the volume predictions set forth in the CAT NMS Plan. The CAT NMS Plan states, when all CAT Reporters are submitting their data to the CAT, it ''must be sized to receive[,] process and load more than 58 billion records per day,'' [33] and that ''[i]t is expected that the Central Repository will grow to more than 29 petabytes of raw, uncompressed data.'' [34] In contrast with those estimates, the Q1 2024 data volumes, which averaged 577 billion events per day, were up 45% compared to Q1 2023, which averaged 399 billion events per day, with peak volumes recorded on April 19, 2024 of 746 billion events. Even higher peak volumes were recorded in July and August 2024.

CAT LLC estimates that the budget for cloud hosting services costs during the CAT Fee 2024–1 Period will be approximately $76,278,426. The budget for cloud hosting services costs during the CAT Fee 2024–1 Period is calculated based on the Updated 2024 Budget. Specifically, this estimate was calculated by adding the budgeted amounts for cloud hosting services costs for the third and fourth quarter of 2024 as set forth in the Updated 2024 Budget and subtracting one half of the cloud hosting services costs incurred in July 2024 (as CAT Fee 2024–1 Period began half way through July, on July 16, 2024).[35]

CAT LLC estimated the budget for the cost for cloud hosting services for the CAT Fee 2024–1 Period based on an assumption of 30% annual year-over-year volume growth for the transaction database and an assumption of 5% annual year-over-year volume growth for CAIS. CAT LLC determined these growth assumptions in coordination with FCAT based on an analysis of a variety of existing data and alternative growth scenarios. In addition, the budget for cloud hosting services for the CAT Fee 2024–1 Period includes a budget for the cost of re-processing data as approved by the CAT Operating Committee.[36] The budget for re-processing data was based on expenditures for re-processing in prior years. This process for estimating the budget for cloud hosting services costs for the CAT Fee 2024–1 Period is the same process by which CAT LLC estimated the cloud hosting services costs for the Original 2024 Budget. The Original 2024 Budget estimated a budget for cloud hosting services of $71,384,109 for the first two quarters of 2024.[37] The actual costs for cloud hosting services for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were $66,737,810.[38] There is only an approximate 7% difference between the estimate and actuals for cloud hosting services costs. Accordingly, CAT LLC believes that the process for estimating the budgeted cloud hosting services costs for the CAT Fee 2024–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for cloud hosting services costs from the prior CAT Fee filing. CAT LLC's proposed annual budget for cloud hosting services costs for 2024 decreased about 3.5% from the Original 2024 Budget to the Updated 2024 Budget, from $154,624,108 to $148,789,981. Although there were expected cost increases related to data volume growth and the associated compute and storage of the increased data levels, as well as from additional capacity for OTQT systems that were added to meet the performance standards set forth in the requirements of the recent SEC exemptive order from November 2023,[39] these cost increases were offset by a variety of cost reduction efforts related to compute efficiencies, the implementation of single pass linker related to options quotes, and the implementation of compute and other efficiencies related to CAIS. Without such cost management efforts, the budgeted costs for cloud hosting services would have increased by approximately 15%, rather than decreased. Correspondingly, the proposed budget for cloud hosting services costs for the third and fourth quarters of 2024 did not change in a material way from the Original 2024 Budget to the Updated 2024 Budget. There was only an approximate 1% decrease from $83,239,999 in the Original 2024 Budget [40] to $82,052,171 in the Updated 2024 Budget for the third and fourth quarters of 2024.[41]

(ii) Technology Costs—Operating Fees

(a) Description of Operating Fees

Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the operating fees set forth in the budget. The Operating Committee approved an operating

[33] Appendix D–4 of the CAT NMS Plan at n.262.

[34] Appendix D–5 of the CAT NMS Plan.

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

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

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

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

[39] Securities Exchange Act Rel. No. 98848 (Nov. 2, 2023), 88 FR 77128 (Nov. 8, 2023).

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

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

budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $14,008,947.50 in technology costs for operating fees for the CAT Fee 2024–1 Period. Operating fees are those fees paid by CAT LLC to FCAT as the Plan Processor to operate and maintain the CAT and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.,* management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management as required by the CAT NMS Plan. Operating fees also include market data provider costs, as discussed below.

Plan Processor: FCAT. Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT a negotiated monthly fixed price for the operation of the CAT. This fixed price contract was negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity. It is anticipated that FCAT will provide a variety of services to the CAT during the CAT Fee 2024–1 Period, including the following:

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

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

Market Data Provider: Exegy. It is anticipated that the operating fees costs for the CAT Fee 2024–1 Period will include costs related to the receipt of certain market data for the CAT pursuant to an agreement between FCAT and Exegy Incorporated (''Exegy''). CAT LLC determined that Exegy would provide market data that included all data elements required by the CAT NMS Plan,[42] and that the fees were reasonable and in line with market rates for the market data received. All costs under the contract would be treated as a direct pass through cost to CAT LLC. CAT LLC estimated the budget for the costs for Exegy for the CAT Fee 2024–1 Period based on the monthly rate set forth in the agreement between Exegy and FCAT.

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

As discussed above, CAT LLC estimated the budget for the operating fees during the CAT Fee 2024–1 Period based on monthly rates set forth in the Plan Processor Agreement and the agreement with Exegy. CAT LLC also recognized that the operating fees are generally consistent throughout the year. This process for estimating the budget for the operating fees for the CAT Fee 2024–1 Period is the same process by which CAT LLC estimated the operating fees for the Original 2024 Budget. The Original 2024 Budget estimated a budget for operating fees of $13,558,875 for the first two quarters of 2024.[44] The actual costs for operating fees for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were $12,608,540.[45] There was an approximate 7% decrease from estimates to actuals for the first two quarters. Accordingly, CAT LLC believes that the process for estimating the budgeted operating fees for the CAT Fee 2024–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for operating fees from the prior CAT Fee filing. As this is the first Prospective CAT Fee Filing, this filing describes the changes in the operating fees from the Original 2024 Budget. CAT LLC's proposed annual budget for operating fees for 2024 increased from $27,223,132 to $27,768,718 [46] from the Original 2024 Budget to the Updated 2024 Budget, and the proposed budget for operating fees for the third and fourth quarters of 2024 increased from $13,664,256 in the Original 2024 Budget [47] to $15,160,178 in the Updated 2024 Budget.[48] This increase is due to a cyber insurance adjustment.

(iii) Technology Costs—CAIS Operating Fees

(a) Description of CAIS Operating Fees

Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the CAIS operating fees set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $9,278,384.50 in technology costs for CAIS operating fees for the CAT Fee 2024–1 Period. CAIS operating fees represent the fees paid to FCAT for services provided with regard to the operation and maintenance of CAIS, and to perform the business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.,* management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. The CAT is required under the CAT NMS Plan to capture and store Customer Identifying

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

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

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

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

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

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

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

Information and Customer Account Information in a database separate from the transactional database and to create a CAT-Customer-ID for each Customer. As of May 31, 2024, the implementation of CAIS was completed.[49]

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

CAT LLC estimates that the budget for CAIS operating fees during the CAT Fee 2024–1 Period will be approximately $9,278,384.50. The budget for CAIS operating fees during the CAT Fee 2024–1 Period is calculated based on the Updated 2024 Budget. Specifically, this estimate was calculated by adding the budgeted amounts for CAIS operating fees for the third and fourth quarter of 2024 as set forth in the Updated 2024 Budget and subtracting one half of the actual CAIS operating fees costs incurred in July 2024 (as CAT Fee 2024–1 Period began half way through July, on July 16, 2024).[50]

CAT LLC calculated the budget for FCAT's CAIS-related services for the CAT Fee 2024–1 Period based on the recurring monthly CAIS operating fees under the Plan Processor Agreement. This process for estimating the budget for the CAIS operating fees for the CAT Fee 2024–1 Period is the same process by which CAT LLC estimated the CAIS operating fees for the Original 2024 Budget. The Original 2024 Budget estimated a budget for CAIS operating fees of $10,418,666 for the the [*sic*] first two quarters of 2024.[51] The actual costs for CAIS operating fees for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were $10,078,045.[52] There is only an approximate 3% difference between the estimate and actuals. Accordingly, CAT LLC believes that the process for estimating the budgeted CAIS operating fees for the CAT Fee 2024–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for CAIS operating fees from the prior CAT Fee filing. As this is the first Prospective CAT Fee Filing, this filing describes the changes in the CAIS operating fees from the Original 2024 Budget. CAT LLC's proposed annual budget for CAIS operating fees for 2024 had a small 2% percent decrease of $491,821 from the Original 2024 Budget to the Updated 2024 Budget, from $20,691,740 to $20,199,919. Correspondingly, the proposed budget for CAIS operating fees for the third and fourth quarters of 2024 had a small 1% percentage decrease of $151,202, from $10,273,076 in the Original 2024 Budget[53] to $10,121,874 in the Updated 2024 Budget.[54]

(iv) Technology Costs—Change Request Fees

(a) Description of Change Request Fees

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

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

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

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

CAT LLC estimated the budget for the potential change requests for the CAT Fee 2024–1 Period based on, among other things, a review of past change requests and potential future change request needs, as well as discussions with FCAT. This process for estimating the budget for the change requests for the CAT Fee 2024–1 Period is the same process by which CAT LLC estimated the change requests cost for the Original 2024 Budget. The Original 2024 Budget estimated a change request budget of $81,250 [*sic*] first two quarters of 2024.[56] The actual costs for change requests for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were $0. Although the budget exceeded the actual costs of change requests during the first two quarters of 2024, CAT LLC believes that the process for estimating a placeholder amount for potential change requests is reasonable given the evolving technology needs of the CAT.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for change request fees from the prior CAT Fee filing. As this is the first Prospective CAT Fee Filing, this filing describes the changes in the change request fees from the Original 2024 Budget. CAT LLC's proposed annual budget for change requests for 2024 decreased by $81,250 from the Original 2024 Budget to the

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

[50] This calculation is ($5,060,937 + $5,060,937) − $843,489.50 = $9,278,384.50.

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

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

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

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

[55] This calculation is ($0 + $162,500) − $0 = $162,500.

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

Updated 2024 Budget, from $243,750 to $162,500. CAT LLC has reduced the annual budget for a placeholder for change request fees for 2024 by one-third, as time has passed without additional change requests anticipated by this placeholder amount. Correspondingly, the proposed budget for change requests for the third and fourth quarters remained the same at $162,500 for the Original 2024 Budget [57] and the Updated 2024 Budget.[58]

(v) Technology Costs—Capitalized Developed Technology Costs

(a) Description of Capitalized Developed Technology Costs

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

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

CAT LLC estimated the budget for capitalized developed technology costs for the CAT Fee 2024–1 Period based on an analysis of a variety of factors, including information related to potential technology costs and related contractual and Plan requirements, and discussions with FCAT regarding such potential technology costs. The Original 2024 Budget estimated a budget for capitalized developed technology costs of $2,300,000 for the first two quarters of 2024.[60] The actual costs for capitalized developed technology costs for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were $3,659,490.[61] The increase was due to a software license fee for CAIS. Accordingly, CAT LLC believes that the process for estimating the budgeted capitalized developed technology costs for the CAT Fee 2024–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for capitalized developed technology costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee Filing, this filing describes the changes in capitalized developed technology costs from the Original 2024 Budget. CAT LLC's proposed budget for capitalized developed technology costs for 2024 increased from the Original 2024 Budget to the Updated 2024 Budget. The annual budget for capitalized developed technology costs for 2024 increased by $5,461,480 from the Original 2024 Budget of $2,300,000 to the Updated 2024 Budget of $7,761,480.[62] Correspondingly, the budget for capitalized developed technology costs for the third and fourth quarters of 2024 increased from $0 [63] in the Original 2024 Budget to $4,101,990 in the Updated 2024 Budget.[64] This increase in the capitalized developed technology costs budget in the Updated 2024 Budget over the Original 2024 Budget was the result of costs related to the software license fee for CAIS in accordance with the Plan Processor Agreement with FCAT, as well as costs related to a set of technology changes to be implemented by FCAT.

(vi) Legal Costs

(a) Description of Legal Costs

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

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

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

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

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

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

[59] This calculation is ($3,810,990 + $291,000) − $0 = $4,101,990.

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

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

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

[63] This calculation is $0 + $0 = $0.

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

orders, Plan Processor Agreement items, and subcontract matters;

- Provide support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues;
- Assist with CAT budget and FCAT costs;
- Assist other counsel for CAT on litigation-related matters; and
- Assist with legal responses related to third-party data requests.

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

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

During the CAT Fee 2024–1 Period, it is anticipated that Jenner will continue to provide legal assistance to CAT LLC regarding certain litigation matters, including: (1) CAT LLC's defense against a lawsuit filed in the Western District of Texas against Chair Gensler, the SEC and CAT LLC challenging the validity of the Rule 613 and the CAT and alleging various constitutional, statutory, and common law claims (''Texas Litigation'');[65] (2) CAT LLC's intervention in a lawsuit in the Eleventh Circuit filed by various parties against the SEC challenging the SEC's approval of the CAT Funding Model;[66] and (3) a lawsuit in the Eleventh Circuit filed by Citadel Securities LLC seeking review of the SEC's May 20, 2024 order[67] granting the Participants temporary conditional exemptive relief related to the reporting of bids and/or offers made in response to a request for quote or other form of solicitation response provided in standard electronic format that is not immediately actionable.[68] Litigation involving CAT LLC is an expense of operating the CAT, and, therefore, is appropriately an obligation of both Participants and Industry Members under the CAT Funding Model.

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

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

CAT LLC estimated the budget for the legal services for the CAT Fee 2024–1 Period based on an analysis of a variety of factors, including law firm fee rates, historical legal fees, and information related to pending legal issues and potential future legal issues, and discussions with the law firms. This process for estimating the budget for the legal services for the CAT Fee 2024–1 Period is the same process by which CAT LLC estimated the legal cost for the Original 2024 Budget. The Original 2024 Budget estimated a budget for legal costs of $2,440,000 for the first two quarters of 2024.[70] The actual costs for legal services for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were $3,156,762.[71] Although there is an increase from the budgeted legal costs to the actual legal costs for the first two quarters of 2024, such increase was due to unanticipated issues that required additional legal efforts on behalf of CAT LLC that developed after the budget was created. Such additional costs including costs related to (1) the legal defense related to the Texas Litigation; and (2) additional regulatory and corporate legal issues, including (a) additional work for commercial contract-related matters, including change orders, Plan Processor Agreement items, and subcontract matters; (b) assistance regarding budget and FCAT costs; (c) assistance to other counsel for CAT on litigation-related matters; and (d) assistance related to CAT fee filings and CAT NMS Plan amendments. Accordingly, CAT LLC believes that the process for estimating the budgeted legal costs for the CAT Fee 2024–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for legal costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee Filing, this filing describes the changes in the legal costs from the Original 2024 Budget. CAT LLC's proposed budget for legal costs for 2024 increased from the Original 2024 Budget to the Updated 2024 Budget. The annual budget for legal costs for 2024 increased from the Original 2024 Budget to the Updated 2024 Budget, from $4,460,000 to $8,146,599. Correspondingly, the proposed budget for legal costs for the third and fourth quarters increased from $2,020,000[72] in the Original 2024 Budget to $4,989,837 in the Updated 2024 Budget.[73] This increase in the legal budget in the Updated 2024 Budget from the Original 2024 Budget was primarily due to unanticipated legal costs, including costs related to (1) the legal defense related to the Texas Litigation; and (2) additional regulatory and corporate legal issues, including (a) additional work for commercial contract-related matters, including change orders, Plan Processor Agreement items, and subcontract matters; (b) assistance regarding budget and FCAT costs; (c) assistance to other counsel for CAT on litigation-related matters; and (d) assistance related to CAT fee filings and CAT NMS Plan amendments. In addition, CAT LLC no longer anticipates incurring legal costs related to the law firms of Pillsbury Winthrop Shaw Pittman LLP and Covington & Burling LLP during the CAT Fee 2024–1 Period due to the conclusion of the relevant prior legal matters.

(vii) Consulting Costs

(a) Description of Consulting Costs

Section 11.3(a)(iii)(B)(B)(3) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the consulting costs set forth in the budget. The Operating

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

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

[67] Securities Exchange Act Rel. No. 100181 (May 20, 2024), 89 FR 45715 (May 23, 2024).

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

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

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

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

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

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

Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $652,623 in consulting costs for the CAT Fee 2024–1 Period. The consulting costs represent the fees estimated to be paid to the consulting firm Deloitte & Touche LLP (''Deloitte'') as project manager during the CAT Fee 2024–1 Period. These consulting costs include costs for advisory services related to the operation of the CAT, and meeting facilitation and communications coordination, vendor support and financial analyses.

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

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

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

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

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

CAT LLC estimates the budget for the consulting costs for Deloitte for the CAT Fee 2024–1 Period based on the current statement of work with Deloitte, which took into consideration past consulting costs, potential future consulting needs, the proposed rates and other contractual issues, as well as discussions with Deloitte. The Original 2024 Budget estimated a budget for consulting cost of $800,000 for the first two quarters of 2024.[75] The actual costs for consulting services for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were $885,580.[76] There is only an approximate 10% difference between the estimate and actuals. Accordingly, CAT LLC believes that the process for estimating the budgeted consulting costs for the CAT Fee 2024–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for consulting costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee Filing, this filing describes the changes in the consulting costs from the Original 2024 Budget. CAT LLC's proposed annual budget for consulting costs for 2024 has not changed from the Original 2024 Budget to the Updated 2024 Budget; it remains $1,600,000. Correspondingly, the proposed budget for consulting costs for the third and fourth quarters of 2024 decreased by $85,580 (which is approximately 11%), from $800,000 in the Original 2024 Budget[77] to $714,420 in the Updated 2024 Budget.[78]

(viii) Insurance Costs

(a) Description of Insurance Costs

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

It is anticipated that the insurance costs for CAT during the CAT Fee 2024–1 Period will include costs related to cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance brokered by USI Insurance Services LLC (''USI''). Such policies are standard for corporate entities, and cyber security liability insurance is important for the CAT System. CAT LLC anticipates that it will continue to maintain this insurance during CAT Fee 2024–1 Period, and notes that the annual premiums for these policies were competitive for the coverage provided. CAT LLC estimated the budget for the insurance costs for the CAT Fee 2024–1 Period based on the actual insurance quote from USI for 2024. The annual premiums would be paid by CAT LLC to USI.[79]

(b) Changes From Prior Fee Filing

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

(ix) Professional and Administration Costs

(a) Description of Professional and Administration Costs

Section 11.3(a)(iii)(B)(B)(5) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the professional and administration costs set forth in the

[74] This calculation is ($359,926 + $354,495) − $61,798 = $652,623.

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

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

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

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

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

budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $428,544.50 in professional and administration costs for the CAT Fee 2024–1 Period. In adopting the CAT NMS Plan, the Commission amended the Plan to add a requirement that CAT LLC's financial statements be prepared in compliance with GAAP, audited by an independent public accounting firm, and made publicly available.[80] The professional and administration costs would include costs related to accounting and accounting advisory services to support the operating and financial functions of CAT, financial statement audit services by an independent accounting firm, preparation of tax returns, and various cash management and treasury functions. The professional and administration costs represent the fees to be paid to Anchin Block & Anchin (''Anchin'') and Grant Thornton LLP (''Grant Thornton'') for financial services during CAT Fee 2024–1 Period.

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

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

- Update and maintain internal controls;
- Provide cash management and treasury functions;
- Faciliate [*sic*] bill payments;
- Provide monthly bookkeeping;
- Review vendor invoices and documentation in support of cash disbursements;
- Provide accounting research and consultations on various accounting, financial reporting and tax matters;
- Address not-for-profit tax and accounting considerations;
- Prepare tax returns;
- Address various accounting, financial reporting and operating inquiries from Participants;
- Develop and maintain annual operating and financial budgets, including budget to actual fluctuation analyses;
- Support compliance with the CAT NMS Plan;
- Work with and provide support to the Operating Committee and various CAT working groups;
- Prepare monthly, quarterly and annual financial statements;
- Support the annual financial statement audits by an independent auditor;
- Review historical costs from inception;
- Provide accounting and financial information in support of SEC filings; and
- Perform additional ad hoc accounting and financial advisory services, as requested by CAT LLC.

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

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

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

CAT LLC estimated the budget for the professional and administration costs for the CAT Fee 2024–1 Period based on a review of past professional and administration costs, potential future professional and administration needs, the proposed rates and other contractual issues, as well as discussions with Anchin and Grant Thornton. This process for estimating the budget for the professional and administration costs for the CAT Fee 2024–1 Period is the same process by which CAT LLC estimated the professional and administration costs for the Original 2024 Budget. The Original 2024 Budget estimated a budget for professional and administration costs of $395,930 for the first two quarters of 2024.[82] The actual costs for professional and administration services for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were $372,977.[83] There is only an approximate 6% difference between the estimate and actuals. Accordingly, CAT LLC believes that the process for estimating the budgeted professional and administration costs for the CAT Fee 2024–1 Period is reasonable.

(b) Changes From Prior Fee Filing

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

[80] Section 9.2 of the CAT NMS Plan.

[81] This calculation is ($157,269 + $293,682)—$22,406.50 = $428,544.50.

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

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

the Original 2024 Budget [84] to $450,951 in the Updated 2024 Budget.[85]

(x) Public Relations Costs

(a) Desription [sic] of Public Relations Costs

Section 11.3(a)(iii)(B)(B)(6) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the public relations costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $43,225 in public relations costs for the CAT Fee 2024–1 Period. The public relations costs represent the fees paid to a public relations firm for professional communications services to CAT, including media relations consulting, strategy and execution. By engaging a public relations firm, CAT LLC will be better positioned to understand and address CAT matters to the benefit of all market participants.

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

CAT LLC estimates that the budget for public relations services during the CAT Fee 2024–1 Period will be approximately $43,225. The budget for public relations services during the CAT Fee 2024–1 Period is calculated based on the Updated 2024 Budget. Specifically, this estimate was calculated by adding the budgeted amounts for the public relations for the third and fourth quarter of 2024 as set forth in the Updated 2024 Budget and subtracting one half of the actual public relations costs incurred in July 2024 (as CAT Fee 2024–1 Period began half way through July, on July 16, 2024).[86] The fees for these services will be paid by CAT LLC to RF | Binder.

CAT LLC estimated the budget for the public relations costs for the CAT Fee 2024–1 Period based on a review of past public relations costs, potential future public relations needs, the proposed rates and other contractual issues, as well as discussions with RF | Binder. CAT LLC also recognized that public relations costs are generally consistent throughout the year. This process for estimating the budget for the public relations costs for the CAT Fee 2024–1 Period is the same process by which CAT LLC estimated the public relations costs for the Original 2024 Budget. The actual costs for public relations for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were $46,200.[87] They are the same. Accordingly, CAT LLC believes that the process for estimating the budgeted public relations costs for the CAT Fee 2024–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for public relations costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee Filing, this filing describes the changes in the public relations costs from the Original 2024 Budget. CAT LLC's proposed annual budget for public relations costs for 2024 had a very minor increase of $875 from the Original 2024 Budget to the Updated 2024 Budget, from $92,400 to $93,275. Correspondingly, the proposed budget for public relations costs for the third and fourth quarters of 2024 increased by $875, from $46,200 in the Original 2024 Budget [88] to $47,075 in the Updated 2024 Budget.[89] The minor change was made to reflect updated contractual terms.

(xi) Reserve

(a) Description of Reserve

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

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

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

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for a reserve from the prior CAT Fee filing. Prior to July 16, 2024, all CAT costs were paid by the Participants via notes. Accordingly, to date, CAT LLC has not maintained any reserve. With the commencement of CAT Fees, CAT LLC proposes to include costs for a reserve of $27,695,385 in Budgeted CAT Costs 2024–1.

(D) Projected Total Executed Equivalent Share Volume

The calculation of Fee Rate 2024–1 also requires the determination of the projected total executed equivalent share volume of transactions in Eligible Securities for the CAT Fee 2024–1 Period. Under the CAT NMS Plan, the Operating Committee is required to

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

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

[86] This calculation is ($23,450 + $23,625) − $3,850 = $43,225.

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

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

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

''reasonably determine the projected total executed equivalent share volume of all transactions in Eligible Securities for each relevant period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months.'' [90] The Operating Committee is required to base its projection on the prior twelve months, but it may use its discretion to analyze the likely volume for the upcoming year. Such discretion would allow the Operating Committee to use its judgment when estimating projected total executed equivalent share volume if the volume over the prior twelve months was unusual or otherwise unfit to serve as the basis of a future volume estimate.[91]

The total executed equivalent share volume of transactions in Eligible Securities for the 12-month period from June 2023 through May 2024 was 3,980,753,840,905.21 executed equivalent shares. The Operating Committee has determined to calculate the projected total executed equivalent share volume for a four-month recovery period for CAT Fee 2024–1 by multiplying by 4/12ths the executed equivalent share volume for the prior 12 months. The Operating Committee determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has remained relatively constant. For example, the executed equivalent share volume for 2021 was 3,963,697,612,395, the executed equivalent share volume for 2022 was 4,039,821,841,560.31, and the executed equivalent share volume for 2023 was 3,868,940,345,680.6. Accordingly, the projected total executed equivalent share volume for the four-month period for CAT Fee 2024–1 is projected to be 1,326,917,946,968.403 executed equivalent shares.[92]

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

(E) Fee Rate 2024–1

Fee Rate 2024–1 would be calculated by dividing Budgeted CAT Costs 2024–1 by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for the four-month recovery period for CAT Fee 2024–1, as described in detail above.[94] Specifically, Fee Rate 2024–1 would be calculated by dividing $138,476,925 by 1,326,917,946,968.403 executed equivalent shares. As a result, Fee Rate 2024–1 would be $0.000104359825199724 6 per executed equivalent share. Fee Rate 2024–1 is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide the Fee Rate in a fee filing for a CAT Fee.[95]

(3) Monthly Fees

CEBBs and CEBSs would be required to pay fees for CAT Fee 2024–1 on a monthly basis for four months, from November 2024 until February 2025.[96] A CEBB's or CEBS's fee for each month would be calculated based on the transactions in Eligible Securities executed by the CEBB or CEBS from the prior month.[97] Proposed paragraph (a)(3)(A) of the fee schedule would state that each CAT Executing Broker would receive its first invoice for CAT Fee 2024–1 in October 2024, and would receive an invoice for CAT Fee 2024–1 each month thereafter until January 2025. Proposed paragraph (a)(3)(B) of the fee schedule would state that ''Consolidated Audited Trail, LLC shall provide each CAT Executing Broker with an invoice for CAT Fee 2024–1 on a monthly basis.'' In addition, paragraph (b)(1) of the fee schedule states that each CEBB and CEBS is required to pay its CAT fees ''each month.''

(4) Consolidated Audit Trail Funding Fees

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

(A) Fee Schedule for CAT Fee 2024–1

The CAT NMS Plan states that:

Each Industry Member that is the CAT Executing Broker for the buyer in a transaction in Eligible Securities (''CAT Executing Broker for the Buyer'' or ''CEBB'') and each Industry Member that is the CAT Executing Broker for the seller in a transaction in Eligible Securities (''CAT Executing Broker for the Seller'' or ''CEBS'') will be required to pay a CAT Fee for each such transaction in in Eligible Securities in the prior month based on CAT Data. The CEBB's CAT Fee or CEBS's CAT Fee (as applicable) for each transaction in Eligible Securities will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate reasonably determined pursuant to paragraph (a)(i) of this Section 11.3.[98]

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

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

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

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

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

As noted in the Plan amendment for the CAT Funding Model, ''[a]s a practical matter, the fee filing would provide the exact fee per executed equivalent share to be paid for the CAT Fees, by multiplying the Fee Rate by one-third and describing the relevant number of decimal places for the fee.'' [99]

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

[91] CAT Funding Model Approval Order at 62651.

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

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

[94] In approving the CAT Funding Model, the Commission stated that ''[t]he manner in which the Fee Rate for Prospective CAT Costs will be calculated (*i.e.,* by dividing the CAT costs reasonably budgeted for the upcoming year by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for the year) is reasonable.'' CAT Funding Model Approval Order at 62651.

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

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

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

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

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

Accordingly, proposed paragraph (a)(3)(B) of the fee schedule would set forth a fee rate of $0.000035 per executed equivalent share. This fee rate is calculated by multiplying Fee Rate 2024–1 of $0.0001043598251997246 by one-third, and rounding the result to six decimal places.[100] The Operating Committee determined to use six decimal places to balance the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.

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

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

Proposed paragraph (a)(3)(B) of the fee schedule would describe the invoices for CAT Fee 2024–1. Proposed paragraph (a)(3)(B) of the fee schedule would state that ''Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for CAT Fee 2024–1 on a monthly basis.'' Proposed paragraph (a)(3)(B) of the fee schedule also would describe the fees to be set forth in the invoices for CAT Fee 2024–1. Specifically, it would state that ''[e]ach month, such invoices shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as a CAT Executing Broker for the Buyer ('CEBB') and/or the CAT Executing Broker for the Seller ('CEBS') (as applicable) from the prior month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of $0.000035 per executed equivalent share.''

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

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

Finally, proposed paragraph (a)(3)(D) of the fee schedule would set forth the requirement for the CAT Executing Brokers to pay the invoices for CAT Fee 2024–1. It would state that ''[e]ach CAT Executing Broker shall be required to pay each invoice for CAT Fee 2024–1 in accordance with paragraph (b).''

(B) Manner of Payment

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

(C) Failure To Pay CAT Fees

The CAT NMS Plan further states that:

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

Accordingly, the Exchange proposes to add this requirement to the Exchange's fee schedule. Proposed paragraph (b)(2) of the fee schedule would state:

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

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

(5) CAT Fee Details

The CAT NMS Plan states that:

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

Such information would provide CEBBs and CEBSs with the ability to understand the details regarding the calculation of their CAT Fee.[105] CAT

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

[101] Section 11.4 of the CAT NMS Plan.

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

[103] Section 11.4 of the CAT NMS Plan.

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

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

LLC will provide CAT Executing Brokers with these details regarding the calculation of their CAT Fees on their monthly invoice for the CAT Fees.

In addition, CAT LLC will make certain aggregate statistics regarding CAT Fees publicly available. Specifically, the CAT NMS Plan states that, ''[f]or each CAT Fee, at a minimum, CAT LLC will make publicly available the aggregate executed equivalent share volume and corresponding aggregate fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.'' [106] Such aggregate statistics will be available on the CAT website.

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

(6) Financial Accountability Milestones

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

> the point at which the Participants have satisfied all of their obligations to build and implement the CAT, such that all CAT system functionality required by Rule 613 and the CAT NMS Plan has been developed, successfully tested, and fully implemented at the initial Error Rates specified by Section 6.5(d)(i) or less, including functionality that efficiently permits the Participants and the Commission to access all CAT Data required to be stored in the Central Repository pursuant to Section 6.5(a), including Customer Account Information, Customer-ID, Customer Identifying Information, and Allocation Reports, and to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, including any related allocation information provided in an Allocation Report. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).

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

(A) Transaction Reporting and Regulatory Access

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

(i) Phase 2a

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

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

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

(ii) Phase 2b

The Quarterly Progress Reports state that ''Phase 2b was fully implemented as of January 4, 2021.'' [113] The Phase 2b Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order, and includes

invoices for CAT Fees.'' CAT Funding Model Approval Order at 62667.

[106] Section 11.3(a)(iv)(B) of the CAT NMS Plan. In approving the CAT Funding Model, the Commission stated that ''[t]he publication of the aggregate executed equivalent share volume and aggregate fee is appropriate because it would allow Participants and CAT Executing Brokers a high-level validation of executed volume and fees.'' CAT Funding Model Approval Order at 62667.

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

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

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

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

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

[112] Phased Reporting Exemptive Relief Order at 23076–78.

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

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

(iii) Phase 2c

The Quarterly Progress Reports state that ''Phase 2c was implemented as of April 26, 2021.'' [115] The Phase 2c Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order. That Order states that ''Phase 2c Industry Member Data'' is Industry Member Data related to Eligible Securities that are equities other than Phase 2a Industry Member Data, Phase 2d Industry Member Data, or Phase 2e Industry Member Data. Specifically, the Phase 2c Industry Member Data includes Industry Member Data that is related to Eligible Securities that are equities and that is related to:

(1) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (2) quotes in unlisted Eligible Securities sent to an IDQS operated by a CAT Reporter (reportable by the Industry Member sending the quotes) (except for quotes reportable in Phase 2d, as discussed below); (3) electronic quotes in listed equity Eligible Securities (*i.e.,* NMS stocks) that are not sent to a national securities exchange or FINRA's Alternative Display Facility; (4) reporting changes to client instructions regarding modifications to algorithms; (5) marking as a representative order any order originated to work a customer order in price guarantee scenarios, such as a guaranteed VWAP; (6) flagging rejected external routes to indicate a route was not accepted by the receiving destination; (7) linkage of duplicate electronic messages related to a Manual Order Event between the electronic event and the original manual route; (8) special handling instructions on order route reports (other than the ISO, which is required to be reported in Phase 2a); (9) quote identifier on trade events; (10) reporting of LTIDs (if applicable) for accounts with Reportable Events that are reportable to CAT as of and including Phase 2c; (11) reporting of date account opened or Account Effective Date (as applicable) for accounts and reporting of a flag indicating the Firm Designated ID type as account or relationship; (12) order effective time for orders that are received by an Industry Member and do not become effective until a later time; (13) the modification or cancellation of an internal route of an order; and (14) linkages to the customer order(s) being represented for representative order scenarios, including agency average price trades, net trades, aggregated orders, and disconnected Order Management System (''OMS'')—Execution Management System (''EMS'') scenarios, as required in the Industry Member Technical Specifications.[116]

Phase 2c Industry Member Data also includes electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are equities and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: (1) an equity bid or offer is displayed publicly or has been communicated (a) for listed securities to the ADF operated by FINRA; or (b) for unlisted equity securities to an ''interdealer quotation system,'' as defined in FINRA Rule 6420(c); or (2) an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing; *i.e.,* no further manual or electronic action is required by the responder providing the quote in order to execute or cause a trade to be executed). With respect to OTC Equity Securities, OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter (other than such an IDQS that does not match and execute orders) are reportable by the Industry Member sending them in Phase 2c. Accordingly, any response to a request for quote or other form of solicitation response provided in a standard electronic format (*e.g.,* FIX) that meets this quote definition (*i.e.,* an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing) would be reportable in Phase 2c.[117]

(iv) Phase 2d

The Quarterly Progress Reports state that ''Phase 2d was fully implemented as of December 13, 2021.'' [118] The Phase 2d Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order. ''Phase 2d Industry Member Data'' is Industry Member Data that is related to Eligible Securities that are options other than Phase 2b Industry Member Data, Industry Member Data that is related to Eligible Securities that are equities other than Phase 2a Industry Member Data or Phase 2c Industry Member Data, and Industry Member Data other than Phase 2e Industry Member Data. Phase 2d Industry Member Data includes with respect to the Eligible Securities that are options: (1) simple manual orders; (2) electronic and manual paired orders; (3) all complex orders with linkages to all CAT-reportable legs; (4) LTIDs (if applicable) for accounts with Reportable Events for Phase 2d; (5) date account opened or Account Effective Date (as applicable) for accounts with an LTID and flag indicating the Firm Designated ID type as account or relationship for such accounts; (6) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (7) the modification or cancellation of an internal route of an order; and (8) linkage between a

[114] Phased Reporting Exemptive Relief Order at 23078.

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

[116] Phase Reporting Exemptive Relief Order at 23078–79.

[117] *Id.* at 23079.

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

combined order and the original customer orders. Phase 2d Industry Member Data also would include electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are options and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: a listed option bid or offer which is accessible electronically by customers or other market participants and is immediately actionable (*i.e.,* no further action is required by the responder providing the quote in order to execute or cause a trade to be executed). Accordingly, any response to a request for quote or other form of solicitation response provided in standard electronic format (*e.g.,* FIX) that meets this definition is reportable in Phase 2d for options.[119]

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

(v) Regulatory Access To Order and Transaction Data

The Financial Accountability Milestone related to Period 4 requires that CAT provide functionality that permits the Participants and the Commission to access Phase 2a, 2b, 2c and 2d data and to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, including any related allocation information provided in an Allocation Report. As CAT LLC reported on its Quarterly Progress Reports, the query tool functionality incorporating the data from Phases 2a, 2b, 2c and 2d was available to the Participants and to the Commission as of December 31, 2021.[121]

(B) CAIS Reporting and Regulatory Access

The CAT System functionality required by Rule 613 and the CAT NMS Plan related to Customer information has been developed, successfully tested, and fully implemented, including the requirements related to regulatory access. The implementation of CAT requirements related to Customer information occurred during Phase 2e. As described in the Quarterly Progress Reports and summarized below, Phase 2e has been fully implemented as of May 31, 2024.[122] Furthermore, because a month of customer and account information data is necessary to create report cards with regard to such data, the publication of monthly report cards with respect to customer and account information commenced on July 15, 2024.[123] Accordingly, the Financial Accountability Milestone related to Period 4 was completed on July 15, 2024.

(i) Phase 2e

The Q2 & Q3 2024 Quarterly Progress Report indicates that Phase 2e was fully implemented as of May 31, 2024.[124] Phase 2e Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order. ''Phase 2e Industry Member Data'' includes ''Customer Account Information and Customer Identifying Information, other than LTIDs, date account opened/Account Effective Date and Firm Designated ID type flag previously reported to the CAT.'' [125] LTIDs and Account Effective Date are both provided in Phases 2c and 2d in certain circumstances, as discussed above. Section 1.1 of the CAT NMS Plan defines the term ''Customer Account Information'' to

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

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

information of sufficient detail to identify a Customer, including, but not limited to, (a) with respect to individuals: name, address, date of birth, individual tax payer identification number (''ITIN'')/social security number (''SSN''), individual's role in the account (*e.g.,* primary holder, joint holder, guardian, trustee, person with the power of attorney); and (b) with respect to legal entities: name, address, Employer Identification Number (''EIN'')/Legal Entity Identifier (''LEI'') or other comparable common entity identifier, if applicable; provided, however, that an Industry Member that has an LEI for a Customer must submit the Customer's LEI in addition to other information of sufficient detail to identify a Customer.

(ii) Regulatory Access to Customer Information

The Financial Accountability Milestone related to Period 4 requires that CAT provide functionality that permits the Participants and the Commission to access Phase 2e Industry Member Data (in addition to the Phase 2a, 2b, 2c and 2d Industry Member Data, as discussed above). As CAT LLC reported on its Q2 & Q3 Quarterly Progress Report, regulators had efficient access to Phase 2e Industry Member Data via the query tool functionality required under the CAT NMS Plan by July 15, 2024.[126]

(C) Error Rate

The Financial Accountability Milestones related to Period 4 require the implementation of the CAT System ''at the initial Error Rates specified by

[119] Phase Reporting Exemptive Relief Order at 23079.

[120] *Id.* at 23079–80.

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

[122] *Id.*

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

[124] *Id.*

[125] Phase Reporting Exemptive Relief Order at 23080.

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

Section 6.5(d)(i) or less.'' The average overall error rate as of July 15, 2024, was less than 5%, which is the initial Error Rate specified by Section 6.5(d)(i) of the CAT NMS Plan. The average overall error rate was calculated by dividing the compliance errors by processed records.

(7) Participant Invoices

While CAT Fees charged to Industry Members become effective in accordance with the requirements of Section 19(b) of the Exchange Act,[127] CAT fees charged to Participants are implemented via an approval of the CAT fees by the Operating Committee in accordance with the requirements of the CAT NMS Plan.[128] On July 31, 2024, the Operating Committee approved the Participant fee related to CAT Fee 2024–1. Specifically, pursuant to the requirements of CAT NMS Plan,[129] each Participant would be required to pay a CAT fee calculated using the fee rate of $0.000035, which is the same fee rate that applies to CEBBs and CEBSs. Like CEBBs and CEBSs, each Participant would be required to pay such CAT fees on a monthly basis for four months, from November 2024 until February 2025, and each Participant's fee for each month would be calculated based on the transactions in Eligible Securities executed on the applicable exchange (for the Participant exchanges) or otherwise than on the exchange (for FINRA) in the prior month. Accordingly, each Participant will receive its first invoice in October 2024, and would receive an invoice each month thereafter until January 2025. Like with the CAT Fee 2024–1 applicable to CEBBs and CEBSs as described in proposed paragraph (a)(3)(C) of the fee schedule, notwithstanding the last invoice date of January 2025, Participants will continue to receive invoices for this fee each month until a new subsequent CAT Fee is in effect with regard to Industry Members. Furthermore, Section 11.4 of the CAT NMS Plan states that each Participant is required to pay such invoices as required by Section 3.7(b) of the CAT NMS Plan. Section 3.7(b) states, in part, that

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

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of the Exchange Act. The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act [130], 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 Act,[131] because it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(8) of the Act,[132] which requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. These provisions also require that the Exchange be ''so organized and [have] the capacity to be able to carry out the purposes'' of the Act and ''to comply, and . . . to enforce compliance by its members and persons associated with its members,'' with the provisions of the Exchange Act.[133] Accordingly, a reasonable reading of the Act indicates that it intended that regulatory funding be sufficient to permit an exchange to fulfill its statutory responsibility under the Act, and contemplated that such funding would be achieved through equitable assessments on the members, issuers, and other users of an exchange's facilities.

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

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

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

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

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

Section 11.1(b) of the CAT NMS Plan states that ''[t]he Participants shall file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves.'' Per Section 11.1(b) of the CAT NMS Plan, the Exchange has filed this fee filing to implement the Industry Member CAT fees included in the CAT Funding Model. The Exchange believes

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

[128] CAT Funding Model Approval Order at 62659.

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

[130] 15 U.S.C. 78f(b)(6).

[131] 15 U.S.C. 78f(b)(4).

[132] 15 U.S.C. 78f(b)(8).

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

[134] CAT NMS Plan Approval Order at 84697.

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

(2) Calculation of Fee Rate for CAT Fee 2024–1 Is Reasonable

The SEC has determined that the CAT Funding Model is reasonable and satisfies the requirements of the Exchange Act. Specifically, the SEC has concluded that the method for determining CAT Fees as set forth in Section 11.3 of the CAT NMS Plan, including the formula for calculating the Fee Rate, the identification of the parties responsible for payment and the transactions subject to the fee rate for CAT Fees, is reasonable and satisfies the Exchange Act.[137] In each respect, as discussed above, CAT Fee 2024–1 is calculated, and would be applied, in accordance with the requirements applicable to CAT Fees as set forth in the CAT NMS Plan. Furthermore, as discussed below, the Exchange believes that each of the figures for the variables in the SEC-approved formula for calculating the fee rate for CAT Fee 2024–1 is reasonable and consistent with the Exchange Act. Calculation of Fee Rate 2024–1 for CAT Fee 2024–1 requires the figures for Budgeted CAT Costs 2024–1, the executed equivalent share volume for the prior twelve months, the determination of CAT Fee 2024–1 Period, and the projection of the executed equivalent share volume for CAT Fee 2024–1 Period. Each of these variables is reasonable and satisfies the Exchange Act, as discussed throughout this filing.

(A) Budgeted CAT Costs 2024–1

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

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

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

Section 11.3(a)(iii)(B) of the CAT NMS Plan also requires that the fee filing provide ''sufficient detail to demonstrate that the budget for the upcoming year, or part of year, as applicable, is reasonable and appropriate.'' As discussed below, the Exchange believes that the budget for the CAT Fee 2024–1 Period is ''reasonable and appropriate.'' Each of the costs included in CAT Fee 2024–1 are reasonable and appropriate because the costs are consistent with standard industry practice, based on the need to comply with the requirements of the CAT NMS Plan, incurred subject to negotiations performed on an arm's length basis, and/or are consistent with the needs of any legal entity, particularly one with no employees.

(i) Technology: Cloud Hosting Services

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

To comply with the requirements of the Plan, the breadth of the cloud activities related to the CAT is substantial. The cloud services not only include the production environment for the CAT, but they also include two industry testing environments, support environments for quality assurance and stress testing and disaster recovery capabilities. Moreover, the cloud storage costs are driven by the requirements of the Plan, which requires the storage of multiple versions of the data, from the original submitted version of the data through various processing steps, to the final version of the data.

Data volume is a significant driver of costs for cloud hosting services. When the Commission adopted the CAT NMS Plan in 2016, it estimated that the CAT would need to receive 58 billion records per day [140] and that annual operating costs for the CAT would range from $36.5 million to $55 million.[141] Through 2023, the actual data volumes have been five times that original estimate. The data volumes to date for 2024 have continued this trend.

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

[135] *Id.* at 84696.

[136] CAT Funding Model Approval Order at 62686.

[137] *Id.* at 62662–63.

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

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

[140] Appendix D–4 of the CAT NMS Plan at n.262.

[141] CAT NMS Plan Approval Order at 84801.

non-peak processing windows), or lower-cost storage tiers. As a result, the required CAT processing timelines contribute to the cloud hosting costs of the CAT.

The costs for cloud hosting services also reflect the need for specialized cloud hosting services given the data volume and unique processing needs of the CAT. The data volume as well as the data processing needs of the CAT necessitate the use of cloud hosting services. The equipment, power and services required for an on-premises data model, the alternative to cloud hosting services, would be cost prohibitive. Moreover, as CAT was being developed, there were limited cloud hosting providers that could satisfy all the necessary CAT requirements, including the operational and security criteria. Over time, more providers offering cloud hosting services that would satisfy these criteria have entered the market. CAT LLC will continue to evaluate alternative cloud hosting services, recognizing that the time and cost to move to an alternative cloud provider would be substantial.

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

(ii) Technology: Operating Fees

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

The operating fees would include the negotiated fees paid by CAT LLC to the Plan Processor to operate and maintain the system for order-related information and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.,* management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the selection of FCAT as the Plan Processor was reasonable and appropriate given its expertise with securities regulatory reporting, after a process of considering other potential candidates.[144] CAT LLC also determined that the fixed price contract, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, was reasonable and appropriate, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity.[145] The services to be performed by FCAT for CAT Fee 2024–1 Period and the budgeted costs related to such services are described above.[146]

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

(iii) Technology: CAIS Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted costs related to CAIS operating fees as a part of CAT Fees.[148] CAT LLC determined that the budgeted costs related to CAIS operating fees described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2024–1. The CAIS operating fees would include the fees paid to the Plan Processor to operate and maintain CAIS and to perform the business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.,* management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the fees for FCAT's CAIS-related services, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity, are reasonable and appropriate.[149] The services to be performed by FCAT for the CAT Fee 2024–1 Period and the budgeted costs for such services are described above.[150]

(iv) Technology: Change Request Fees

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

(v) Capitalized Developed Technology Costs

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

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

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

[144] *See* Section 3(a)(2)(C)(ii) above.

[145] *Id.*

[146] *Id.*

[147] *Id.*

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

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

[150] *Id.*

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

[152] *See* Section 3(a)(2)(C)(iv) above.

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

[154] *See* Section 3(a)(2)(C)(v) above.

as a part of Budgeted CAT Costs 2024–1.

(vi) Legal

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted costs related to legal fees as a part of CAT Fees.[155] CAT LLC determined that the budgeted legal costs described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2024–1. Given the unique nature of the CAT, the number of parties involved with the CAT (including, for example, the SEC, Participants, Industry Members, and vendors) and the many regulatory, contractual and other issues associated with the CAT, the scope of the necessary legal services is substantial. CAT LLC determined that the scope of the proposed legal services is necessary to implement and maintain the CAT and that the legal rates reflect the specialized services necessary for such a project. CAT LLC determined to hire and continue to use each law firm based on a variety of factors, including their relevant expertise and fees. In each case, CAT LLC determined that the fee rates were in line with market rates for specialized legal expertise. In addition, CAT LLC determined that the budgeted costs for the legal projects were appropriate given the breadth of the services provided. The services to be performed by each law firm for the CAT Fee 2024–1 Period and the budgeted costs related to such services are described above.[156]

(vii) Consulting

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted consulting costs as a part of CAT Fees.[157] CAT LLC determined that the budgeted consulting costs described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2024–1. Because there are no CAT employees [158] and because of the significant number of issues associated with the CAT, the consultants are budgeted to provide assistance in the management of various CAT matters and the processes related to such matters.[159] CAT LLC determined the budgeted consulting costs were appropriate, as the consulting services were to be provided at reasonable market rates that were comparable to the rates charged by other consulting firms for similar work. Moreover, the total budgeted costs for such consulting services were appropriate in light of the breadth of services provided by Deloitte. The services budgeted to be performed by Deloitte and the budgeted costs related to such services are described above.[160]

(viii) Insurance

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

(ix) Professional and Administration

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted professional and administration costs as a part of CAT Fees.[165] CAT LLC determined that the budgeted professional and administration costs described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2024–1. Because there are no CAT employees, all required accounting, financial, tax, cash management and treasury functions for CAT LLC have been outsourced at market rates. In addition, the required annual financial statement audit of CAT LLC is included in professional and administration costs, which costs are also at market rates. The services performed by Anchin and Grant Thornton and the costs related to such services are described above.[166]

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

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

(x) Public Relations Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted public relations costs as a part of CAT Fees.[169] CAT LLC determined that the budgeted public relations costs described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2024–1. CAT LLC determined that the types of public relations services to be utilized were beneficial to the CAT and market participants more generally. Public relations services are important for various reasons, including monitoring comments made by market participants about CAT and understanding issues

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

[156] *See* Section 3(a)(2)(B)(vi) above.

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

[158] As stated in the filing of the proposed CAT NMS Plan, ''[i]t is the intent of the Participants that the Company have no employees.'' Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614, 30621 (May 17, 2016).

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

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

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

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

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

[164] *Id.*

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

[166] *See* Section 3(a)(2)(C)(ix) above.

[167] *Id.*

[168] *Id.*

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

related to the CAT discussed on the public record.[170] By continuing to engage a public relations firm, CAT LLC will be better positioned to understand and address CAT issues to the benefit of all market participants.[171] Moreover, CAT LLC determined that the budgeted rates charged for such services were in line with market rates.[172] As noted above, the total budgeted public relations costs for the CAT Fee 2024–1 Period represent a small percentage of Budgeted CAT Costs 2024–1—that is, approximately 0.03% of Budgeted CAT Costs 2024–1.

(xi) Reserve

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

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

> Because the CAT is a critical regulatory tool/system, the CAT needs to have a stable funding source to build financial stability to support the Company as a going concern. Funding for the CAT, as noted in Section 11.1(b), is the responsibility of the Participants and the industry. Because CAT fees are charged based on the budget, which is based on anticipated volume, it is reasonable to have a reserve on hand to prevent a shortfall in the event there is an unexpectedly high volume in a given year. A reserve would help to assure that the CAT has sufficient resources to cover costs should there be unanticipated costs or costs that are higher than expected.[175]

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

(B) Reconciliation of Budget to the Collected Fees

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

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

The total executed equivalent share volume of transactions in Eligible Securities for the period from June 2023 through May 2024 was 3,980,753,840,905.21 executed equivalent shares. CAT LLC determined the total executed equivalent share volume for the prior twelve months by counting executed equivalent shares in the same manner as it counts executed equivalent shares for CAT billing purposes.[180]

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

CAT LLC has determined to calculate the projected total executed equivalent share volume for the four months in which CAT Fee 2024–1 Period would be payable by multiplying by 4/12ths (*i.e.,* one-third) the executed equivalent share volume for the prior 12 months.[181] CAT LLC determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has remained relatively constant in recent years. For example, the executed equivalent share volume for 2021 was 3,963,697,612,395 executed equivalent shares, the executed equivalent share volume for 2022 was 4,039,821,841,560.31 executed equivalent shares, and the executed equivalent share volume for 2023 was 3,868,940,345,680.6. Accordingly, the projected total executed equivalent share volume for the four-month period for CAT Fee 2024–1 is 1,326,917,946,968.403 executed equivalent shares.[182]

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

(i) Decimal Places

As noted in the approval order for the CAT Funding Model, as a practical matter, the fee filing for a CAT Fee would provide the exact fee per executed equivalent share to be paid for each CAT Fee, by multiplying the Fee Rate by one-third and describing the relevant number of decimal places for the fee rate.[183] Accordingly, proposed paragraph (a)(3)(B) of the fee schedule would set forth a fee rate of $0.000035 per executed equivalent share. This fee rate is calculated by multiplying Fee Rate 2024–1 by one-third and rounding the result to six decimal places. CAT LLC determined that the use of six decimal places is reasonable as it balances the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.[184]

(ii) Reasonable Fee Level

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

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

CAT Fee 2024–1 provides for an equitable allocation of fees, as it

[170] *See* Section 3(a)(2)(C)(x) above.

[171] *Id.*

[172] *Id.*

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

[174] CAT Funding Model Approval Order at 62657.

[175] *Id.*

[176] *Id.*

[177] *Id.*

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

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

[180] *See* Section 3(a)(2)(D) above.

[181] *Id.*

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

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

[184] *See* Section 3(a)(4)(A) above.

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

[186] *Id.*

equitably allocates CAT costs between and among the Participants and Industry Members. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfied the requirements of the Exchange Act, including the formula for calculating CAT Fees as well as the Industry Members to be charged the CAT Fees.[187] In approving the CAT Funding Model, the SEC stated that ''[t]he Participants have sufficiently demonstrated that the proposed allocation of fees is reasonable.'' [188] Accordingly, the CAT Funding Model sets forth the requirements for allocating fees related to Budgeted CAT Costs among Participants and Industry Members, and the fee filings for CAT Fees must comply with those requirements.

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

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

(4) CAT Fee 2024–1 Is Not Unfairly Discriminatory

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

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

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

Section 6(b)(8) of the Act [189] requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that CAT Fee 2024–1 implements provisions of the CAT NMS Plan that were approved by the Commission and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan.

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

Furthermore, in approving the CAT Funding Model, the SEC analyzed the potential competitive impact of the CAT Funding Model, including competitive issues related to market services, trading services and regulatory services, efficiency concerns, and capital formation.[190] The SEC also analyzed the potential effect of CAT fees calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. Based on this analysis, the SEC approved the CAT Funding Model as compliant with the Exchange Act. CAT Fee 2024–1 is calculated and implemented in accordance with the CAT Funding Model as approved by the SEC.

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

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act [191] and Rule 19b–4(f)(2) thereunder,[192] because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the

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

[188] CAT Funding Model Approval Order at 62629.

[189] 15 U.S.C. 78f(b)(8).

[190] CAT Funding Model Approval Order at 62676–86.

[191] 15 U.S.C. 78s(b)(3)(A)(ii).

[192] 17 CFR 240.19b–4(f)(2).

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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–GEMX–2024–29 on the subject line.

Paper Comments

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

All submissions should refer to file number SR–GEMX–2024–29. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–GEMX–2024–29 and should be submitted on or before September 25, 2024.

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

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–19774 Filed 9–3–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100847; File No. SR–NYSECHX–2024–26]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Fees for Industry Members Related to Reasonably Budgeted Costs of the National Market System Plan Governing the Consolidated Audit Trail for the Period From July 16, 2024 Through December 31, 2024

August 28, 2024.

Pursuant to Section 19(b)(1) under the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 16, 2024, NYSE Chicago, Inc. (''NYSE Chicago'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the Fee Schedule of NYSE Chicago, Inc. (''Fee Schedule'') to establish fees for Industry Members[3] related to reasonably budgeted CAT costs of the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'') for the period from July 16, 2024 through December 31, 2024. These fees would be payable to Consolidated Audit Trail, LLC (''CAT LLC'' or the ''Company'') and referred to as CAT Fee 2024–1, and would be described in a section of the Fee Schedule titled ''Consolidated Audit Trail Funding Fees.'' The fee rate for CAT Fee 2024–1 would be $0.000035 per executed equivalent share. CAT Executing Brokers will receive their first monthly invoice for CAT Fee 2024–1 in October 2024 calculated based on their transactions as CAT Executing Brokers for the Buyer (''CEBB'') and/or CAT Executing Brokers for the Seller (''CEBS'') in September 2024. The proposed rule change is available on the Exchange's website at *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 Statutory Basis for, the Proposed Rule Change

1. Purpose

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

[193] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] An ''Industry Member'' is defined as ''a member of a national securities exchange or a member of a national securities association.'' *See* NYSE Chicago Rule 6.6810(u). *See also* Section 1.1 of the CAT NMS Plan. Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the CAT NMS Plan and/or the CAT Compliance Rule. *See* NYSE Chicago Rule 6.6810.

[4] Securities Exchange Act Rel. No. 67457 (July 18, 2012), 77 FR 45722 (Aug. 1, 2012).

[5] Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (''CAT NMS Plan Approval Order'').

on behalf of CAT LLC by the Participants.[6] The Operating Committee adopted a revised funding model to fund the CAT (''CAT Funding Model''). On September 6, 2023, the Commission approved the CAT Funding Model after concluding that the model was reasonable and that it satisfied the requirements of Section 11A of the Exchange Act and Rule 608 thereunder.[7]

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

Under the CAT Funding Model, Participants, CEBBs and CEBSs are subject to fees designed to cover the ongoing budgeted costs of the CAT, as determined by the Operating Committee. ''The Operating Committee will establish fees ('CAT Fees') to be payable by Participants and Industry Members with regard to CAT costs not previously paid by the Participants ('Prospective CAT Costs').'' [9] In establishing a CAT Fee, the Operating Committee will calculate a ''Fee Rate'' for the relevant period. Then, for each month in which a CAT Fee is in effect, each CEBB and CEBS would be required to pay the fee for each transaction in Eligible Securities executed by the CEBB or CEBS from the prior month as set forth in CAT Data, where the fee for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate.[10]

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

CAT LLC proposes to charge CEBBs and CEBSs (as described in more detail below) CAT Fee 2024–1 to recover the reasonably budgeted CAT costs for July 16, 2024 through December 31, 2024, in accordance with the CAT Funding Model. To implement this fee on behalf of CAT LLC, the CAT NMS Plan requires the Participants to ''file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves, and such fees shall be labeled as 'Consolidated Audit Trail Funding Fees.' '' [17] The Plan further states that ''[o]nce the Operating Committee has approved such Fee Rate, the Participants shall be required to file with the SEC pursuant to Section 19(b) of the Exchange Act CAT Fees to be charged to Industry Members calculated using such Fee Rate.'' [18] Accordingly, the purpose of this filing is to implement a CAT Fee on behalf of CAT LLC for Industry Members, referred to as CAT Fee 2024–1, in accordance with the CAT NMS Plan.

(1) CAT Executing Brokers

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

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

The following fields of the Participant Technical Specifications indicate the CAT Executing Brokers for the transactions executed on an exchange:

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

[7] Securities Exchange Act Rel. No. 98290 (Sept. 6, 2023), 88 FR 62628 (Sept. 12, 2023) (''CAT Funding Model Approval Order'').

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

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

[10] In approving the CAT Funding Model, the Commission stated that, ''[t]he proposed recovery of Prospective CAT Costs is appropriate.'' CAT Funding Model Approval Order at 62651.

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

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

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

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

[15] CAT Funding Model Approval Order at 62659.

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

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

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

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

[20] Section 1.1 of the CAT NMS Plan. Note that CEBBs and CEBSs may, but are not required to, pass-through their CAT Fees to their clients, who may, in turn, pass their fees to their clients until they are imposed ultimately on the account that executed the transaction. *See* CAT Funding Model Approval Order at 62649.

EQUITY ORDER TRADE (EOT) [21]

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

OPTION TRADE (OT) [22]

No.	Field name	Data type	Description	Include key
16.n.13/17.n.13	member	Member Alias	The identifier for the member firm that is responsible for the order ..	R

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

TRF/ORF/ADF TRANSACTION DATA EVENT (TRF) [23]

No.	Field name	Data type	Description	Include key
26	reportingExecutingMpid	Member Alias	MPID of the executing party	R
28	contraExecutingMpid	Member Alias	MPID of the contra-side executing party	C

(2) Calculation of Fee Rate 2024–1

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

(A) CAT Fee 2024–1 Period

CAT LLC proposes to implement CAT Fee 2024–1 as the first CAT Fee related to Prospective CAT Costs. CAT LLC proposes to commence CAT Fee 2024–1 during the year, rather than at the beginning of the year. Accordingly, CAT Fee 2024–1 ''would be calculated as described in paragraph II'' of Section 11.3(a)(i)(A) of the CAT NMS Plan, which states that ''[d]uring each year, the Operating Committee will calculate a new Fee Rate by dividing the reasonably budgeted CAT costs for the remainder of the year by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for the remainder of the year.'' [25] For CAT Fee 2024–1, the reasonably budgeted CAT costs for ''the remainder of the year'' are the reasonably budgeted CAT costs from July 16, 2024 through December 31, 2024. This period is referred to as the CAT Fee 2024–1 Period. Such costs would be recovered over a four-month period, where the first invoices are sent in October 2024 based on transactions in September 2024.

(B) Executed Equivalent Shares for Transactions in Eligible Securities

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

(C) Budgeted CAT Costs 2024–1

The CAT NMS Plan states that ''[t]he budgeted CAT costs for the year shall be comprised of all reasonable fees, costs and expenses reasonably budgeted to be incurred by or for the Company in connection with the development, implementation and operation of the CAT as set forth in the annual operating budget approved by the Operating Committee pursuant to Section 11.1(a) of the CAT NMS Plan, or as adjusted during the year by the Operating

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

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

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

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

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

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

Committee.'' [27] Section 11.1(a) of the CAT NMS Plan describes the requirement for the Operating Committee to approve an operating budget for CAT LLC on an annual basis. It requires the budget to ''include the projected costs of the Company, including the costs of developing and operating the CAT for the upcoming year, and the sources of all revenues to cover such costs, as well as the funding of any reserve that the Operating Committee reasonably deems appropriate for the prudent operation of the Company.'' Section 11.1(a)(i) of the CAT NMS Plan further states that:

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

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

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

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

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

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

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

Budget category	Budgeted CAT costs 2024–1 *
Capitalized Developed Technology Costs **	$4,101,990
Technology Costs:	99,728,258
Cloud Hosting Services	76,278,426
Operating Fees	14,008,947.50
CAIS Operating Fees	9,278,384.50
Change Request Fees	162,500
Legal	4,484,554.50
Consulting	652,623
Insurance	1,342,345
Professional and administration	428,544.50
Public relations	43,225
Subtotal	110,781,540
Reserve	27,695,385
Total Budgeted CAT Costs 2024–1	138,476,925

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

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

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

(i) Technology Costs—Cloud Hosting Services

(a) Description of Cloud Hosting Services Costs

Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the cloud hosting services costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $76,278,426 in technology costs for cloud hosting services for the CAT Fee 2024–1 Period. The technology

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

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

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

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

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

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

costs for cloud hosting services represent costs reasonably budgeted to be incurred for services provided by the cloud services provider for the CAT, Amazon Web Services, Inc. (''AWS''), during the CAT Fee 2024–1 Period.

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

The cost for AWS cloud services for the CAT is a function of the volume of CAT Data. The greater the amount of CAT Data, the greater the cost of AWS services to CAT LLC. During the CAT 2024–1 Period, it is expected that AWS will provide cloud hosting services for volumes of CAT Data far in excess of the volume predictions set forth in the CAT NMS Plan. The CAT NMS Plan states, when all CAT Reporters are submitting their data to the CAT, it ''must be sized to receive[,] process and load more than 58 billion records per day,'' [33] and that ''[i]t is expected that the Central Repository will grow to more than 29 petabytes of raw, uncompressed data.'' [34] In contrast with those estimates, the Q1 2024 data volumes, which averaged 577 billion events per day, were up 45% compared to Q1 2023, which averaged 399 billion events per day, with peak volumes recorded on April 19, 2024 of 746 billion events. Even higher peak volumes were recorded in July and August 2024.

CAT LLC estimates that the budget for cloud hosting services costs during the CAT Fee 2024–1 Period will be approximately $76,278,426. The budget for cloud hosting services costs during the CAT Fee 2024–1 Period is calculated based on the Updated 2024 Budget. Specifically, this estimate was calculated by adding the budgeted amounts for cloud hosting services costs for the third and fourth quarter of 2024 as set forth in the Updated 2024 Budget and subtracting one half of the cloud hosting services costs incurred in July 2024 (as CAT Fee 2024–1 Period began half way through July, on July 16, 2024).[35]

CAT LLC estimated the budget for the cost for cloud hosting services for the CAT Fee 2024–1 Period based on an assumption of 30% annual year-over-year volume growth for the transaction database and an assumption of 5% annual year-over-year volume growth for CAIS. CAT LLC determined these growth assumptions in coordination with FCAT based on an analysis of a variety of existing data and alternative growth scenarios. In addition, the budget for cloud hosting services for the CAT Fee 2024–1 Period includes a budget for the cost of re-processing data as approved by the CAT Operating Committee.[36] The budget for re-processing data was based on expenditures for re-processing in prior years. This process for estimating the budget for cloud hosting services costs for the CAT Fee 2024–1 Period is the same process by which CAT LLC estimated the cloud hosting services costs for the Original 2024 Budget. The Original 2024 Budget estimated a budget for cloud hosting services of $71,384,109 for the first two quarters of 2024.[37] The actual costs for cloud hosting services for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were $66,737,810.[38] There is only an approximate 7% difference between the estimate and actuals for cloud hosting services costs. Accordingly, CAT LLC believes that the process for estimating the budgeted cloud hosting services costs for the CAT Fee 2024–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for cloud hosting services costs from the prior CAT Fee filing. CAT LLC's proposed annual budget for cloud hosting services costs for 2024 decreased about 3.5% from the Original 2024 Budget to the Updated 2024 Budget, from $154,624,108 to $148,789,981. Although there were expected cost increases related to data volume growth and the associated compute and storage of the increased data levels, as well as from additional capacity for OTQT systems that were added to meet the performance standards set forth in the requirements of the recent SEC exemptive order from November 2023,[39] these cost increases were offset by a variety of cost reduction efforts related to compute efficiencies, the implementation of single pass linker related to options quotes, and the implementation of compute and other efficiencies related to CAIS. Without such cost management efforts, the budgeted costs for cloud hosting services would have increased by approximately 15%, rather than decreased. Correspondingly, the proposed budget for cloud hosting services costs for the third and fourth quarters of 2024 did not change in a material way from the Original 2024 Budget to the Updated 2024 Budget. There was only an approximate 1% decrease from $83,239,999 in the Original 2024 Budget [40] to $82,052,171 in the Updated 2024 Budget for the third and fourth quarters of 2024.[41]

(ii) Technology Costs—Operating Fees

(a) Description of Operating Fees

Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the operating fees set forth in the budget. The Operating Committee approved an operating

[33] Appendix D–4 of the CAT NMS Plan at n.262.

[34] Appendix D–5 of the CAT NMS Plan.

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

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

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

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

[39] Securities Exchange Act Rel. No. 98848 (Nov. 2, 2023), 88 FR 77128 (Nov. 8, 2023).

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

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

budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $14,008,947.50 in technology costs for operating fees for the CAT Fee 2024–1 Period. Operating fees are those fees paid by CAT LLC to FCAT as the Plan Processor to operate and maintain the CAT and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.,* management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management as required by the CAT NMS Plan. Operating fees also include market data provider costs, as discussed below.

Plan Processor: FCAT. Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT a negotiated monthly fixed price for the operation of the CAT. This fixed price contract was negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity. It is anticipated that FCAT will provide a variety of services to the CAT during the CAT Fee 2024–1 Period, including the following:

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

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

Market Data Provider: Exegy. It is anticipated that the operating fees costs for the CAT Fee 2024–1 Period will include costs related to the receipt of certain market data for the CAT pursuant to an agreement between FCAT and Exegy Incorporated (''Exegy''). CAT LLC determined that Exegy would provide market data that included all data elements required by the CAT NMS Plan,[42] and that the fees were reasonable and in line with market rates for the market data received. All costs under the contract would be treated as a direct pass through cost to CAT LLC. CAT LLC estimated the budget for the costs for Exegy for the CAT Fee 2024–1 Period based on the monthly rate set forth in the agreement between Exegy and FCAT.

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

As discussed above, CAT LLC estimated the budget for the operating fees during the CAT Fee 2024–1 Period based on monthly rates set forth in the Plan Processor Agreement and the agreement with Exegy. CAT LLC also recognized that the operating fees are generally consistent throughout the year. This process for estimating the budget for the operating fees for the CAT Fee 2024–1 Period is the same process by which CAT LLC estimated the operating fees for the Original 2024 Budget. The Original 2024 Budget estimated a budget for operating fees of $13,558,875 for the first two quarters of 2024.[44] The actual costs for operating fees for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were $12,608,540.[45] There was an approximate 7% decrease from estimates to actuals for the first two quarters. Accordingly, CAT LLC believes that the process for estimating the budgeted operating fees for the CAT Fee 2024–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for operating fees from the prior CAT Fee filing. As this is the first Prospective CAT Fee Filing, this filing describes the changes in the operating fees from the Original 2024 Budget. CAT LLC's proposed annual budget for operating fees for 2024 increased from $27,223,132 to $27,768,718 [46] from the Original 2024 Budget to the Updated 2024 Budget, and the proposed budget for operating fees for the third and fourth quarters of 2024 increased from $13,664,256 in the Original 2024 Budget [47] to $15,160,178 in the Updated 2024 Budget.[48] This increase is due to a cyber insurance adjustment.

(iii) Technology Costs—CAIS Operating Fees

(a) Description of CAIS Operating Fees

Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the CAIS operating fees set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $9,278,384.50 in technology costs for CAIS operating fees for the CAT Fee 2024–1 Period. CAIS operating fees represent the fees paid to FCAT for services provided with regard to the operation and maintenance of CAIS, and to perform the business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.,* management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. The CAT is required under the CAT NMS Plan to capture and store Customer Identifying

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

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

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

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

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

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

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

Information and Customer Account Information in a database separate from the transactional database and to create a CAT-Customer-ID for each Customer. As of May 31, 2024, the implementation of CAIS was completed.[49]

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

CAT LLC estimates that the budget for CAIS operating fees during the CAT Fee 2024–1 Period will be approximately $9,278,384.50. The budget for CAIS operating fees during the CAT Fee 2024–1 Period is calculated based on the Updated 2024 Budget. Specifically, this estimate was calculated by adding the budgeted amounts for CAIS operating fees for the third and fourth quarter of 2024 as set forth in the Updated 2024 Budget and subtracting one half of the actual CAIS operating fees costs incurred in July 2024 (as CAT Fee 2024–1 Period began half way through July, on July 16, 2024).[50]

CAT LLC calculated the budget for FCAT's CAIS-related services for the CAT Fee 2024–1 Period based on the recurring monthly CAIS operating fees under the Plan Processor Agreement. This process for estimating the budget for the CAIS operating fees for the CAT Fee 2024–1 Period is the same process by which CAT LLC estimated the CAIS operating fees for the Original 2024 Budget. The Original 2024 Budget estimated a budget for CAIS operating fees of $10,418,666 for the first two quarters of 2024.[51] The actual costs for CAIS operating fees for the the [*sic*] first two quarters of 2024, which are set forth in the Updated 2024 Budget, were $10,078,045.[52] There is only an approximate 3% difference between the estimate and actuals. Accordingly, CAT LLC believes that the process for estimating the budgeted CAIS operating fees for the CAT Fee 2024–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for CAIS operating fees from the prior CAT Fee filing. As this is the first Prospective CAT Fee Filing, this filing describes the changes in the CAIS operating fees from the Original 2024 Budget. CAT LLC's proposed annual budget for CAIS operating fees for 2024 had a small 2% percent decrease of $491,821 from the Original 2024 Budget to the Updated 2024 Budget, from $20,691,740 to $20,199,919. Correspondingly, the proposed budget for CAIS operating fees for the third and fourth quarters of 2024 had a small 1% percentage decrease of $151,202, from $10,273,076 in the Original 2024 Budget[53] to $10,121,874 in the Updated 2024 Budget.[54]

(iv) Technology Costs—Change Request Fees

(a) Description of Change Request Fees

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

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

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

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

CAT LLC estimated the budget for the potential change requests for the CAT Fee 2024–1 Period based on, among other things, a review of past change requests and potential future change request needs, as well as discussions with FCAT. This process for estimating the budget for the change requests for the CAT Fee 2024–1 Period is the same process by which CAT LLC estimated the change requests cost for the Original 2024 Budget. The Original 2024 Budget estimated a change request budget of $81,250 for the the [*sic*] first two quarters of 2024.[56] The actual costs for change requests for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were $0. Although the budget exceeded the actual costs of change requests during the first two quarters of 2024, CAT LLC believes that the process for estimating a placeholder amount for potential change requests is reasonable given the evolving technology needs of the CAT.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for change request fees from the prior CAT Fee filing. As this is the first Prospective CAT Fee Filing, this filing describes the changes in the change request fees from the Original 2024 Budget. CAT LLC's proposed annual budget for change requests for 2024 decreased by $81,250 from the Original 2024 Budget to the

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

[50] This calculation is ($5,060,937 + $5,060,937) − $843,489.50 = $9,278,384.50.

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

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

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

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

[55] This calculation is ($0 + $162,500) − $0 = $162,500.

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

Updated 2024 Budget, from $243,750 to $162,500. CAT LLC has reduced the annual budget for a placeholder for change request fees for 2024 by one-third, as time has passed without additional change requests anticipated by this placeholder amount. Correspondingly, the proposed budget for change requests for the third and fourth quarters remained the same at $162,500 for the Original 2024 Budget [57] and the Updated 2024 Budget.[58]

(v) Technology Costs—Capitalized Developed Technology Costs

(a) Description of Capitalized Developed Technology Costs

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

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

CAT LLC estimated the budget for capitalized developed technology costs for the CAT Fee 2024–1 Period based on an analysis of a variety of factors, including information related to potential technology costs and related contractual and Plan requirements, and discussions with FCAT regarding such potential technology costs. The Original 2024 Budget estimated a budget for capitalized developed technology costs of $2,300,000 for the first two quarters of 2024.[60] The actual costs for capitalized developed technology costs for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were $3,659,490.[61] The increase was due to a software license fee for CAIS. Accordingly, CAT LLC believes that the process for estimating the budgeted capitalized developed technology costs for the CAT Fee 2024–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for capitalized developed technology costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee Filing, this filing describes the changes in capitalized developed technology costs from the Original 2024 Budget. CAT LLC's proposed budget for capitalized developed technology costs for 2024 increased from the Original 2024 Budget to the Updated 2024 Budget. The annual budget for capitalized developed technology costs for 2024 increased by $5,461,480 from the Original 2024 Budget of $2,300,000 to the Updated 2024 Budget of $7,761,480.[62] Correspondingly, the budget for capitalized developed technology costs for the third and fourth quarters of 2024 increased from $0 [63] in the Original 2024 Budget to $4,101,990 in the Updated 2024 Budget.[64] This increase in the capitalized developed technology costs budget in the Updated 2024 Budget over the Original 2024 Budget was the result of costs related to the software license fee for CAIS in accordance with the Plan Processor Agreement with FCAT, as well as costs related to a set of technology changes to be implemented by FCAT.

(vi) Legal Costs

(a) Description of Legal Costs

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

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

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

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

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

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

[59] This calculation is ($3,810,990 + $291,000) − $0 = $4,101,990.

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

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

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

[63] This calculation is $0 + $0 = $0.

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

orders, Plan Processor Agreement items, and subcontract matters;

- Provide support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues;
- Assist with CAT budget and FCAT costs;
- Assist other counsel for CAT on litigation-related matters; and
- Assist with legal responses related to third-party data requests.

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

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

During the CAT Fee 2024–1 Period, it is anticipated that Jenner will continue to provide legal assistance to CAT LLC regarding certain litigation matters, including: (1) CAT LLC's defense against a lawsuit filed in the Western District of Texas against Chair Gensler, the SEC and CAT LLC challenging the validity of the Rule 613 and the CAT and alleging various constitutional, statutory, and common law claims (''Texas Litigation'');[65] (2) CAT LLC's intervention in a lawsuit in the Eleventh Circuit filed by various parties against the SEC challenging the SEC's approval of the CAT Funding Model;[66] and (3) a lawsuit in the Eleventh Circuit filed by Citadel Securities LLC seeking review of the SEC's May 20, 2024 order[67] granting the Participants temporary conditional exemptive relief related to the reporting of bids and/or offers made in response to a request for quote or other form of solicitation response provided in standard electronic format that is not immediately actionable.[68] Litigation involving CAT LLC is an expense of operating the CAT, and, therefore, is appropriately an obligation of both Participants and Industry Members under the CAT Funding Model.

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

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

CAT LLC estimated the budget for the legal services for the CAT Fee 2024–1 Period based on an analysis of a variety of factors, including law firm fee rates, historical legal fees, and information related to pending legal issues and potential future legal issues, and discussions with the law firms. This process for estimating the budget for the legal services for the CAT Fee 2024–1 Period is the same process by which CAT LLC estimated the legal cost for the Original 2024 Budget. The Original 2024 Budget estimated a budget for legal costs of $2,440,000 for the first two quarters of 2024.[70] The actual costs for legal services for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were $3,156,762.[71] Although there is an increase from the budgeted legal costs to the actual legal costs for the first two quarters of 2024, such increase was due to unanticipated issues that required additional legal efforts on behalf of CAT LLC that developed after the budget was created. Such additional costs including costs related to (1) the legal defense related to the Texas Litigation; and (2) additional regulatory and corporate legal issues, including (a) additional work for commercial contract-related matters, including change orders, Plan Processor Agreement items, and subcontract matters; (b) assistance regarding budget and FCAT costs; (c) assistance to other counsel for CAT on litigation-related matters; and (d) assistance related to CAT fee filings and CAT NMS Plan amendments. Accordingly, CAT LLC believes that the process for estimating the budgeted legal costs for the CAT Fee 2024–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for legal costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee Filing, this filing describes the changes in the legal costs from the Original 2024 Budget. CAT LLC's proposed budget for legal costs for 2024 increased from the Original 2024 Budget to the Updated 2024 Budget. The annual budget for legal costs for 2024 increased from the Original 2024 Budget to the Updated 2024 Budget, from $4,460,000 to $8,146,599. Correspondingly, the proposed budget for legal costs for the third and fourth quarters increased from $2,020,000[72] in the Original 2024 Budget to $4,989,837 in the Updated 2024 Budget.[73] This increase in the legal budget in the Updated 2024 Budget from the Original 2024 Budget was primarily due to unanticipated legal costs, including costs related to (1) the legal defense related to the Texas Litigation; and (2) additional regulatory and corporate legal issues, including (a) additional work for commercial contract-related matters, including change orders, Plan Processor Agreement items, and subcontract matters; (b) assistance regarding budget and FCAT costs; (c) assistance to other counsel for CAT on litigation-related matters; and (d) assistance related to CAT fee filings and CAT NMS Plan amendments. In addition, CAT LLC no longer anticipates incurring legal costs related to the law firms of Pillsbury Winthrop Shaw Pittman LLP and Covington & Burling LLP during the CAT Fee 2024–1 Period due to the conclusion of the relevant prior legal matters.

(vii) Consulting Costs

(a) Description of Consulting Costs

Section 11.3(a)(iii)(B)(B)(3) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the consulting costs set forth in the budget. The Operating

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

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

[67] Securities Exchange Act Rel. No. 100181 (May 20, 2024), 89 FR. 45715 (May 23, 2024).

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

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

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

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

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

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

Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $652,623 in consulting costs for the CAT Fee 2024–1 Period. The consulting costs represent the fees estimated to be paid to the consulting firm Deloitte & Touche LLP (''Deloitte'') as project manager during the CAT Fee 2024–1 Period. These consulting costs include costs for advisory services related to the operation of the CAT, and meeting facilitation and communications coordination, vendor support and financial analyses.

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

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

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

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

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

CAT LLC estimates the budget for the consulting costs for Deloitte for the CAT Fee 2024–1 Period based on the current statement of work with Deloitte, which took into consideration past consulting costs, potential future consulting needs, the proposed rates and other contractual issues, as well as discussions with Deloitte. The Original 2024 Budget estimated a budget for consulting cost of $800,000 for the first two quarters of 2024.[75] The actual costs for consulting services for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were $885,580.[76] There is only an approximate 10% difference between the estimate and actuals. Accordingly, CAT LLC believes that the process for estimating the budgeted consulting costs for the CAT Fee 2024–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for consulting costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee Filing, this filing describes the changes in the consulting costs from the Original 2024 Budget. CAT LLC's proposed annual budget for consulting costs for 2024 has not changed from the Original 2024 Budget to the Updated 2024 Budget; it remains $1,600,000. Correspondingly, the proposed budget for consulting costs for the third and fourth quarters of 2024 decreased by $85,580 (which is approximately 11%), from $800,000 in the Original 2024 Budget[77] to $714,420 in the Updated 2024 Budget.[78]

(viii) Insurance Costs

(a) Description of Insurance Costs

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

It is anticipated that the insurance costs for CAT during the CAT Fee 2024–1 Period will include costs related to cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance brokered by USI Insurance Services LLC (''USI''). Such policies are standard for corporate entities, and cyber security liability insurance is important for the CAT System. CAT LLC anticipates that it will continue to maintain this insurance during CAT Fee 2024–1 Period, and notes that the annual premiums for these policies were competitive for the coverage provided. CAT LLC estimated the budget for the insurance costs for the CAT Fee 2024–1 Period based on the actual insurance quote from USI for 2024. The annual premiums would be paid by CAT LLC to USI.[79]

(b) Changes From Prior Fee Filing

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

(ix) Professional and Administration Costs

(a) Description of Professional and Administration Costs

Section 11.3(a)(iii)(B)(B)(5) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the professional and administration costs set forth in the

[74] This calculation is ($359,926 + $354,495) − $61,798 = $652,623.

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

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

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

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

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

budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $428,544.50 in professional and administration costs for the CAT Fee 2024–1 Period. In adopting the CAT NMS Plan, the Commission amended the Plan to add a requirement that CAT LLC's financial statements be prepared in compliance with GAAP, audited by an independent public accounting firm, and made publicly available.[80] The professional and administration costs would include costs related to accounting and accounting advisory services to support the operating and financial functions of CAT, financial statement audit services by an independent accounting firm, preparation of tax returns, and various cash management and treasury functions. The professional and administration costs represent the fees to be paid to Anchin Block & Anchin (''Anchin'') and Grant Thornton LLP (''Grant Thornton'') for financial services during CAT Fee 2024–1 Period.

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

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

- Update and maintain internal controls;
- Provide cash management and treasury functions;
- Faciliate [*sic*] bill payments;
- Provide monthly bookkeeping;
- Review vendor invoices and documentation in support of cash disbursements;
- Provide accounting research and consultations on various accounting, financial reporting and tax matters;
- Address not-for-profit tax and accounting considerations;
- Prepare tax returns;
- Address various accounting, financial reporting and operating inquiries from Participants;
- Develop and maintain annual operating and financial budgets, including budget to actual fluctuation analyses;
- Support compliance with the CAT NMS Plan;
- Work with and provide support to the Operating Committee and various CAT working groups;
- Prepare monthly, quarterly and annual financial statements;
- Support the annual financial statement audits by an independent auditor;
- Review historical costs from inception;
- Provide accounting and financial information in support of SEC filings; and
- Perform additional ad hoc accounting and financial advisory services, as requested by CAT LLC.

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

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

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

CAT LLC estimated the budget for the professional and administration costs for the CAT Fee 2024–1 Period based on a review of past professional and administration costs, potential future professional and administration needs, the proposed rates and other contractual issues, as well as discussions with Anchin and Grant Thornton. This process for estimating the budget for the professional and administration costs for the CAT Fee 2024–1 Period is the same process by which CAT LLC estimated the professional and administration costs for the Original 2024 Budget. The Original 2024 Budget estimated a budget for professional and administration costs of $395,930 for the first two quarters of 2024.[82] The actual costs for professional and administration services for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were $372,977.[83] There is only an approximate 6% difference between the estimate and actuals. Accordingly, CAT LLC believes that the process for estimating the budgeted professional and administration costs for the CAT Fee 2024–1 Period is reasonable.

(b) Changes From Prior Fee Filing

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

[80] Section 9.2 of the CAT NMS Plan.

[81] This calculation is ($157,269 + $293,682) − $22,406.50 = $428,544.50.

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

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

the Original 2024 Budget [84] to $450,951 in the Updated 2024 Budget.[85]

(x) Public Relations Costs

(a) Desription [sic] of Public Relations Costs

Section 11.3(a)(iii)(B)(B)(6) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the public relations costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $43,225 in public relations costs for the CAT Fee 2024–1 Period. The public relations costs represent the fees paid to a public relations firm for professional communications services to CAT, including media relations consulting, strategy and execution. By engaging a public relations firm, CAT LLC will be better positioned to understand and address CAT matters to the benefit of all market participants.

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

CAT LLC estimates that the budget for public relations services during the CAT Fee 2024–1 Period will be approximately $43,225. The budget for public relations services during the CAT Fee 2024–1 Period is calculated based on the Updated 2024 Budget. Specifically, this estimate was calculated by adding the budgeted amounts for the public relations for the third and fourth quarter of 2024 as set forth in the Updated 2024 Budget and subtracting one half of the actual public relations costs incurred in July 2024 (as CAT Fee 2024–1 Period began half way through July, on July 16, 2024).[86] The fees for these services will be paid by CAT LLC to RF|Binder.

CAT LLC estimated the budget for the public relations costs for the CAT Fee 2024–1 Period based on a review of past public relations costs, potential future public relations needs, the proposed rates and other contractual issues, as well as discussions with RF|Binder. CAT LLC also recognized that public relations costs are generally consistent throughout the year. This process for estimating the budget for the public relations costs for the CAT Fee 2024–1 Period is the same process by which CAT LLC estimated the public relations costs for the Original 2024 Budget. The Original 2024 Budget estimated a budget for public relations costs of $46,200 for the the [*sic*] first two quarters of 2024.[87] The actual costs for public relations for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were $46,200.[88] They are the same. Accordingly, CAT LLC believes that the process for estimating the budgeted public relations costs for the CAT Fee 2024–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for public relations costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee Filing, this filing describes the changes in the public relations costs from the Original 2024 Budget. CAT LLC's proposed annual budget for public relations costs for 2024 had a very minor increase of $875 from the Original 2024 Budget to the Updated 2024 Budget, from $92,400 to $93,275. Correspondingly, the proposed budget for public relations costs for the third and fourth quarters of 2024 increased by $875, from $46,200 in the Original 2024 Budget [89] to $47,075 in the Updated 2024 Budget.[90] The minor change was made to reflect updated contractual terms.

(xi) Reserve

(a) Description of Reserve

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

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

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

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for a reserve from the prior CAT Fee filing. Prior to July 16, 2024, all CAT costs were paid by the Participants via notes. Accordingly, to date, CAT LLC has not maintained any reserve. With the commencement of CAT Fees, CAT LLC proposes to include costs for a reserve of $27,695,385 in Budgeted CAT Costs 2024–1.

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

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

[86] This calculation is ($23,450 + $23,625) − $3,850 = $43,225.

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

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

[89] This calculation is $23,100 + $23,100 = $46,200.

[90] This calculation is $23,450 + $23,625 = $47,075.

(D) Projected Total Executed Equivalent Share Volume

The calculation of Fee Rate 2024–1 also requires the determination of the projected total executed equivalent share volume of transactions in Eligible Securities for the CAT Fee 2024–1 Period. Under the CAT NMS Plan, the Operating Committee is required to ''reasonably determine the projected total executed equivalent share volume of all transactions in Eligible Securities for each relevant period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months.'' [91] The Operating Committee is required to base its projection on the prior twelve months, but it may use its discretion to analyze the likely volume for the upcoming year. Such discretion would allow the Operating Committee to use its judgment when estimating projected total executed equivalent share volume if the volume over the prior twelve months was unusual or otherwise unfit to serve as the basis of a future volume estimate.[92]

The total executed equivalent share volume of transactions in Eligible Securities for the 12-month period from June 2023 through May 2024 was 3,980,753,840,905.21 executed equivalent shares. The Operating Committee has determined to calculate the projected total executed equivalent share volume for a four-month recovery period for CAT Fee 2024–1 by multiplying by 4/12ths the executed equivalent share volume for the prior 12 months. The Operating Committee determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has remained relatively constant. For example, the executed equivalent share volume for 2021 was 3,963,697,612,395, the executed equivalent share volume for 2022 was 4,039,821,841,560.31, and the executed equivalent share volume for 2023 was 3,868,940,345,680.6. Accordingly, the projected total executed equivalent share volume for the four-month period for CAT Fee 2024–1 is projected to be 1,326,917,946,968.403 executed equivalent shares.[93]

The projected total executed equivalent share volume of all transactions in Eligible Securities for the four-month recovery period for CAT Fee 2024–1 and a description of the calculation of the projection is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a CAT Fee.[94]

(E) Fee Rate 2024–1

Fee Rate 2024–1 would be calculated by dividing Budgeted CAT Costs 2024–1 by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for the four-month recovery period for CAT Fee 2024–1, as described in detail above.[95] Specifically, Fee Rate 2024–1 would be calculated by dividing $138,476,925 by 1,326,917,946,968.403 executed equivalent shares. As a result, Fee Rate 2024–1 would be $0.000104359825199724 6 per executed equivalent share. Fee Rate 2024–1 is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide the Fee Rate in a fee filing for a CAT Fee.[96]

(3) Monthly Fees

CEBBs and CEBSs would be required to pay fees for CAT Fee 2024–1 on a monthly basis for four months, from November 2024 until February 2025.[97] A CEBB's or CEBS's fee for each month would be calculated based on the transactions in Eligible Securities executed by the CEBB or CEBS from the prior month.[98] Proposed paragraph (a)(3)(A) to the Consolidated Audit Trail Funding Fees section of the Fee Schedule would state that each CAT Executing Broker would receive its first invoice for CAT Fee 2024–1 in October 2024, and would receive an invoice for CAT Fee 2024–1 each month thereafter until January 2025. Proposed paragraph (a)(3)(B) to the Consolidated Audit Trail Funding Fees section of the Fee Schedule would state that ''Consolidated Audited Trail, LLC shall provide each CAT Executing Broker with an invoice for CAT Fee 2024–1 on a monthly basis.'' In addition, paragraph (b)(1) to the Consolidated Audit Trail Funding Fees section of the Fee Schedule would state that each CEBB and CEBS is required to pay its CAT fees ''each month.''

(4) Consolidated Audit Trail Funding Fees

To implement CAT Fee 2024–1, a ''Consolidated Audit Trail Funding Fees'' section would be added to the Exchange's Fee Schedule, to include the proposed paragraphs described below.

(A) Fee Schedule for CAT Fee 2024–1

The CAT NMS Plan states that:

> Each Industry Member that is the CAT Executing Broker for the buyer in a transaction in Eligible Securities (''CAT Executing Broker for the Buyer'' or ''CEBB'') and each Industry Member that is the CAT Executing Broker for the seller in a transaction in Eligible Securities (''CAT Executing Broker for the Seller'' or ''CEBS'') will be required to pay a CAT Fee for each such transaction in in Eligible Securities in the prior month based on CAT Data. The CEBB's CAT Fee or CEBS's CAT Fee (as applicable) for each transaction in Eligible Securities will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate reasonably determined pursuant to paragraph (a)(i) of this Section 11.3.[99]

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

> (A) Each CAT Executing Broker shall receive its first invoice for CAT Fee 2024–1 in October 2024, which shall set forth the CAT Fee 2024–1 fees calculated based on transactions in September 2024, and shall receive an invoice for CAT Fee 2024–1 for each month thereafter until January 2025.
>
> (B) Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for CAT Fee 2024–1 on a monthly basis. Each month, such invoices shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as a CAT Executing Broker for the Buyer (''CEBB'') and/or the CAT Executing Broker for the Seller (''CEBS'') (as applicable) from the prior month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of $0.000035 per executed equivalent share.
>
> (C) Notwithstanding the last invoice date of January 2025 for CAT Fee-2024–1 in paragraph 3(A), CAT Fee 2024–1 shall continue in effect after January 2025, with each CAT Executing Broker receiving an invoice for CAT Fee 2024–1 each month, until a new subsequent CAT Fee is in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act. Consolidated Audit Trail, LLC

[91] Section 11.3(a)(i)(D) of the CAT NMS Plan.

[92] CAT Funding Model Approval Order at 62651.

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

[94] Section 11.3(a)(iii)(B) of the CAT NMS Plan.

[95] In approving the CAT Funding Model, the Commission stated that ''[t]he manner in which the Fee Rate for Prospective CAT Costs will be calculated (*i.e.,* by dividing the CAT costs reasonably budgeted for the upcoming year by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for the year) is reasonable.'' CAT Funding Model Approval Order at 62651.

[96] Section 11.3(a)(iii)(B) of the CAT NMS Plan.

[97] *See* Section 11.3(a)(iii)(A) of the CAT NMS Plan.

[98] *See* proposed paragraph (a)(3)(B) under the Consolidated Audit Trail Funding Fees section of the Fee Schedule.

[99] Section 11.3(a)(iii)(A) of the CAT NMS Plan.

will provide notice when CAT Fee 2024–1 will no longer be in effect.

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

As noted in the Plan amendment for the CAT Funding Model, ''[a]s a practical matter, the fee filing would provide the exact fee per executed equivalent share to be paid for the CAT Fees, by multiplying the Fee Rate by one-third and describing the relevant number of decimal places for the fee.'' [100] Accordingly, proposed paragraph (a)(3)(B) to the Consolidated Audit Trail Funding Fees section of the Fee Schedule would set forth a fee rate of $0.000035 per executed equivalent share. This fee rate is calculated by multiplying Fee Rate 2024–1 of $0.0001043598251997246 by one-third, and rounding the result to six decimal places.[101] The Operating Committee determined to use six decimal places to balance the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.

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

Proposed paragraph (a)(3)(A) to the Consolidated Audit Trail Funding Fees section of the Fee Schedule also would describe the monthly cadence of the invoices for CAT Fee 2024–1. Specifically, after the first invoices are provided to CAT Executing Brokers in October 2024, invoices will be sent to CAT Executing Brokers each month thereafter until January 2025.

Proposed paragraph (a)(3)(B) to the Consolidated Audit Trail Funding Fees section of the Fee Schedule would describe the invoices for CAT Fee 2024–1. Proposed paragraph (a)(3)(B) to the Consolidated Audit Trail Funding Fees section of the Fee Schedule would state that ''Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for CAT Fee 2024–1 on a monthly basis.'' Proposed paragraph (a)(3)(B) to the Consolidated Audit Trail Funding Fees section of the Fee Schedule also would describe the fees to be set forth in the invoices for CAT Fee 2024–1. Specifically, it would state that ''[e]ach month, such invoices shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as a CAT Executing Broker for the Buyer ('CEBB') and/or the CAT Executing Broker for the Seller ('CEBS') (as applicable) from the prior month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of $0.000035 per executed equivalent share.''

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

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

Finally, proposed paragraph (a)(3)(D) to the Consolidated Audit Trail Funding Fees section of the Fee Schedule would set forth the requirement for the CAT Executing Brokers to pay the invoices for CAT Fee 2024–1. It would state that ''[e]ach CAT Executing Broker shall be required to pay each invoice for CAT Fee 2024–1 in accordance with paragraph (b).''

(B) Manner of Payment

The Exchange proposes to add paragraph (b)(1) to the Consolidated Audit Trail Funding Fees section of its Fee Schedule to describe the manner of payment of Industry Member CAT fees. The CAT NMS Plan requires the Operating Committee to establish a system for the collection of CAT fees.[102] The Plan Processor has established a billing system for CAT fees.[103] Therefore, the Exchange proposes to require CAT Executing Brokers to pay CAT Fee 2024–1 in accordance with such system. Accordingly, proposed paragraph (b)(1) would state that ''[e]ach CAT Executing Broker shall pay its CAT fees as required pursuant to paragraph (a) each month to the Consolidated Audit Trail, LLC in the manner prescribed by the Consolidated Audit Trail, LLC.''

(C) Failure to Pay CAT Fees

The CAT NMS Plan further states that:

> Participants shall require each Industry Member to pay all applicable fees authorized under this Article XI within thirty (30) days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If an Industry Member fails to pay any such fee when due (as determined in accordance with the preceding sentence), such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (a) the Prime Rate plus 300 basis points; or (b) the maximum rate permitted by applicable law.[104]

Accordingly, the Exchange proposes to add this requirement to the Exchange's Fee Schedule. Proposed paragraph (b)(2) to the Consolidated Audit Trail Funding Fees section of the Fee Schedule would state:

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

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

[100] CAT Funding Model Approval Order at 62658, n.658.

[101] Dividing $0.0001043598251997246 by three equals $0.00003478660839990821. Rounding $0.00003478660839990821 to six decimal places equals $0.000035.

[102] Section 11.4 of the CAT NMS Plan.

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

[104] Section 11.4 of the CAT NMS Plan.

(5) CAT Fee Details

The CAT NMS Plan states that:

> Details regarding the calculation of a Participant or CAT Executing Broker's CAT Fees will be provided upon request to such Participant or CAT Executing Broker. At a minimum, such details would include each Participant or CAT Executing Broker's executed equivalent share volume and corresponding fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.[105]

Such information would provide CEBBs and CEBSs with the ability to understand the details regarding the calculation of their CAT Fee.[106] CAT LLC will provide CAT Executing Brokers with these details regarding the calculation of their CAT Fees on their monthly invoice for the CAT Fees.

In addition, CAT LLC will make certain aggregate statistics regarding CAT Fees publicly available. Specifically, the CAT NMS Plan states that, ''[f]or each CAT Fee, at a minimum, CAT LLC will make publicly available the aggregate executed equivalent share volume and corresponding aggregate fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.'' [107] Such aggregate statistics will be available on the CAT website.

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

(6) Financial Accountability Milestones

The CAT NMS Plan states that ''[n]o Participant will make a filing with the SEC pursuant to Section 19(b) of the Exchange Act regarding any CAT Fee related to Prospective CAT Costs until the Financial Accountability Milestone related to Period 4 described in Section 11.6 has been satisfied.'' [108] The substantive requirements of the Financial Accountability Milestones related to Period 4 have been satisfied, as the CAT has completed the requirements for the ''Full Implementation of CAT NMS Plan Requirements.'' Section 1.1 of the CAT NMS Plan defines ''Full Implementation of CAT NMS Plan Requirements'' as:

> the point at which the Participants have satisfied all of their obligations to build and implement the CAT, such that all CAT system functionality required by Rule 613 and the CAT NMS Plan has been developed, successfully tested, and fully implemented at the initial Error Rates specified by Section 6.5(d)(i) or less, including functionality that efficiently permits the Participants and the Commission to access all CAT Data required to be stored in the Central Repository pursuant to Section 6.5(a), including Customer Account Information, Customer-ID, Customer Identifying Information, and Allocation Reports, and to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, including any related allocation information provided in an Allocation Report. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants' Quarterly Progress Reports. As indicated by the Participants' Quarterly Progress Report for the second and third quarter of 2024,[109] Full Implementation of CAT NMS Plan Requirements was completed on July 15, 2024.

(A) Transaction Reporting and Regulatory Access

The CAT system functionality required by Rule 613 and the CAT NMS Plan related to order and transaction data has been developed, successfully tested, and fully implemented, including the requirements related to regulatory access. The implementation of CAT requirements related to order and transaction data occurred over four phases: Phases 2a, 2b, 2c and 2d.[110] As described in the Quarterly Progress Reports and summarized below, each of these phases has been fully implemented.[111]

(i) Phase 2a

The Quarterly Progress Reports state that ''Phase 2a was fully implemented as of October 26, 2020.'' [112] The Phase 2a Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order, and includes the following data related to Eligible Securities that are equities:

- All events and scenarios covered by OATS, which includes information related to the receipt or origination of orders, order transmittal, and order modifications, cancellations and executions;
- Reportable Events for: (1) proprietary orders, including market maker orders, for Eligible Securities that are equities; (2) electronic quotes in listed equity Eligible Securities (*i.e.,* NMS stocks) sent to a national securities exchange or FINRA's Alternative Display Facility (''ADF''); (3) electronic quotes in unlisted Eligible Securities (*i.e.,* OTC Equity Securities) received by an Industry Member operating an interdealer quotation system (''IDQS''); and (4) electronic quotes in unlisted Eligible Securities sent to an IDQS or other quotation system not operated by a Participant or Industry Member;
- Firm Designated IDs (''FDIDs''), which Industry Members must report to the CAT as required by Sections 6.3(d)(i)(A) and 6.4(d)(ii)(C) of the CAT NMS Plan;
- Industry Members would be required to report all street side representative orders, including both agency and proprietary orders and mark such orders as representative orders, except in certain limited exceptions as described in the Industry Member Technical Specifications;
- The link between the street side representative order and the order being represented when: (1) the representative order was originated specifically to represent a single order received either

[105] Section 11.3(a)(iv)(A) of the CAT NMS Plan.

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

[107] Section 11.3(a)(iv)(B) of the CAT NMS Plan. In approving the CAT Funding Model, the Commission stated that ''[t]he publication of the aggregate executed equivalent share volume and aggregate fee is appropriate because it would allow Participants and CAT Executing Brokers a high-level validation of executed volume and fees.'' CAT Funding Model Approval Order at 62667.

[108] Section 11.3(a)(iii)(C) of the CAT NMS Plan.

[109] Q2 & Q3 2024 Quarterly Progress Report (July 29, 2024).

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

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

[112] *See, e.g.,* Q1 2024 Quarterly Progress Report (Apr. 30, 2024).

from a customer or another broker-dealer; and (2) there is (a) an existing direct electronic link in the Industry Member's system between the order being represented and the representative order and (b) any resulting executions are immediately and automatically applied to the represented order in the Industry Member's system;

- Manual and Electronic Capture Time for Manual Order Events;
- Special handling instructions for the original receipt or origination of an order during Phase 2a; and
- When routing an order, whether the order was routed as an intermarket sweep order (''ISO'').

In Phase 2a, Industry Members were not required to report modifications of a previously routed order in certain limited instances, nor were they required to report a cancellation of an order received from a Customer after the order has been executed.[113]

(ii) Phase 2b

The Quarterly Progress Reports state that ''Phase 2b was fully implemented as of January 4, 2021.'' [114] The Phase 2b Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order, and includes the Industry Member Data related to Eligible Securities that are options and related to simple electronic option orders, excluding electronic paired option orders. A simple electronic option order is an order to buy or sell a single option that is not related to or dependent on any other transaction for pricing and timing of execution that is either received or routed electronically by an Industry Member. Electronic receipt of an order is defined as the initial receipt of an order by an Industry Member in electronic form in standard format directly into an order handling or execution system. Electronic routing of an order is the routing of an order via electronic medium in standard format from one Industry Member's order handling or execution system to an exchange or another Industry Member. An electronic paired option order is an electronic option order that contains both the buy and sell side that is routed to another Industry Member or exchange for crossing and/or price improvement as a single transaction on an exchange. Responses to auctions of simple orders and paired simple orders would be reportable in Phase 2b. Furthermore, combined orders in options would be treated in Phase 2b in the same way as equity representative orders are treated in Phase 2a. A combined order would mean, as permitted by SRO rules, a single, simple order in Listed Options created by combining individual, simple orders in Listed Options from a customer with the same exchange origin code before routing to an exchange. During Phase 2b, the single combined order sent to an exchange must be reported and marked as a combined order, but the linkage to the underlying orders is not required to be reported until Phase 2d.[115]

(iii) Phase 2c

The Quarterly Progress Reports state that ''Phase 2c was implemented as of April 26, 2021.'' [116] The Phase 2c Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order. That Order states that ''Phase 2c Industry Member Data'' is Industry Member Data related to Eligible Securities that are equities other than Phase 2a Industry Member Data, Phase 2d Industry Member Data, or Phase 2e Industry Member Data. Specifically, the Phase 2c Industry Member Data includes Industry Member Data that is related to Eligible Securities that are equities and that is related to: (1) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (2) quotes in unlisted Eligible Securities sent to an IDQS operated by a CAT Reporter (reportable by the Industry Member sending the quotes) (except for quotes reportable in Phase 2d, as discussed below); (3) electronic quotes in listed equity Eligible Securities (*i.e.,* NMS stocks) that are not sent to a national securities exchange or FINRA's Alternative Display Facility; (4) reporting changes to client instructions regarding modifications to algorithms; (5) marking as a representative order any order originated to work a customer order in price guarantee scenarios, such as a guaranteed VWAP; (6) flagging rejected external routes to indicate a route was not accepted by the receiving destination; (7) linkage of duplicate electronic messages related to a Manual Order Event between the electronic event and the original manual route; (8) special handling instructions on order route reports (other than the ISO, which is required to be reported in Phase 2a); (9) quote identifier on trade events; (10) reporting of LTIDs (if applicable) for accounts with Reportable Events that are reportable to CAT as of and including Phase 2c; (11) reporting of date account opened or Account Effective Date (as applicable) for accounts and reporting of a flag indicating the Firm Designated ID type as account or relationship; (12) order effective time for orders that are received by an Industry Member and do not become effective until a later time; (13) the modification or cancellation of an internal route of an order; and (14) linkages to the customer order(s) being represented for representative order scenarios, including agency average price trades, net trades, aggregated orders, and disconnected Order Management System (''OMS'')—Execution Management System (''EMS'') scenarios, as required in the Industry Member Technical Specifications.[117]

Phase 2c Industry Member Data also includes electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are equities and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: (1) an equity bid or offer is displayed publicly or has been communicated (a) for listed securities to the ADF operated by FINRA; or (b) for unlisted equity securities to an ''interdealer quotation system,'' as defined in FINRA Rule 6420(c); or (2) an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing; *i.e.,* no further manual or electronic action is required by the responder providing the quote in order to execute or cause a trade to be executed). With respect to OTC Equity Securities, OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter (other than such an IDQS that does not match and execute orders) are reportable by the Industry Member sending them in Phase 2c. Accordingly, any response to a request for quote or other form of solicitation response provided in a standard electronic format (*e.g.,* FIX) that meets this quote definition (*i.e.,* an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing) would be reportable in Phase 2c.[118]

[113] Phased Reporting Exemptive Relief Order at 23076–78.

[114] *See, e.g.,* Q1 2024 Quarterly Progress Report (Apr. 30, 2024).

[115] Phased Reporting Exemptive Relief Order at 23078.

[116] *See, e.g.,* Q1 2024 Quarterly Progress Report (Apr. 30, 2024).

[117] Phase Reporting Exemptive Relief Order at 23078–79.

[118] *Id.* at 23079.

(iv) Phase 2d

The Quarterly Progress Reports state that ''Phase 2d was fully implemented as of December 13, 2021.'' [119] The Phase 2d Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order. ''Phase 2d Industry Member Data'' is Industry Member Data that is related to Eligible Securities that are options other than Phase 2b Industry Member Data, Industry Member Data that is related to Eligible Securities that are equities other than Phase 2a Industry Member Data or Phase 2c Industry Member Data, and Industry Member Data other than Phase 2e Industry Member Data. Phase 2d Industry Member Data includes with respect to the Eligible Securities that are options: (1) simple manual orders; (2) electronic and manual paired orders; (3) all complex orders with linkages to all CAT-reportable legs; (4) LTIDs (if applicable) for accounts with Reportable Events for Phase 2d; (5) date account opened or Account Effective Date (as applicable) for accounts with an LTID and flag indicating the Firm Designated ID type as account or relationship for such accounts; (6) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (7) the modification or cancellation of an internal route of an order; and (8) linkage between a combined order and the original customer orders. Phase 2d Industry Member Data also would include electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are options and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: a listed option bid or offer which is accessible electronically by customers or other market participants and is immediately actionable (*i.e.,* no further action is required by the responder providing the quote in order to execute or cause a trade to be executed). Accordingly, any response to a request for quote or other form of solicitation response provided in standard electronic format (*e.g.,* FIX) that meets this definition is reportable in Phase 2d for options.[120]

Phase 2d Industry Member Data also includes with respect to Eligible Securities that are options or equities (1) receipt time of cancellation and modification instructions through Order Cancel Request and Order Modification Request events; (2) modifications of previously routed orders in certain instances; and (3) OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter that does not match and execute orders. In addition, subject to any exemptive or other relief, Phase 2d Industry Member Data includes verbal or manual quotes on an exchange floor or in the over-the-counter market, where verbal quotes and manual quotes are defined as bids or offers in Eligible Securities provided verbally or that are provided or received other than via a CAT Reporter's order handling and execution system (*e.g.,* quotations provided via email or instant messaging).[121]

(v) Regulatory Access to Order and Transaction Data

The Financial Accountability Milestone related to Period 4 requires that CAT provide functionality that permits the Participants and the Commission to access Phase 2a, 2b, 2c and 2d data and to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, including any related allocation information provided in an Allocation Report. As CAT LLC reported on its Quarterly Progress Reports, the query tool functionality incorporating the data from Phases 2a, 2b, 2c and 2d was available to the Participants and to the Commission as of December 31, 2021.[122]

(B) CAIS Reporting and Regulatory Access

The CAT System functionality required by Rule 613 and the CAT NMS Plan related to Customer information has been developed, successfully tested, and fully implemented, including the requirements related to regulatory access. The implementation of CAT requirements related to Customer information occurred during Phase 2e. As described in the Quarterly Progress Reports and summarized below, Phase 2e has been fully implemented as of May 31, 2024.[123] Furthermore, because a month of customer and account information data is necessary to create report cards with regard to such data, the publication of monthly report cards with respect to customer and account information commenced on July 15, 2024.[124] Accordingly, the Financial Accountability Milestone related to Period 4 was completed on July 15, 2024.

(i) Phase 2e

The Q2 & Q3 2024 Quarterly Progress Report indicates that Phase 2e was fully implemented as of May 31, 2024.[125] Phase 2e Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order. ''Phase 2e Industry Member Data'' includes ''Customer Account Information and Customer Identifying Information, other than LTIDs, date account opened/Account Effective Date and Firm Designated ID type flag previously reported to the CAT.'' [126] LTIDs and Account Effective Date are both provided in Phases 2c and 2d in certain circumstances, as discussed above. Section 1.1 of the CAT NMS Plan defines the term ''Customer Account Information'' to

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

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

information of sufficient detail to identify a Customer, including, but not limited to, (a)

[119] *See, e.g.,* Q1 2024 Quarterly Progress Report (Apr. 30, 2024).

[120] Phase Reporting Exemptive Relief Order at 23079.

[121] *Id.* at 23079–80.

[122] *See, e.g.,* Q1 2024 Quarterly Progress Report (Apr. 30, 2024).

[123] *Id.*

[124] Q2 & Q3 2024 Quarterly Progress Report (July 29, 2024).

[125] *Id.*

[126] Phase Reporting Exemptive Relief Order at 23080.

with respect to individuals: name, address, date of birth, individual tax payer identification number (''ITIN'')/social security number (''SSN''), individual's role in the account (*e.g.,* primary holder, joint holder, guardian, trustee, person with the power of attorney); and (b) with respect to legal entities: name, address, Employer Identification Number (''EIN'')/Legal Entity Identifier (''LEI'') or other comparable common entity identifier, if applicable; provided, however, that an Industry Member that has an LEI for a Customer must submit the Customer's LEI in addition to other information of sufficient detail to identify a Customer.

(ii) Regulatory Access to Customer Information

The Financial Accountability Milestone related to Period 4 requires that CAT provide functionality that permits the Participants and the Commission to access Phase 2e Industry Member Data (in addition to the Phase 2a, 2b, 2c and 2d Industry Member Data, as discussed above). As CAT LLC reported on its Q2 & Q3 Quarterly Progress Report, regulators had efficient access to Phase 2e Industry Member Data via the query tool functionality required under the CAT NMS Plan by July 15, 2024.[127]

(C) Error Rate

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

(7) Participant Invoices

While CAT Fees charged to Industry Members become effective in accordance with the requirements of Section 19(b) of the Exchange Act,[128] CAT fees charged to Participants are implemented via an approval of the CAT fees by the Operating Committee in accordance with the requirements of the CAT NMS Plan.[129] On July 31, 2024, the Operating Committee approved the Participant fee related to CAT Fee 2024–1. Specifically, pursuant to the requirements of CAT NMS Plan,[130] each Participant would be required to pay a CAT fee calculated using the fee rate of $0.000035, which is the same fee rate that applies to CEBBs and CEBSs. Like CEBBs and CEBSs, each Participant would be required to pay such CAT fees on a monthly basis for four months, from November 2024 until February 2025, and each Participant's fee for each month would be calculated based on the transactions in Eligible Securities executed on the applicable exchange (for the Participant exchanges) or otherwise than on the exchange (for FINRA) in the prior month. Accordingly, each Participant will receive its first invoice in October 2024, and would receive an invoice each month thereafter until January 2025. Like with the CAT Fee 2024–1 applicable to CEBBs and CEBSs as described in proposed paragraph (a)(3)(C) to the Consolidated Audit Trail Funding Fees section of the Fee Schedule, notwithstanding the last invoice date of January 2025, Participants will continue to receive invoices for this fee each month until a new subsequent CAT Fee is in effect with regard to Industry Members. Furthermore, Section 11.4 of the CAT NMS Plan states that each Participant is required to pay such invoices as required by Section 3.7(b) of the CAT NMS Plan. Section 3.7(b) states, in part, that

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

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of the Exchange Act. The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[131] 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 Act,[132] because it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(8) of the Act,[133] which requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. These provisions also require that the Exchange be ''so organized and [have] the capacity to be able to carry out the purposes'' of the Act and ''to comply, and . . . to enforce compliance by its members and persons associated with its members,'' with the provisions of the Exchange Act.[134] Accordingly, a reasonable reading of the Act indicates that it intended that regulatory funding be sufficient to permit an exchange to fulfill its statutory responsibility under the Act, and contemplated that such funding would be achieved through equitable assessments on the members, issuers, and other users of an exchange's facilities.

The Exchange believes that this proposal is consistent with the Act because it implements provisions of the Plan and is designed to assist the Exchange in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [135] 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 Act.

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

[127] Q2 & Q3 2024 Quarterly Progress Report (July 29, 2024).

[128] Section 11.3(a)(i)(A)(I) of the CAT NMS Plan.

[129] CAT Funding Model Approval Order at 62659.

[130] *See* Section 11.3(a)(ii) and Appendix B of the CAT NMS Plan.

[131] 15 U.S.C. 78f(b)(6).

[132] 15 U.S.C. 78f(b)(4).

[133] 15 U.S.C. 78f(b)(8).

[134] *See* Section 6(b)(1) of the Exchange Act.

[135] CAT NMS Plan Approval Order at 84697.

professional and administration, and public relations costs.

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

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

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

Section 11.1(b) of the CAT NMS Plan states that ''[t]he Participants shall file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves.'' Per Section 11.1(b) of the CAT NMS Plan, the Exchange has filed this fee filing to implement the Industry Member CAT fees included in the CAT Funding Model. The Exchange believes that this proposal is consistent with the Exchange Act because it is consistent with, and implements, the CAT Funding Model in the CAT NMS Plan, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the CAT NMS Plan. In approving the CAT NMS Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [136] Similarly, in approving the CAT Funding Model, the SEC concluded that the CAT Funding Model met this standard.[137] As this proposal implements the Plan and the CAT Funding Model described therein, and applies specific requirements to Industry Members in compliance with the Plan, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Exchange Act.

(2) Calculation of Fee Rate for CAT Fee 2024–1 Is Reasonable

The SEC has determined that the CAT Funding Model is reasonable and satisfies the requirements of the Exchange Act. Specifically, the SEC has concluded that the method for determining CAT Fees as set forth in Section 11.3 of the CAT NMS Plan, including the formula for calculating the Fee Rate, the identification of the parties responsible for payment and the transactions subject to the fee rate for CAT Fees, is reasonable and satisfies the Exchange Act.[138] In each respect, as discussed above, CAT Fee 2024–1 is calculated, and would be applied, in accordance with the requirements applicable to CAT Fees as set forth in the CAT NMS Plan. Furthermore, as discussed below, the Exchange believes that each of the figures for the variables in the SEC-approved formula for calculating the fee rate for CAT Fee 2024–1 is reasonable and consistent with the Exchange Act. Calculation of Fee Rate 2024–1 for CAT Fee 2024–1 requires the figures for Budgeted CAT Costs 2024–1, the executed equivalent share volume for the prior twelve months, the determination of CAT Fee 2024–1 Period, and the projection of the executed equivalent share volume for CAT Fee 2024–1 Period. Each of these variables is reasonable and satisfies the Exchange Act, as discussed throughout this filing.

(A) Budgeted CAT Costs 2024–1

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

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

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

Section 11.3(a)(iii)(B) of the CAT NMS Plan also requires that the fee filing provide ''sufficient detail to demonstrate that the budget for the upcoming year, or part of year, as applicable, is reasonable and appropriate.'' As discussed below, the Exchange believes that the budget for the CAT Fee 2024–1 Period is ''reasonable and appropriate.'' Each of the costs included in CAT Fee 2024–1 are reasonable and appropriate because the costs are consistent with standard industry practice, based on the need to comply with the requirements of the CAT NMS Plan, incurred subject to negotiations performed on an arm's length basis, and/or are consistent with the needs of any legal entity, particularly one with no employees.

(i) Technology: Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover budgeted costs related to cloud hosting services as a part of CAT Fees.[139] CAT LLC determined that the budgeted costs related to cloud hosting services described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2024–1. As described above, the cloud hosting services costs reflect, among other things, the breadth of the CAT cloud activities, data volumes far in excess of the original volume estimates, the need for specialized cloud services given the volume and unique nature of the CAT, the processing time requirements of the Plan, and regular efforts to seek to minimize costs where permissible under the Plan. CAT LLC determined that use of cloud hosting services is necessary for implementation of the CAT, particularly given the substantial data volumes associated with the CAT, and that the fees for cloud hosting services negotiated by FCAT were reasonable, taking into consideration a variety of factors, including the expected volume of data and the breadth of services provided and market rates for similar services.[140] Indeed, the actual costs of the CAT are far in excess of the original estimated costs of the CAT due to various factors, including the higher volumes and greater complexity of the CAT than anticipated when Rule 613 was originally adopted.

To comply with the requirements of the Plan, the breadth of the cloud

[136] *Id.* at 84696.

[137] CAT Funding Model Approval Order at 62686.

[138] *Id.* at 62662–63.

[139] Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan.

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

activities related to the CAT is substantial. The cloud services not only include the production environment for the CAT, but they also include two industry testing environments, support environments for quality assurance and stress testing and disaster recovery capabilities. Moreover, the cloud storage costs are driven by the requirements of the Plan, which requires the storage of multiple versions of the data, from the original submitted version of the data through various processing steps, to the final version of the data.

Data volume is a significant driver of costs for cloud hosting services. When the Commission adopted the CAT NMS Plan in 2016, it estimated that the CAT would need to receive 58 billion records per day [141] and that annual operating costs for the CAT would range from $36.5 million to $55 million.[142] Through 2023, the actual data volumes have been five times that original estimate. The data volumes to date for 2024 have continued this trend.

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

The costs for cloud hosting services also reflect the need for specialized cloud hosting services given the data volume and unique processing needs of the CAT. The data volume as well as the data processing needs of the CAT necessitate the use of cloud hosting services. The equipment, power and services required for an on-premises data model, the alternative to cloud hosting services, would be cost prohibitive. Moreover, as CAT was being developed, there were limited cloud hosting providers that could satisfy all the necessary CAT requirements, including the operational and security criteria. Over time, more providers offering cloud hosting services that would satisfy these criteria have entered the market. CAT LLC will continue to evaluate alternative cloud hosting services, recognizing that the time and cost to move to an alternative cloud provider would be substantial.

The reasonableness of the cloud hosting services costs is further supported by key cost discipline mechanisms for the CAT—a cost-based funding structure, cost transparency, cost management efforts (including regular efforts to lower compute and storage costs where permitted by the Plan) and oversight. Together, these mechanisms help ensure the ongoing reasonableness of the CAT's costs and the level of fees assessed to support those costs.[143]

(ii) Technology: Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted costs related to operating fees as a part of CAT Fees.[144] CAT LLC determined that the budgeted costs related to operating fees described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2024–1.

The operating fees would include the negotiated fees paid by CAT LLC to the Plan Processor to operate and maintain the system for order-related information and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.,* management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the selection of FCAT as the Plan Processor was reasonable and appropriate given its expertise with securities regulatory reporting, after a process of considering other potential candidates.[145] CAT LLC also determined that the fixed price contract, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, was reasonable and appropriate, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity.[146] The services to be performed by FCAT for CAT Fee 2024–1 Period and the budgeted costs related to such services are described above.[147]

The operating costs also include costs related to the receipt of market data. CAT LLC anticipates continuing to receive certain market data from Exegy during the CAT Fee 2024–1 Period. CAT LLC anticipates that Exegy will continue to provide data that meets the SIP Data requirements of the CAT NMS Plan and that the fees are reasonable and in line with market rates for market data received.[148]

(iii) Technology: CAIS Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted costs related to CAIS operating fees as a part of CAT Fees.[149] CAT LLC determined that the budgeted costs related to CAIS operating fees described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2024–1. The CAIS operating fees would include the fees paid to the Plan Processor to operate and maintain CAIS and to perform the business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.,* management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the fees for FCAT's CAIS-related services, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity, are reasonable and appropriate.[150] The services to be performed by FCAT for the CAT Fee 2024–1 Period and the budgeted costs for such services are described above.[151]

(iv) Technology: Change Request Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted costs related to change request fees as a part of CAT Fees.[152] CAT LLC determined that the budgeted costs related to change request fees described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2024–1. It is common practice to utilize a change request process to address evolving needs in technology projects. This is particularly true for a project like CAT that is the first of its kind, both in substance and in scale. The substance and costs of each of the change requests are evaluated by the Operating Committee and approved in accordance

[141] Appendix D–4 of the CAT NMS Plan at n.262.

[142] CAT NMS Plan Approval Order at 84801.

[143] *See* Securities Exchange Act Rel. No. 97151 (Mar. 15, 2023), 88 FR 17086, 17117 (Mar. 21, 2023) (describing key cost discipline mechanisms for the CAT).

[144] Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan.

[145] *See* Section 3(a)(2)(C)(ii) above.

[146] *Id.*

[147] *Id.*

[148] *Id.*

[149] Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan.

[150] *See* Section 3(a)(2)(C)(iii) above.

[151] *Id.*

[152] Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan.

with the requirements for Operating Committee meetings. In each case, CAT LLC forecasts that the change requests will be necessary to implement the CAT. As described above,[153] CAT LLC has included a reasonable placeholder budget amount for potential change requests that may arise during the CAT Fee 2024–1 Period. As noted above, the total budgeted costs for change requests during the CAT Fee 2024–1 Period represent a small percentage of Budgeted CAT Costs 2024–1—that is, approximately 0.12% of Budgeted CAT Costs 2024–1.

(v) Capitalized Developed Technology Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted costs related to capitalized developed technology costs as a part of CAT Fees.[154] In general, capitalized developed technology costs would include costs related to, for example, certain development costs, costs related to certain modifications, upgrades and other changes to the CAT, CAIS implementation fees and license fees. The amount and type of budgeted capitalized developed technology costs for the CAT Fee 2024–1 Period, which relate to the CAIS software license fee and technology changes to be implemented by FCAT, are described in more detail above.[155] CAT LLC determined that these budgeted costs are reasonable and should be included as a part of Budgeted CAT Costs 2024–1.

(vi) Legal

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted costs related to legal fees as a part of CAT Fees.[156] CAT LLC determined that the budgeted legal costs described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2024–1. Given the unique nature of the CAT, the number of parties involved with the CAT (including, for example, the SEC, Participants, Industry Members, and vendors) and the many regulatory, contractual and other issues associated with the CAT, the scope of the necessary legal services is substantial. CAT LLC determined that the scope of the proposed legal services is necessary to implement and maintain the CAT and that the legal rates reflect the specialized services necessary for such a project. CAT LLC determined to hire and continue to use each law firm based on a variety of factors, including their relevant expertise and fees. In each case, CAT LLC determined that the fee rates were in line with market rates for specialized legal expertise. In addition, CAT LLC determined that the budgeted costs for the legal projects were appropriate given the breadth of the services provided. The services to be performed by each law firm for the CAT Fee 2024–1 Period and the budgeted costs related to such services are described above.[157]

(vii) Consulting

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted consulting costs as a part of CAT Fees.[158] CAT LLC determined that the budgeted consulting costs described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2024–1. Because there are no CAT employees [159] and because of the significant number of issues associated with the CAT, the consultants are budgeted to provide assistance in the management of various CAT matters and the processes related to such matters.[160] CAT LLC determined the budgeted consulting costs were appropriate, as the consulting services were to be provided at reasonable market rates that were comparable to the rates charged by other consulting firms for similar work. Moreover, the total budgeted costs for such consulting services were appropriate in light of the breadth of services provided by Deloitte. The services budgeted to be performed by Deloitte and the budgeted costs related to such services are described above.[161]

(viii) Insurance

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted insurance costs as a part of CAT Fees.[162] CAT LLC determined that the budgeted insurance costs described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2024–1. CAT LLC determined that it is common practice to have directors' and officers' liability insurance, and errors and omissions liability insurance. CAT LLC further determined that it was important to have cyber security insurance given the nature of the CAT, and such a decision is consistent with the CAT NMS Plan, which states that the cyber incident response plan may include ''[i]nsurance against security breaches.'' [163] As discussed above,[164] CAT LLC determined that the budgeted insurance costs were appropriate given its prior experience with this market and an analysis of the alternative insurance offerings. Based on this analysis, CAT LLC determined that the selected insurance policies provided appropriate coverage at reasonable market rates.[165]

(ix) Professional and Administration

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted professional and administration costs as a part of CAT Fees.[166] CAT LLC determined that the budgeted professional and administration costs described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2024–1. Because there are no CAT employees, all required accounting, financial, tax, cash management and treasury functions for CAT LLC have been outsourced at market rates. In addition, the required annual financial statement audit of CAT LLC is included in professional and administration costs, which costs are also at market rates. The services performed by Anchin and Grant Thornton and the costs related to such services are described above.[167]

CAT LLC anticipates continuing to make use of Anchin, a financial advisory firm, to assist with financial matters for the CAT. CAT LLC determined that the budgeted costs for Anchin were appropriate, as the financial advisory services were to be provided at reasonable market rates that were comparable to the rates charged by other such firms for similar work. Moreover, the total budgeted costs for such financial advisory services were appropriate in light of the breadth of services provided by Anchin. The services budgeted to be performed by Anchin and the budgeted costs related to such services are described above.[168]

[153] *See* Section 3(a)(2)(C)(iv) above.

[154] Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan.

[155] *See* Section 3(a)(2)(C)(v) above.

[156] Section 11.3(a)(iii)(B)(B)(2) of the CAT NMS Plan.

[157] *See* Section 3(a)(2)(B)(vi) above.

[158] Section 11.3(b)(iii)(B)(B)(3) of the CAT NMS Plan.

[159] As stated in the filing of the proposed CAT NMS Plan, ''[i]t is the intent of the Participants that the Company have no employees.'' Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614, 30621 (May 17, 2016).

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

[161] Section 3(a)(2)(C)(vii) of the CAT NMS Plan.

[162] Section 11.3(b)(iii)(B)(B)(4) of the CAT NMS Plan.

[163] Section 4.1.5 of Appendix D of the CAT NMS Plan.

[164] *See* Section 3(a)(2)(C)(viii) above.

[165] *Id.*

[166] Section 11.3(a)(iii)(B)(B)(5) of the CAT NMS Plan.

[167] *See* Section 3(a)(2)(C)(ix) above.

[168] *Id.*

CAT LLC anticipates continuing to make use of Grant Thornton, an independent accounting firm, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC determined that the budgeted costs for Grant Thornton were appropriate, as the accounting services were to be provided at reasonable market rates that were comparable to the rates charged by other such firms for similar work. Moreover, the total budgeted costs for such accounting services were appropriate in light of the breadth of services provided by Grant Thornton. The services budgeted to be performed by Grant Thornton and the budgeted costs related to such services are described above.[169]

(x) Public Relations Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted public relations costs as a part of CAT Fees.[170] CAT LLC determined that the budgeted public relations costs described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2024–1. CAT LLC determined that the types of public relations services to be utilized were beneficial to the CAT and market participants more generally. Public relations services are important for various reasons, including monitoring comments made by market participants about CAT and understanding issues related to the CAT discussed on the public record.[171] By continuing to engage a public relations firm, CAT LLC will be better positioned to understand and address CAT issues to the benefit of all market participants.[172] Moreover, CAT LLC determined that the budgeted rates charged for such services were in line with market rates.[173] As noted above, the total budgeted public relations costs for the CAT Fee 2024–1 Period represent a small percentage of Budgeted CAT Costs 2024–1—that is, approximately 0.03% of Budgeted CAT Costs 2024–1.

(xi) Reserve

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted reserve costs as a part of CAT Fees.[174] CAT LLC determined that the inclusion of a reserve in the amount of 25% of Budgeted CAT Costs 2024–1 complies with the requirements of the CAT NMS Plan related to a reserve, is a reasonable amount and should be included as a part of Budgeted CAT Costs 2024–1.

In its approval order for the CAT Funding Model, the Commission stated that it would be reasonable for the annual operating budget for the CAT to ''include a reserve of not more than 25% of the annual budget.'' [175] In making this statement, the Commission noted the following:

> Because the CAT is a critical regulatory tool/system, the CAT needs to have a stable funding source to build financial stability to support the Company as a going concern. Funding for the CAT, as noted in Section 11.1(b), is the responsibility of the Participants and the industry. Because CAT fees are charged based on the budget, which is based on anticipated volume, it is reasonable to have a reserve on hand to prevent a shortfall in the event there is an unexpectedly high volume in a given year. A reserve would help to assure that the CAT has sufficient resources to cover costs should there be unanticipated costs or costs that are higher than expected.[176]

The SEC also recognized that that a reserve would help address the difficulty in predicting certain variable CAT costs, like trading volume.[177] The SEC also recognized that CAT fees will be collected approximately three months after trading activity on which a CAT fee is based, or 25% of the year, and that the reserve would be available to address funding needs related to this three-month delay.[178] The inclusion of the proposed reserve in Budgeted CAT Costs 2024–1 would provide each of these benefits to the CAT. The reserve is discussed further above.[179]

(B) Reconciliation of Budget to the Collected Fees

The CAT NMS Plan also requires fee filings for Prospective CAT Fees to include ''a discussion of how the budget is reconciled to the collected fees.'' [180] To date, CAT LLC has not collected any CAT fees. Accordingly, there are no collected fees to be reconciled with the budget.

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

The total executed equivalent share volume of transactions in Eligible Securities for the period from June 2023 through May 2024 was 3,980,753,840,905.21 executed equivalent shares. CAT LLC determined the total executed equivalent share volume for the prior twelve months by counting executed equivalent shares in the same manner as it counts executed equivalent shares for CAT billing purposes.[181]

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

CAT LLC has determined to calculate the projected total executed equivalent share volume for the four months in which CAT Fee 2024–1 Period would be payable by multiplying by 4/12ths (*i.e.,* one-third) the executed equivalent share volume for the prior 12 months.[182] CAT LLC determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has remained relatively constant in recent years. For example, the executed equivalent share volume for 2021 was 3,963,697,612,395 executed equivalent shares, the executed equivalent share volume for 2022 was 4,039,821,841,560.31 executed equivalent shares, and the executed equivalent share volume for 2023 was 3,868,940,345,680.6. Accordingly, the projected total executed equivalent share volume for the four-month period for CAT Fee 2024–1 is 1,326,917,946,968.403 executed equivalent shares.[183]

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

(i) Decimal Places

As noted in the approval order for the CAT Funding Model, as a practical matter, the fee filing for a CAT Fee would provide the exact fee per executed equivalent share to be paid for each CAT Fee, by multiplying the Fee Rate by one-third and describing the relevant number of decimal places for the fee rate.[184] Accordingly, proposed paragraph (a)(3)(B) to the Consolidated Audit Trail Funding Fees section of the Fee Schedule would set forth a fee rate of $0.000035 per executed equivalent share. This fee rate is calculated by multiplying Fee Rate 2024–1 by one-third and rounding the result to six decimal places. CAT LLC determined that the use of six decimal places is reasonable as it balances the accuracy of the calculation with the potential systems and other impracticalities of

[169] *Id.*

[170] Section 11.3(a)(iii)(B)(B)(6) of the CAT NMS Plan.

[171] *See* Section 3(a)(2)(C)(x) above.

[172] *Id.*

[173] *Id.*

[174] Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan.

[175] CAT Funding Model Approval Order at 62657.

[176] *Id.*

[177] *Id.*

[178] *Id.*

[179] *See* Section 3(a)(2)(C)(xi) above.

[180] Section 11.3(a)(iii)(B)(C) of the CAT NMS Plan.

[181] *See* Section 3(a)(2)(D) above.

[182] *Id.*

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

[184] CAT Funding Model Approval Order at 62658, n.658.

using additional decimal places in the calculation.[185]

(ii) Reasonable Fee Level

The Exchange believes that imposing CAT Fee 2024–1 with a fee rate of $0.000035 per executed equivalent share is reasonable because it provides for a revenue stream for the Company that is aligned with Budgeted CAT Costs 2024–1 and such budgeted costs would be spread out over a four-month period. Moreover, the Exchange believes that the level of the fee rate is reasonable, as it is comparable to other transaction-based fees. Indeed, CAT Fee 2024–1 is significantly lower than fees assessed pursuant to Section 31 (*e.g.,* $0.0009 per share to 0.0004 per share),[186] and, as a result, the magnitude of CAT Fee 2024–1 is small, and therefore will mitigate any potential adverse economic effects or inefficiencies.[187]

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

CAT Fee 2024–1 provides for an equitable allocation of fees, as it equitably allocates CAT costs between and among the Participants and Industry Members. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfied the requirements of the Exchange Act, including the formula for calculating CAT Fees as well as the Industry Members to be charged the CAT Fees.[188] In approving the CAT Funding Model, the SEC stated that ''[t]he Participants have sufficiently demonstrated that the proposed allocation of fees is reasonable.'' [189] Accordingly, the CAT Funding Model sets forth the requirements for allocating fees related to Budgeted CAT Costs among Participants and Industry Members, and the fee filings for CAT Fees must comply with those requirements.

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

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

(4) CAT Fee 2024–1 Is Not Unfairly Discriminatory

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

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

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

Section 6(b)(8) of the Act [190] requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that CAT Fee 2024–1 implements provisions of the CAT NMS Plan that were approved by the Commission and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan.

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

Furthermore, in approving the CAT Funding Model, the SEC analyzed the potential competitive impact of the CAT Funding Model, including competitive issues related to market services, trading services and regulatory services, efficiency concerns, and capital formation.[191] The SEC also analyzed the potential effect of CAT fees calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. Based on this analysis, the SEC approved the CAT Funding Model as compliant with the Exchange Act. CAT Fee 2024–1 is

[185] *See* Section 3(a)(4)(A) above.

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

[187] *Id.*

[188] *See* Section 11.3(b) of the CAT NMS Plan.

[189] CAT Funding Model Approval Order at 62629.

[190] 15 U.S.C. 78f(b)(8).

[191] CAT Funding Model Approval Order at 62676–86.

calculated and implemented in accordance with the CAT Funding Model as approved by the SEC.

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

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

No written comments were 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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act [192] and Rule 19b–4(f)(2) thereunder,[193] because it establishes or changes a due, or fee.

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

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSECHX–2024–26 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–NYSECHX–2024–26. 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 (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSECHX–2024–26 and should be submitted on or before September 25, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[194]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–19758 Filed 9–3–24; 8:45 am]

BILLING CODE 8011–01–P

[192] 15 U.S.C. 78s(b)(3)(A)(ii).

[193] 17 CFR 240.19b–4(f)(2).

[194] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100844; File No. SR–NYSEAMER–2024–50]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Fees for Industry Members Related to Reasonably Budgeted Costs of the National Market System Plan Governing the Consolidated Audit Trail for the Period From July 16, 2024 Through December 31, 2024

August 28, 2024.

Pursuant to Section 19(b)(1) under the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 16, 2024, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the NYSE American Equities Price List (''Equities Price List'') and the NYSE American Options Fee Schedule (''Options Fee Schedule'') to establish fees for Industry Members [3] related to reasonably budgeted CAT costs of the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'') for the period from July 16, 2024 through December 31, 2024. These fees would be payable to Consolidated Audit Trail, LLC (''CAT LLC'' or the ''Company'') and referred to as CAT Fee 2024–1, and would be described in a section of the Equities Price List and the Options Fee Schedule titled ''Consolidated Audit Trail Funding Fees.'' The fee rate for CAT Fee 2024–1 would be $0.000035 per executed equivalent share. CAT Executing Brokers will receive their first monthly invoice for CAT Fee 2024–1 in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] An ''Industry Member'' is defined as ''a member of a national securities exchange or a member of a national securities association.'' *See* NYSE American Rule 6810(u). *See also* Section 1.1 of the CAT NMS Plan. Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the CAT NMS Plan and/or the CAT Compliance Rule. *See* NYSE American Rule 6810.

October 2024 calculated based on their transactions as CAT Executing Brokers for the Buyer (''CEBB'') and/or CAT Executing Brokers for the Seller (''CEBS'') in September 2024. The proposed rule change is available on the Exchange's website at *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 Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 11, 2012, the Commission adopted Rule 613 of Regulation NMS, which required the self-regulatory organizations (''SROs'') to submit a national market system (''NMS'') plan to create, implement and maintain a consolidated audit trail that would capture customer and order event information for orders in NMS securities across all markets, from the time of order inception through routing, cancellation, modification or execution.[4] On November 15, 2016, the Commission approved the CAT NMS Plan.[5] Under the CAT NMS Plan, the Operating Committee has the discretion to establish funding for CAT LLC to operate the CAT, including establishing fees for Industry Members to be assessed by CAT LLC that would be implemented on behalf of CAT LLC by the Participants.[6] The Operating Committee adopted a revised funding model to fund the CAT (''CAT Funding Model''). On September 6, 2023, the Commission approved the CAT Funding Model after concluding that the model was reasonable and that it satisfied the requirements of Section 11A of the Exchange Act and Rule 608 thereunder.[7]

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

Under the CAT Funding Model, Participants, CEBBs and CEBSs are subject to fees designed to cover the ongoing budgeted costs of the CAT, as determined by the Operating Committee. ''The Operating Committee will establish fees ('CAT Fees') to be payable by Participants and Industry Members with regard to CAT costs not previously paid by the Participants ('Prospective CAT Costs').'' [9] In establishing a CAT Fee, the Operating Committee will calculate a ''Fee Rate'' for the relevant period. Then, for each month in which a CAT Fee is in effect, each CEBB and CEBS would be required to pay the fee for each transaction in Eligible Securities executed by the CEBB or CEBS from the prior month as set forth in CAT Data, where the fee for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate.[10]

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

CAT LLC proposes to charge CEBBs and CEBSs (as described in more detail below) CAT Fee 2024–1 to recover the reasonably budgeted CAT costs for July 16, 2024 through December 31, 2024, in accordance with the CAT Funding Model. To implement this fee on behalf of CAT LLC, the CAT NMS Plan requires the Participants to ''file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves, and such fees shall be labeled as 'Consolidated Audit Trail Funding Fees.' '' [17] The Plan further states that ''[o]nce the Operating Committee has approved such Fee Rate, the Participants shall be required to file with the SEC pursuant to Section 19(b) of the Exchange Act CAT Fees to be charged to Industry Members calculated using such Fee Rate.'' [18] Accordingly, the purpose of this filing is to implement a CAT Fee on behalf of CAT LLC for Industry Members, referred to as CAT Fee 2024–1, in accordance with the CAT NMS Plan.

(1) CAT Executing Brokers

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

[4] Securities Exchange Act Rel. No. 67457 (July 18, 2012), 77 FR 45722 (Aug. 1, 2012).

[5] Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (''CAT NMS Plan Approval Order'').

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

[7] Securities Exchange Act Rel. No. 98290 (Sept. 6, 2023), 88 FR 62628 (Sept. 12, 2023) (''CAT Funding Model Approval Order'').

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

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

[10] In approving the CAT Funding Model, the Commission stated that, ''[t]he proposed recovery of Prospective CAT Costs is appropriate.'' CAT Funding Model Approval Order at 62651.

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

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

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

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

[15] CAT Funding Model Approval Order at 62659.

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

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

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

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

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

The following fields of the Participant Technical Specifications indicate the CAT Executing Brokers for the transactions executed on an exchange:

EQUITY ORDER TRADE (EOT)[21]

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

OPTION TRADE (OT)[22]

No.	Field name	Data type	Description	Include key
16.n.13/17.n.13	member	Member Alias	The identifier for the member firm that is responsible for the order.	R

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

TRF/ORF/ADF TRANSACTION DATA EVENT (TRF)[23]

No.	Field name	Data type	Description	Include key
26	reportingExecuting-Mpid.	Member Alias	MPID of the executing party	R
28	contraExecutingMpid	Member Alias	MPID of the contra-side executing party	C

(2) Calculation of Fee Rate 2024–1

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

(A) CAT Fee 2024–1 Period

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

Data, charging CAT Executing Brokers could streamline the billing process. CAT Funding Model Approval Order at 62629.

[20] Section 1.1 of the CAT NMS Plan. Note that CEBBs and CEBSs may, but are not required to, pass-through their CAT Fees to their clients, who may, in turn, pass their fees to their clients until they are imposed ultimately on the account that executed the transaction. *See* CAT Funding Model Approval Order at 62649.

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

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

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

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

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

(B) Executed Equivalent Shares for Transactions in Eligible Securities

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

(C) Budgeted CAT Costs 2024–1

The CAT NMS Plan states that ''[t]he budgeted CAT costs for the year shall be comprised of all reasonable fees, costs and expenses reasonably budgeted to be incurred by or for the Company in connection with the development, implementation and operation of the CAT as set forth in the annual operating budget approved by the Operating Committee pursuant to Section 11.1(a) of the CAT NMS Plan, or as adjusted during the year by the Operating Committee.'' [27] Section 11.1(a) of the CAT NMS Plan describes the requirement for the Operating Committee to approve an operating budget for CAT LLC on an annual basis. It requires the budget to ''include the projected costs of the Company, including the costs of developing and operating the CAT for the upcoming year, and the sources of all revenues to cover such costs, as well as the funding of any reserve that the Operating Committee reasonably deems appropriate for the prudent operation of the Company.'' Section 11.1(a)(i) of the CAT NMS Plan further states that:

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

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

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

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

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

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

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

Budget category	Budgeted CAT costs 2024–1 *
Capitalized Developed Technology Costs **	$4,101,990
Technology Costs:	99,728,258
Cloud Hosting Services	76,278,426
Operating Fees	14,008,947.50
CAIS Operating Fees	9,278,384.50
Change Request Fees	162,500
Legal	4,484,554.50
Consulting	652,623
Insurance	1,342,345
Professional and administration	428,544.50
Public relations	43,225
Subtotal	110,781,540
Reserve	27,695,385

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

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

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

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

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

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

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

Budget category	Budgeted CAT costs 2024–1 *
Total Budgeted CAT Costs 2024–1	138,476,925

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

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

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

(i) Technology Costs—Cloud Hosting Services

(a) Description of Cloud Hosting Services Costs

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

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

The cost for AWS cloud services for the CAT is a function of the volume of CAT Data. The greater the amount of CAT Data, the greater the cost of AWS services to CAT LLC. During the CAT 2024–1 Period, it is expected that AWS will provide cloud hosting services for volumes of CAT Data far in excess of the volume predictions set forth in the CAT NMS Plan. The CAT NMS Plan states, when all CAT Reporters are submitting their data to the CAT, it ''must be sized to receive[,] process and load more than 58 billion records per day,'' [33] and that ''[i]t is expected that the Central Repository will grow to more than 29 petabytes of raw, uncompressed data.'' [34] In contrast with those estimates, the Q1 2024 data volumes, which averaged 577 billion events per day, were up 45% compared to Q1 2023, which averaged 399 billion events per day, with peak volumes recorded on April 19, 2024 of 746 billion events. Even higher peak volumes were recorded in July and August 2024.

CAT LLC estimates that the budget for cloud hosting services costs during the CAT Fee 2024–1 Period will be approximately $76,278,426. The budget for cloud hosting services costs during the CAT Fee 2024–1 Period is calculated based on the Updated 2024 Budget. Specifically, this estimate was calculated by adding the budgeted amounts for cloud hosting services costs for the third and fourth quarter of 2024 as set forth in the Updated 2024 Budget and subtracting one half of the cloud hosting services costs incurred in July 2024 (as CAT Fee 2024–1 Period began half way through July, on July 16, 2024).[35]

CAT LLC estimated the budget for the cost for cloud hosting services for the CAT Fee 2024–1 Period based on an assumption of 30% annual year-over-year volume growth for the transaction database and an assumption of 5% annual year-over-year volume growth for CAIS. CAT LLC determined these growth assumptions in coordination with FCAT based on an analysis of a variety of existing data and alternative growth scenarios. In addition, the budget for cloud hosting services for the CAT Fee 2024–1 Period includes a budget for the cost of re-processing data as approved by the CAT Operating Committee.[36] The budget for re-processing data was based on expenditures for re-processing in prior years. This process for estimating the budget for cloud hosting services costs for the CAT Fee 2024–1 Period is the same process by which CAT LLC estimated the cloud hosting services costs for the Original 2024 Budget. The Original 2024 Budget estimated a budget for cloud hosting services of $71,384,109 for the first two quarters of 2024.[37] The actual costs for cloud hosting services for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were $66,737,810.[38] There is only an approximate 7% difference between the estimate and actuals for cloud hosting services costs. Accordingly, CAT LLC believes that the process for estimating the budgeted cloud hosting services

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

[33] Appendix D–4 of the CAT NMS Plan at n.262.

[34] Appendix D–5 of the CAT NMS Plan.

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

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

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

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

costs for the CAT Fee 2024–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for cloud hosting services costs from the prior CAT Fee filing. CAT LLC's proposed annual budget for cloud hosting services costs for 2024 decreased about 3.5% from the Original 2024 Budget to the Updated 2024 Budget, from $154,624,108 to $148,789,981. Although there were expected cost increases related to data volume growth and the associated compute and storage of the increased data levels, as well as from additional capacity for OTQT systems that were added to meet the performance standards set forth in the requirements of the recent SEC exemptive order from November 2023,[39] these cost increases were offset by a variety of cost reduction efforts related to compute efficiencies, the implementation of single pass linker related to options quotes, and the implementation of compute and other efficiencies related to CAIS. Without such cost management efforts, the budgeted costs for cloud hosting services would have increased by approximately 15%, rather than decreased. Correspondingly, the proposed budget for cloud hosting services costs for the third and fourth quarters of 2024 did not change in a material way from the Original 2024 Budget to the Updated 2024 Budget. There was only an approximate 1% decrease from $83,239,999 in the Original 2024 Budget[40] to $82,052,171 in the Updated 2024 Budget for the third and fourth quarters of 2024.[41]

(ii) Technology Costs—Operating Fees

(a) Description of Operating Fees

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

Plan Processor: FCAT. Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT a negotiated monthly fixed price for the operation of the CAT. This fixed price contract was negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity. It is anticipated that FCAT will provide a variety of services to the CAT during the CAT Fee 2024–1 Period, including the following:

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

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

Market Data Provider: Exegy. It is anticipated that the operating fees costs for the CAT Fee 2024–1 Period will include costs related to the receipt of certain market data for the CAT pursuant to an agreement between FCAT and Exegy Incorporated (''Exegy''). CAT LLC determined that Exegy would provide market data that included all data elements required by the CAT NMS Plan,[42] and that the fees were reasonable and in line with market rates for the market data received. All costs under the contract would be treated as a direct pass through cost to CAT LLC. CAT LLC estimated the budget for the costs for Exegy for the CAT Fee 2024–1 Period based on the monthly rate set forth in the agreement between Exegy and FCAT.

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

As discussed above, CAT LLC estimated the budget for the operating fees during the CAT Fee 2024–1 Period based on monthly rates set forth in the Plan Processor Agreement and the agreement with Exegy. CAT LLC also recognized that the operating fees are generally consistent throughout the year. This process for estimating the budget for the operating fees for the CAT Fee 2024–1 Period is the same process by which CAT LLC estimated the operating fees for the Original 2024 Budget. The Original 2024 Budget estimated a budget for operating fees of $13,558,875 for the first two quarters of 2024.[44] The actual costs for operating fees for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were $12,608,540.[45] There was an approximate 7% decrease from

[39] Securities Exchange Act Rel. No. 98848 (Nov. 2, 2023), 88 FR 77128 (Nov. 8, 2023).

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

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

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

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

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

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

estimates to actuals for the first two quarters. Accordingly, CAT LLC believes that the process for estimating the budgeted operating fees for the CAT Fee 2024–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for operating fees from the prior CAT Fee filing. As this is the first Prospective CAT Fee Filing, this filing describes the changes in the operating fees from the Original 2024 Budget. CAT LLC's proposed annual budget for operating fees for 2024 increased from $27,223,132 to $27,768,718[46] from the Original 2024 Budget to the Updated 2024 Budget, and the proposed budget for operating fees for the third and fourth quarters of 2024 increased from $13,664,256 in the Original 2024 Budget[47] to $15,160,178 in the Updated 2024 Budget.[48] This increase is due to a cyber insurance adjustment.

(iii) Technology Costs—CAIS Operating Fees

(a) Description of CAIS Operating Fees

Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the CAIS operating fees set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $9,278,384.50 in technology costs for CAIS operating fees for the CAT Fee 2024–1 Period. CAIS operating fees represent the fees paid to FCAT for services provided with regard to the operation and maintenance of CAIS, and to perform the business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.,* management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. The CAT is required under the CAT NMS Plan to capture and store Customer Identifying Information and Customer Account Information in a database separate from the transactional database and to create a CAT-Customer-ID for each Customer. As of May 31, 2024, the implementation of CAIS was completed.[49]

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

CAT LLC estimates that the budget for CAIS operating fees during the CAT Fee 2024–1 Period will be approximately $9,278,384.50. The budget for CAIS operating fees during the CAT Fee 2024–1 Period is calculated based on the Updated 2024 Budget. Specifically, this estimate was calculated by adding the budgeted amounts for CAIS operating fees for the third and fourth quarter of 2024 as set forth in the Updated 2024 Budget and subtracting one half of the actual CAIS operating fees costs incurred in July 2024 (as CAT Fee 2024–1 Period began half way through July, on July 16, 2024).[50]

CAT LLC calculated the budget for FCAT's CAIS-related services for the CAT Fee 2024–1 Period based on the recurring monthly CAIS operating fees under the Plan Processor Agreement. This process for estimating the budget for the CAIS operating fees for the CAT Fee 2024–1 Period is the same process by which CAT LLC estimated the CAIS operating fees for the Original 2024 Budget. The Original 2024 Budget estimated a budget for CAIS operating fees of $10,418,666 for the first two quarters of 2024.[51] The actual costs for CAIS operating fees for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were $10,078,045.[52] There is only an approximate 3% difference between the estimate and actuals. Accordingly, CAT LLC believes that the process for estimating the budgeted CAIS operating fees for the CAT Fee 2024–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for CAIS operating fees from the prior CAT Fee filing. As this is the first Prospective CAT Fee Filing, this filing describes the changes in the CAIS operating fees from the Original 2024 Budget. CAT LLC's proposed annual budget for CAIS operating fees for 2024 had a small 2% percent decrease of $491,821 from the Original 2024 Budget to the Updated 2024 Budget, from $20,691,740 to $20,199,919. Correspondingly, the proposed budget for CAIS operating fees for the third and fourth quarters of 2024 had a small 1% percentage decrease of $151,202, from $10,273,076 in the Original 2024 Budget[53] to $10,121,874 in the Updated 2024 Budget.[54]

(iv) Technology Costs—Change Request Fees

(a) Description of Change Request Fees

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

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

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

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

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

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

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

[50] This calculation is ($5,060,937 + $5,060,937) − $843,489.50 = $9,278,384.50.

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

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

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

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

based on prior experience with change requests related to the CAT.

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

CAT LLC estimated the budget for the potential change requests for the CAT Fee 2024–1 Period based on, among other things, a review of past change requests and potential future change request needs, as well as discussions with FCAT. This process for estimating the budget for the change requests for the CAT Fee 2024–1 Period is the same process by which CAT LLC estimated the change requests cost for the Original 2024 Budget. The Original 2024 Budget estimated a change request budget of $81,250 for the the [*sic*] first two quarters of 2024.[56] The actual costs for change requests for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were $0. Although the budget exceeded the actual costs of change requests during the first two quarters of 2024, CAT LLC believes that the process for estimating a placeholder amount for potential change requests is reasonable given the evolving technology needs of the CAT.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for change request fees from the prior CAT Fee filing. As this is the first Prospective CAT Fee Filing, this filing describes the changes in the change request fees from the Original 2024 Budget. CAT LLC's proposed annual budget for change requests for 2024 decreased by $81,250 from the Original 2024 Budget to the Updated 2024 Budget, from $243,750 to $162,500. CAT LLC has reduced the annual budget for a placeholder for change request fees for 2024 by one-third, as time has passed without additional change requests anticipated by this placeholder amount. Correspondingly, the proposed budget for change requests for the third and fourth quarters remained the same at $162,500 for the Original 2024 Budget[57] and the Updated 2024 Budget.[58]

(v) Technology Costs—Capitalized Developed Technology Costs

(a) Description of Capitalized Developed Technology Costs

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

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

CAT LLC estimated the budget for capitalized developed technology costs for the CAT Fee 2024–1 Period based on an analysis of a variety of factors, including information related to potential technology costs and related contractual and Plan requirements, and discussions with FCAT regarding such potential technology costs. The Original 2024 Budget estimated a budget for capitalized developed technology costs of $2,300,000 for the first two quarters of 2024.[60] The actual costs for capitalized developed technology costs for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were $3,659,490.[61] The increase was due to a software license fee for CAIS. Accordingly, CAT LLC believes that the process for estimating the budgeted capitalized developed technology costs for the CAT Fee 2024–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for capitalized developed technology costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee Filing, this filing describes the changes in capitalized developed technology costs from the Original 2024 Budget. CAT LLC's proposed budget for capitalized developed technology costs for 2024 increased from the Original 2024 Budget to the Updated 2024 Budget. The annual budget for capitalized developed technology costs for 2024 increased by $5,461,480 from the Original 2024 Budget of $2,300,000 to the Updated 2024 Budget of $7,761,480.[62] Correspondingly, the budget for capitalized developed technology costs for the third and fourth quarters of 2024 increased from $0[63] in the Original 2024 Budget to $4,101,990 in the Updated 2024 Budget.[64] This increase in the capitalized developed technology costs budget in the Updated 2024 Budget over the Original 2024 Budget was the result of costs related to the software license fee for CAIS in accordance with the Plan Processor Agreement with FCAT, as well as costs related to a set of technology changes to be implemented by FCAT.

(vi) Legal Costs

(a) Description of Legal Costs

Section 11.3(a)(iii)(B)(B)(2) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the legal costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that includes $4,484,554.50 in legal costs for the CAT Fee 2024–1 Period. This category of

[55] This calculation is ($0 + $162,500) − $0 = $162,500.

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

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

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

[59] This calculation is ($3,810,990 + $291,000) − $0 = $4,101,990.

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

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

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

[63] This calculation is $0 + $0 = $0.

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

costs represents budgeted costs for legal services for this period. CAT LLC anticipates that it will receive legal services from two law firms, Wilmer Cutler Pickering Hale and Dorr LLP (''WilmerHale'') and Jenner & Block LLP (''Jenner''), during the CAT Fee 2024–1 Period.

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

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

- Assist with CAT fee filings and related funding issues;
- Draft exemptive requests from CAT NMS Plan requirements and/or proposed amendments to the CAT NMS Plan;
- Provide legal interpretations of CAT NMS Plan requirements;
- Provide legal support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team;
- Draft SRO rule filings related to the CAT Compliance Rule;
- Manage corporate governance matters, including supporting Operating Committee meetings and preparing resolutions and consents;
- Assist with communications with the industry, including CAT Alerts and presentations;
- Provide guidance regarding the confidentiality of CAT Data;
- Assist with cost management analyses and proposals;
- Assist with commercial contract-related matters, including change orders, Plan Processor Agreement items, and subcontract matters;
- Provide support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues;
- Assist with CAT budget and FCAT costs;
- Assist other counsel for CAT on litigation-related matters; and
- Assist with legal responses related to third-party data requests.

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

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

During the CAT Fee 2024–1 Period, it is anticipated that Jenner will continue to provide legal assistance to CAT LLC regarding certain litigation matters, including: (1) CAT LLC's defense against a lawsuit filed in the Western District of Texas against Chair Gensler, the SEC and CAT LLC challenging the validity of the Rule 613 and the CAT and alleging various constitutional, statutory, and common law claims (''Texas Litigation'');[65] (2) CAT LLC's intervention in a lawsuit in the Eleventh Circuit filed by various parties against the SEC challenging the SEC's approval of the CAT Funding Model;[66] and (3) a lawsuit in the Eleventh Circuit filed by Citadel Securities LLC seeking review of the SEC's May 20, 2024 order[67] granting the Participants temporary conditional exemptive relief related to the reporting of bids and/or offers made in response to a request for quote or other form of solicitation response provided in standard electronic format that is not immediately actionable.[68] Litigation involving CAT LLC is an expense of operating the CAT, and, therefore, is appropriately an obligation of both Participants and Industry Members under the CAT Funding Model.

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

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

CAT LLC estimated the budget for the legal services for the CAT Fee 2024–1 Period based on an analysis of a variety of factors, including law firm fee rates, historical legal fees, and information related to pending legal issues and potential future legal issues, and discussions with the law firms. This process for estimating the budget for the legal services for the CAT Fee 2024–1 Period is the same process by which CAT LLC estimated the legal cost for the Original 2024 Budget. The Original 2024 Budget estimated a budget for legal costs of $2,440,000 for the first two quarters of 2024.[70] The actual costs for legal services for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were $3,156,762.[71] Although there is an increase from the budgeted legal costs to the actual legal costs for the first two quarters of 2024, such increase was due to unanticipated issues that required additional legal efforts on behalf of CAT LLC that developed after the budget was created. Such additional costs including costs related to (1) the legal defense related to the Texas Litigation; and (2) additional regulatory and corporate legal issues, including (a) additional work for commercial contract-related matters, including change orders, Plan Processor Agreement items, and subcontract matters; (b) assistance regarding budget and FCAT costs; (c) assistance to other counsel for CAT on litigation-related matters; and (d) assistance related to CAT fee filings and CAT NMS Plan amendments. Accordingly, CAT LLC believes that the process for estimating

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

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

[67] Securities Exchange Act Rel. No. 100181 (May 20, 2024), 89 FR 45715 (May 23, 2024).

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

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

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

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

the budgeted legal costs for the CAT Fee 2024–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for legal costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee Filing, this filing describes the changes in the legal costs from the Original 2024 Budget. CAT LLC's proposed budget for legal costs for 2024 increased from the Original 2024 Budget to the Updated 2024 Budget. The annual budget for legal costs for 2024 increased from the Original 2024 Budget to the Updated 2024 Budget, from $4,460,000 to $8,146,599. Correspondingly, the proposed budget for legal costs for the third and fourth quarters increased from $2,020,000[72] in the Original 2024 Budget to $4,989,837 in the Updated 2024 Budget.[73] This increase in the legal budget in the Updated 2024 Budget from the Original 2024 Budget was primarily due to unanticipated legal costs, including costs related to (1) the legal defense related to the Texas Litigation; and (2) additional regulatory and corporate legal issues, including (a) additional work for commercial contract-related matters, including change orders, Plan Processor Agreement items, and subcontract matters; (b) assistance regarding budget and FCAT costs; (c) assistance to other counsel for CAT on litigation-related matters; and (d) assistance related to CAT fee filings and CAT NMS Plan amendments. In addition, CAT LLC no longer anticipates incurring legal costs related to the law firms of Pillsbury Winthrop Shaw Pittman LLP and Covington & Burling LLP during the CAT Fee 2024–1 Period due to the conclusion of the relevant prior legal matters.

(vii) Consulting Costs

(a) Description of Consulting Costs

Section 11.3(a)(iii)(B)(B)(3) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the consulting costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $652,623 in consulting costs for the CAT Fee 2024–1 Period. The consulting costs represent the fees estimated to be paid to the consulting firm Deloitte & Touche LLP (''Deloitte'') as project manager during the CAT Fee 2024–1 Period. These consulting costs include costs for advisory services related to the operation of the CAT, and meeting facilitation and communications coordination, vendor support and financial analyses.

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

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

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

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

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

CAT LLC estimates the budget for the consulting costs for Deloitte for the CAT Fee 2024–1 Period based on the current statement of work with Deloitte, which took into consideration past consulting costs, potential future consulting needs, the proposed rates and other contractual issues, as well as discussions with Deloitte. The Original 2024 Budget estimated a budget for consulting cost of $800,000 for the first two quarters of 2024.[75] The actual costs for consulting services for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were $885,580.[76] There is only an approximate 10% difference between the estimate and actuals. Accordingly, CAT LLC believes that the process for estimating the budgeted consulting costs for the CAT Fee 2024–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for consulting costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee Filing, this filing describes the changes in the consulting costs from the Original 2024 Budget. CAT LLC's proposed annual budget for consulting costs for 2024 has not changed from the Original 2024 Budget to the Updated 2024 Budget; it remains $1,600,000. Correspondingly, the proposed budget for consulting costs for the third and fourth quarters of 2024 decreased by $85,580 (which is approximately 11%), from $800,000 in the Original 2024 Budget[77] to $714,420 in the Updated 2024 Budget.[78]

(viii) Insurance Costs

(a) Description of Insurance Costs

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

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

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

[74] This calculation is ($359,926 + $354,495) − $61,798 = $652,623.

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

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

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

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

incurred for insurance for CAT during the CAT Fee 2024–1 Period.

It is anticipated that the insurance costs for CAT during the CAT Fee 2024–1 Period will include costs related to cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance brokered by USI Insurance Services LLC (''USI''). Such policies are standard for corporate entities, and cyber security liability insurance is important for the CAT System. CAT LLC anticipates that it will continue to maintain this insurance during CAT Fee 2024–1 Period, and notes that the annual premiums for these policies were competitive for the coverage provided. CAT LLC estimated the budget for the insurance costs for the CAT Fee 2024–1 Period based on the actual insurance quote from USI for 2024. The annual premiums would be paid by CAT LLC to USI.[79]

(b) Changes From Prior Fee Filing

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

(ix) Professional and Administration Costs

(a) Description of Professional and Administration Costs

Section 11.3(a)(iii)(B)(B)(5) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the professional and administration costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $428,544.50 in professional and administration costs for the CAT Fee 2024–1 Period. In adopting the CAT NMS Plan, the Commission amended the Plan to add a requirement that CAT LLC's financial statements be prepared in compliance with GAAP, audited by an independent public accounting firm, and made publicly available.[80] The professional and administration costs would include costs related to accounting and accounting advisory services to support the operating and financial functions of CAT, financial statement audit services by an independent accounting firm, preparation of tax returns, and various cash management and treasury functions. The professional and administration costs represent the fees to be paid to Anchin Block & Anchin (''Anchin'') and Grant Thornton LLP (''Grant Thornton'') for financial services during CAT Fee 2024–1 Period.

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

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

- Update and maintain internal controls;
- Provide cash management and treasury functions;
- Faciliate [*sic*] bill payments;
- Provide monthly bookkeeping;
- Review vendor invoices and documentation in support of cash disbursements;
- Provide accounting research and consultations on various accounting, financial reporting and tax matters;
- Address not-for-profit tax and accounting considerations;
- Prepare tax returns;
- Address various accounting, financial reporting and operating inquiries from Participants;
- Develop and maintain annual operating and financial budgets, including budget to actual fluctuation analyses;
- Support compliance with the CAT NMS Plan;
- Work with and provide support to the Operating Committee and various CAT working groups;
- Prepare monthly, quarterly and annual financial statements;
- Support the annual financial statement audits by an independent auditor;
- Review historical costs from inception;
- Provide accounting and financial information in support of SEC filings; and
- Perform additional ad hoc accounting and financial advisory services, as requested by CAT LLC.

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

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

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

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

[80] Section 9.2 of the CAT NMS Plan.

1 Period began half way through July, on July 16, 2024).[81]

CAT LLC estimated the budget for the professional and administration costs for the CAT Fee 2024–1 Period based on a review of past professional and administration costs, potential future professional and administration needs, the proposed rates and other contractual issues, as well as discussions with Anchin and Grant Thornton. This process for estimating the budget for the professional and administration costs for the CAT Fee 2024–1 Period is the same process by which CAT LLC estimated the professional and administration costs for the Original 2024 Budget. The Original 2024 Budget estimated a budget for professional and administration costs of $395,930 for the first two quarters of 2024.[82] The actual costs for professional and administration services for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were $372,977.[83] There is only an approximate 6% difference between the estimate and actuals. Accordingly, CAT LLC believes that the process for estimating the budgeted professional and administration costs for the CAT Fee 2024–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for professional and administration costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee Filing, this filing describes the changes in the professional and administration costs from the Original 2024 Budget. CAT LLC's proposed annual budget for professional and administration costs for 2024 had a very minor increase of $2,666 from the Original 2024 Budget, from $821,264 to $823,930. CAT LLC's proposed annual budget for professional and administration costs for 2024 has not changed in a material way for Anchin and Grant Thornton costs. Correspondingly, the proposed budget for professional and administration costs for the third and fourth quarters of 2024 increased by $25,617 (which is approximately 6%), from $425,334 in the Original 2024 Budget[84] to $450,951 in the Updated 2024 Budget.[85]

(x) Public Relations Costs

(a) Desription [*sic*] of Public Relations Costs

Section 11.3(a)(iii)(B)(B)(6) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the public relations costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $43,225 in public relations costs for the CAT Fee 2024–1 Period. The public relations costs represent the fees paid to a public relations firm for professional communications services to CAT, including media relations consulting, strategy and execution. By engaging a public relations firm, CAT LLC will be better positioned to understand and address CAT matters to the benefit of all market participants.

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

CAT LLC estimates that the budget for public relations services during the CAT Fee 2024–1 Period will be approximately $43,225. The budget for public relations services during the CAT Fee 2024–1 Period is calculated based on the Updated 2024 Budget. Specifically, this estimate was calculated by adding the budgeted amounts for the public relations for the third and fourth quarter of 2024 as set forth in the Updated 2024 Budget and subtracting one half of the actual public relations costs incurred in July 2024 (as CAT Fee 2024–1 Period began half way through July, on July 16, 2024).[86] The fees for these services will be paid by CAT LLC to RF|Binder.

CAT LLC estimated the budget for the public relations costs for the CAT Fee 2024–1 Period based on a review of past public relations costs, potential future public relations needs, the proposed rates and other contractual issues, as well as discussions with RF|Binder. CAT LLC also recognized that public relations costs are generally consistent throughout the year. This process for estimating the budget for the public relations costs for the CAT Fee 2024–1 Period is the same process by which CAT LLC estimated the public relations costs for the Original 2024 Budget. The Original 2024 Budget estimated a budget for public relations costs of $46,200 for the the [*sic*] first two quarters of 2024.[87] The actual costs for public relations for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were $46,200.[88] They are the same. Accordingly, CAT LLC believes that the process for estimating the budgeted public relations costs for the CAT Fee 2024–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for public relations costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee Filing, this filing describes the changes in the public relations costs from the Original 2024 Budget. CAT LLC's proposed annual budget for public relations costs for 2024 had a very minor increase of $875 from the Original 2024 Budget to the Updated 2024 Budget, from $92,400 to $93,275. Correspondingly, the proposed budget for public relations costs for the third and fourth quarters of 2024 increased by $875, from $46,200 in the Original 2024 Budget[89] to $47,075 in

[81] This calculation is ($157,269 + $293,682) − $22,406.50 = $428,544.50.

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

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

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

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

[86] This calculation is ($23,450 + $23,625) − $3,850 = $43,225.

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

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

[89] This calculation is $23,100 + $23,100 = $46,200.

the Updated 2024 Budget.[90] The minor change was made to reflect updated contractual terms.

(xi) Reserve

(a) Description of Reserve

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

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

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

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for a reserve from the prior CAT Fee filing. Prior to July 16, 2024, all CAT costs were paid by the Participants via notes. Accordingly, to date, CAT LLC has not maintained any reserve. With the commencement of CAT Fees, CAT LLC proposes to include costs for a reserve of $27,695,385 in Budgeted CAT Costs 2024–1.

(D) Projected Total Executed Equivalent Share Volume

The calculation of Fee Rate 2024–1 also requires the determination of the projected total executed equivalent share volume of transactions in Eligible Securities for the CAT Fee 2024–1 Period. Under the CAT NMS Plan, the Operating Committee is required to ''reasonably determine the projected total executed equivalent share volume of all transactions in Eligible Securities for each relevant period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months.'' [91] The Operating Committee is required to base its projection on the prior twelve months, but it may use its discretion to analyze the likely volume for the upcoming year. Such discretion would allow the Operating Committee to use its judgment when estimating projected total executed equivalent share volume if the volume over the prior twelve months was unusual or otherwise unfit to serve as the basis of a future volume estimate.[92]

The total executed equivalent share volume of transactions in Eligible Securities for the 12-month period from June 2023 through May 2024 was 3,980,753,840,905.21 executed equivalent shares. The Operating Committee has determined to calculate the projected total executed equivalent share volume for a four-month recovery period for CAT Fee 2024–1 by multiplying by 4/12ths the executed equivalent share volume for the prior 12 months. The Operating Committee determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has remained relatively constant. For example, the executed equivalent share volume for 2021 was 3,963,697,612,395, the executed equivalent share volume for 2022 was 4,039,821,841,560.31, and the executed equivalent share volume for 2023 was 3,868,940,345,680.6. Accordingly, the projected total executed equivalent share volume for the four-month period for CAT Fee 2024–1 is projected to be 1,326,917,946,968.403 executed equivalent shares.[93]

The projected total executed equivalent share volume of all transactions in Eligible Securities for the four-month recovery period for CAT Fee 2024–1 and a description of the calculation of the projection is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a CAT Fee.[94]

(E) Fee Rate 2024–1

Fee Rate 2024–1 would be calculated by dividing Budgeted CAT Costs 2024–1 by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for the four-month recovery period for CAT Fee 2024–1, as described in detail above.[95] Specifically, Fee Rate 2024–1 would be calculated by dividing $138,476,925 by 1,326,917,946,968.403 executed equivalent shares. As a result, Fee Rate 2024–1 would be $0.0001043598251997246 per executed equivalent share. Fee Rate 2024–1 is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide the Fee Rate in a fee filing for a CAT Fee.[96]

(3) Monthly Fees

CEBBs and CEBSs would be required to pay fees for CAT Fee 2024–1 on a monthly basis for four months, from November 2024 until February 2025.[97] A CEBB's or CEBS's fee for each month would be calculated based on the transactions in Eligible Securities executed by the CEBB or CEBS from the prior month.[98] Proposed paragraph (a)(3)(A) to the Consolidated Audit Trail Funding Fees section of the Equities Price List and the Options Fee Schedule would state that each CAT Executing Broker would receive its first invoice for CAT Fee 2024–1 in October 2024, and would receive an invoice for CAT Fee 2024–1 each month thereafter until January 2025. Proposed paragraph (a)(3)(B) to the Consolidated Audit Trail Funding Fees section of the Equities Price List and the Options Fee Schedule would state that ''Consolidated Audited Trail, LLC shall provide each CAT Executing Broker with an invoice for CAT Fee 2024–1 on a monthly basis.'' In addition, paragraph (b)(1) would state that each CEBB and CEBS is required to pay its CAT fees ''each month.''

[90] This calculation is $23,450 + $23,625 = $47,075.

[91] Section 11.3(a)(i)(D) of the CAT NMS Plan.

[92] CAT Funding Model Approval Order at 62651.

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

[94] Section 11.3(a)(iii)(B) of the CAT NMS Plan.

[95] In approving the CAT Funding Model, the Commission stated that ''[t]he manner in which the Fee Rate for Prospective CAT Costs will be calculated (*i.e.,* by dividing the CAT costs reasonably budgeted for the upcoming year by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for the year) is reasonable.'' CAT Funding Model Approval Order at 62651.

[96] Section 11.3(a)(iii)(B) of the CAT NMS Plan.

[97] *See* Section 11.3(a)(iii)(A) of the CAT NMS Plan.

[98] *See* proposed paragraph (a)(3)(B) under Consolidated Audit Trail Funding Fees on the Equities Price List and the Options Fee Schedule.

(4) Consolidated Audit Trail Funding Fees

To implement CAT Fee 2024–1, a ''Consolidated Audit Trail Funding Fees'' section would be added to the Equities Price List and the Options Fee Schedule, to include the proposed paragraphs described below.

(A) Fee Schedule for CAT Fee 2024–1

The CAT NMS Plan states that:

Each Industry Member that is the CAT Executing Broker for the buyer in a transaction in Eligible Securities (''CAT Executing Broker for the Buyer'' or ''CEBB'') and each Industry Member that is the CAT Executing Broker for the seller in a transaction in Eligible Securities (''CAT Executing Broker for the Seller'' or ''CEBS'') will be required to pay a CAT Fee for each such transaction in in Eligible Securities in the prior month based on CAT Data. The CEBB's CAT Fee or CEBS's CAT Fee (as applicable) for each transaction in Eligible Securities will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate reasonably determined pursuant to paragraph (a)(i) of this Section 11.3.[99]

Accordingly, based on the factors discussed above, the Exchange proposes to add paragraph (a)(3) to the Consolidated Audit Trail Funding Fees section of the Equities Price List and the Options Fee Schedule. Proposed paragraph (a)(3) would state the following:

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

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

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

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

As noted in the Plan amendment for the CAT Funding Model, ''[a]s a practical matter, the fee filing would provide the exact fee per executed equivalent share to be paid for the CAT Fees, by multiplying the Fee Rate by one-third and describing the relevant number of decimal places for the fee.'' [100] Accordingly, proposed paragraph (a)(3)(B) to the Consolidated Audit Trail Funding Fees section of the Equities Price List and the Options Fee Schedule would set forth a fee rate of $0.000035 per executed equivalent share. This fee rate is calculated by multiplying Fee Rate 2024–1 of $0.0001043598251997246 by one-third, and rounding the result to six decimal places.[101] The Operating Committee determined to use six decimal places to balance the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.

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

Proposed paragraph (a)(3)(A) to the Consolidated Audit Trail Funding Fees section of the Equities Price List and the Options Fee Schedule also would describe the monthly cadence of the invoices for CAT Fee 2024–1. Specifically, after the first invoices are provided to CAT Executing Brokers in October 2024, invoices will be sent to CAT Executing Brokers each month thereafter until January 2025.

Proposed paragraph (a)(3)(B) to the Consolidated Audit Trail Funding Fees section of the Equities Price List and the Options Fee Schedule would describe the invoices for CAT Fee 2024–1. Proposed paragraph (a)(3)(B) to the Consolidated Audit Trail Funding Fees section of the Equities Price List and the Options Fee Schedule would state that ''Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for CAT Fee 2024–1 on a monthly basis.'' Proposed paragraph (a)(3)(B) to the Consolidated Audit Trail Funding Fees section of the Equities Price List and the Options Fee Schedule also would describe the fees to be set forth in the invoices for CAT Fee 2024–1. Specifically, it would state that ''[e]ach month, such invoices shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as a CAT Executing Broker for the Buyer ('CEBB') and/or the CAT Executing Broker for the Seller ('CEBS') (as applicable) from the prior month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of $0.000035 per executed equivalent share.''

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

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

Finally, proposed paragraph (a)(3)(D) to the Consolidated Audit Trail Funding Fees section of the Equities Price List and the Options Fee Schedule would set forth the requirement for the CAT Executing Brokers to pay the invoices for CAT Fee 2024–1. It would state that

[99] Section 11.3(a)(iii)(A) of the CAT NMS Plan.

[100] CAT Funding Model Approval Order at 62658, n.658.

[101] Dividing $0.0001043598251997246 by three equals $0.00003478660839990821. Rounding $0.00003478660839990821 to six decimal places equals $0.000035.

''[e]ach CAT Executing Broker shall be required to pay each invoice for CAT Fee 2024–1 in accordance with paragraph (b).''

(B) Manner of Payment

The Exchange proposes to add paragraph (b)(1) to the Consolidated Audit Trail Funding Fees section of the Equities Price List and the Options Fee Schedule to describe the manner of payment of Industry Member CAT fees. The CAT NMS Plan requires the Operating Committee to establish a system for the collection of CAT fees.[102] The Plan Processor has established a billing system for CAT fees.[103] Therefore, the Exchange proposes to require CAT Executing Brokers to pay CAT Fee 2024–1 in accordance with such system. Accordingly, proposed paragraph (b)(1) would state that ''[e]ach CAT Executing Broker shall pay its CAT fees as required pursuant to paragraph (a) each month to the Consolidated Audit Trail, LLC in the manner prescribed by the Consolidated Audit Trail, LLC.''

(C) Failure To Pay CAT Fees

The CAT NMS Plan further states that:

> Participants shall require each Industry Member to pay all applicable fees authorized under this Article XI within thirty (30) days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If an Industry Member fails to pay any such fee when due (as determined in accordance with the preceding sentence), such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (a) the Prime Rate plus 300 basis points; or (b) the maximum rate permitted by applicable law.[104]

Accordingly, the Exchange proposes to add this requirement to the Equities Price List and the Options Fee Schedule. Proposed paragraph (b)(2) to the Consolidated Audit Trail Funding Fees section of the Equities Price List and the Options Fee Schedule would state:

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

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

(5) CAT Fee Details

The CAT NMS Plan states that:

> Details regarding the calculation of a Participant or CAT Executing Broker's CAT Fees will be provided upon request to such Participant or CAT Executing Broker. At a minimum, such details would include each Participant or CAT Executing Broker's executed equivalent share volume and corresponding fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.[105]

Such information would provide CEBBs and CEBSs with the ability to understand the details regarding the calculation of their CAT Fee.[106] CAT LLC will provide CAT Executing Brokers with these details regarding the calculation of their CAT Fees on their monthly invoice for the CAT Fees.

In addition, CAT LLC will make certain aggregate statistics regarding CAT Fees publicly available. Specifically, the CAT NMS Plan states that, ''[f]or each CAT Fee, at a minimum, CAT LLC will make publicly available the aggregate executed equivalent share volume and corresponding aggregate fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.'' [107] Such aggregate statistics will be available on the CAT website.

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

(6) Financial Accountability Milestones

The CAT NMS Plan states that ''[n]o Participant will make a filing with the SEC pursuant to Section 19(b) of the Exchange Act regarding any CAT Fee related to Prospective CAT Costs until the Financial Accountability Milestone related to Period 4 described in Section 11.6 has been satisfied.'' [108] The substantive requirements of the Financial Accountability Milestones related to Period 4 have been satisfied, as the CAT has completed the requirements for the ''Full Implementation of CAT NMS Plan Requirements.'' Section 1.1 of the CAT NMS Plan defines ''Full Implementation of CAT NMS Plan Requirements'' as:

> the point at which the Participants have satisfied all of their obligations to build and implement the CAT, such that all CAT system functionality required by Rule 613 and the CAT NMS Plan has been developed, successfully tested, and fully implemented at the initial Error Rates specified by Section 6.5(d)(i) or less, including functionality that efficiently permits the Participants and the Commission to access all CAT Data required to be stored in the Central Repository pursuant to Section 6.5(a), including Customer Account Information, Customer-ID, Customer Identifying Information, and Allocation Reports, and to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, including any related allocation information provided in an Allocation Report. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants' Quarterly Progress Reports. As indicated by the Participants' Quarterly Progress Report for the second and third quarter of 2024,[109] Full Implementation of CAT NMS Plan Requirements was completed on July 15, 2024.

(A) Transaction Reporting and Regulatory Access

The CAT system functionality required by Rule 613 and the CAT NMS

[102] Section 11.4 of the CAT NMS Plan.

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

[104] Section 11.4 of the CAT NMS Plan.

[105] Section 11.3(a)(iv)(A) of the CAT NMS Plan.

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

[107] Section 11.3(a)(iv)(B) of the CAT NMS Plan. In approving the CAT Funding Model, the Commission stated that ''[t]he publication of the aggregate executed equivalent share volume and aggregate fee is appropriate because it would allow Participants and CAT Executing Brokers a high-level validation of executed volume and fees.'' CAT Funding Model Approval Order at 62667.

[108] Section 11.3(a)(iii)(C) of the CAT NMS Plan.

[109] Q2 & Q3 2024 Quarterly Progress Report (July 29, 2024).

Plan related to order and transaction data has been developed, successfully tested, and fully implemented, including the requirements related to regulatory access. The implementation of CAT requirements related to order and transaction data occurred over four phases: Phases 2a, 2b, 2c and 2d.[110] As described in the Quarterly Progress Reports and summarized below, each of these phases has been fully implemented.[111]

(i) Phase 2a

The Quarterly Progress Reports state that ''Phase 2a was fully implemented as of October 26, 2020.'' [112] The Phase 2a Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order, and includes the following data related to Eligible Securities that are equities:

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

In Phase 2a, Industry Members were not required to report modifications of a previously routed order in certain limited instances, nor were they required to report a cancellation of an order received from a Customer after the order has been executed.[113]

(ii) Phase 2b

The Quarterly Progress Reports state that ''Phase 2b was fully implemented as of January 4, 2021.'' [114] The Phase 2b Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order, and includes the Industry Member Data related to Eligible Securities that are options and related to simple electronic option orders, excluding electronic paired option orders. A simple electronic option order is an order to buy or sell a single option that is not related to or dependent on any other transaction for pricing and timing of execution that is either received or routed electronically by an Industry Member. Electronic receipt of an order is defined as the initial receipt of an order by an Industry Member in electronic form in standard format directly into an order handling or execution system. Electronic routing of an order is the routing of an order via electronic medium in standard format from one Industry Member's order handling or execution system to an exchange or another Industry Member. An electronic paired option order is an electronic option order that contains both the buy and sell side that is routed to another Industry Member or exchange for crossing and/or price improvement as a single transaction on an exchange. Responses to auctions of simple orders and paired simple orders would be reportable in Phase 2b. Furthermore, combined orders in options would be treated in Phase 2b in the same way as equity representative orders are treated in Phase 2a. A combined order would mean, as permitted by SRO rules, a single, simple order in Listed Options created by combining individual, simple orders in Listed Options from a customer with the same exchange origin code before routing to an exchange. During Phase 2b, the single combined order sent to an exchange must be reported and marked as a combined order, but the linkage to the underlying orders is not required to be reported until Phase 2d.[115]

(iii) Phase 2c

The Quarterly Progress Reports state that ''Phase 2c was implemented as of April 26, 2021.'' [116] The Phase 2c Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order. That Order states that ''Phase 2c Industry Member Data'' is Industry Member Data related to Eligible Securities that are equities other than Phase 2a Industry Member Data, Phase 2d Industry Member Data, or Phase 2e Industry Member Data. Specifically, the Phase 2c Industry Member Data includes Industry Member Data that is related to Eligible Securities that are equities and that is related to: (1) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (2) quotes in unlisted Eligible Securities sent to an IDQS operated by a CAT Reporter (reportable by the Industry Member sending the quotes) (except for quotes reportable in Phase 2d, as discussed below); (3) electronic quotes in listed equity Eligible Securities (*i.e.,* NMS stocks) that are not sent to a national securities exchange or FINRA's Alternative Display Facility; (4) reporting changes to client instructions regarding modifications to algorithms; (5) marking as a representative order any order originated to work a customer order in price guarantee scenarios, such as a guaranteed VWAP; (6) flagging rejected external routes to indicate a route was not accepted by the receiving destination; (7) linkage of duplicate electronic messages related to a Manual Order Event between the electronic

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

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

[112] *See, e.g.,* Q1 2024 Quarterly Progress Report (Apr. 30, 2024).

[113] Phased Reporting Exemptive Relief Order at 23076–78.

[114] *See, e.g.,* Q1 2024 Quarterly Progress Report (Apr. 30, 2024).

[115] Phased Reporting Exemptive Relief Order at 23078.

[116] *See, e.g.,* Q1 2024 Quarterly Progress Report (Apr. 30, 2024).

event and the original manual route; (8) special handling instructions on order route reports (other than the ISO, which is required to be reported in Phase 2a); (9) quote identifier on trade events; (10) reporting of LTIDs (if applicable) for accounts with Reportable Events that are reportable to CAT as of and including Phase 2c; (11) reporting of date account opened or Account Effective Date (as applicable) for accounts and reporting of a flag indicating the Firm Designated ID type as account or relationship; (12) order effective time for orders that are received by an Industry Member and do not become effective until a later time; (13) the modification or cancellation of an internal route of an order; and (14) linkages to the customer order(s) being represented for representative order scenarios, including agency average price trades, net trades, aggregated orders, and disconnected Order Management System (''OMS'')—Execution Management System (''EMS'') scenarios, as required in the Industry Member Technical Specifications.[117]

Phase 2c Industry Member Data also includes electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are equities and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: (1) an equity bid or offer is displayed publicly or has been communicated (a) for listed securities to the ADF operated by FINRA; or (b) for unlisted equity securities to an ''interdealer quotation system,'' as defined in FINRA Rule 6420(c); or (2) an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing; *i.e.,* no further manual or electronic action is required by the responder providing the quote in order to execute or cause a trade to be executed). With respect to OTC Equity Securities, OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter (other than such an IDQS that does not match and execute orders) are reportable by the Industry Member sending them in Phase 2c. Accordingly, any response to a request for quote or other form of solicitation response provided in a standard electronic format (*e.g.,* FIX) that meets this quote definition (*i.e.,* an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing) would be reportable in Phase 2c.[118]

(iv) Phase 2d

The Quarterly Progress Reports state that ''Phase 2d was fully implemented as of December 13, 2021.'' [119] The Phase 2d Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order. ''Phase 2d Industry Member Data'' is Industry Member Data that is related to Eligible Securities that are options other than Phase 2b Industry Member Data, Industry Member Data that is related to Eligible Securities that are equities other than Phase 2a Industry Member Data or Phase 2c Industry Member Data, and Industry Member Data other than Phase 2e Industry Member Data. Phase 2d Industry Member Data includes with respect to the Eligible Securities that are options: (1) simple manual orders; (2) electronic and manual paired orders; (3) all complex orders with linkages to all CAT-reportable legs; (4) LTIDs (if applicable) for accounts with Reportable Events for Phase 2d; (5) date account opened or Account Effective Date (as applicable) for accounts with an LTID and flag indicating the Firm Designated ID type as account or relationship for such accounts; (6) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (7) the modification or cancellation of an internal route of an order; and (8) linkage between a combined order and the original customer orders. Phase 2d Industry Member Data also would include electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are options and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: a listed option bid or offer which is accessible electronically by customers or other market participants and is immediately actionable (*i.e.,* no further action is required by the responder providing the quote in order to execute or cause a trade to be executed). Accordingly, any response to a request for quote or other form of solicitation response provided in standard electronic format (*e.g.,* FIX) that meets this definition is reportable in Phase 2d for options.[120]

Phase 2d Industry Member Data also includes with respect to Eligible Securities that are options or equities (1) receipt time of cancellation and modification instructions through Order Cancel Request and Order Modification Request events; (2) modifications of previously routed orders in certain instances; and (3) OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter that does not match and execute orders. In addition, subject to any exemptive or other relief, Phase 2d Industry Member Data includes verbal or manual quotes on an exchange floor or in the over-the-counter market, where verbal quotes and manual quotes are defined as bids or offers in Eligible Securities provided verbally or that are provided or received other than via a CAT Reporter's order handling and execution system (*e.g.,* quotations provided via email or instant messaging).[121]

(v) Regulatory Access to Order and Transaction Data

The Financial Accountability Milestone related to Period 4 requires that CAT provide functionality that permits the Participants and the Commission to access Phase 2a, 2b, 2c and 2d data and to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, including any related allocation information provided in an Allocation Report. As CAT LLC reported on its Quarterly Progress Reports, the query tool functionality incorporating the data from Phases 2a, 2b, 2c and 2d was available to the Participants and to the Commission as of December 31, 2021.[122]

(B) CAIS Reporting and Regulatory Access

The CAT System functionality required by Rule 613 and the CAT NMS Plan related to Customer information has been developed, successfully tested, and fully implemented, including the requirements related to regulatory access. The implementation of CAT requirements related to Customer information occurred during Phase 2e. As described in the Quarterly Progress Reports and summarized below, Phase 2e has been fully implemented as of May 31, 2024.[123] Furthermore, because a month of customer and account information data is necessary to create

[117] Phase Reporting Exemptive Relief Order at 23078–79.

[118] *Id.* at 23079.

[119] *See, e.g.,* Q1 2024 Quarterly Progress Report (Apr. 30, 2024).

[120] Phase Reporting Exemptive Relief Order at 23079.

[121] *Id.* at 23079–80.

[122] *See, e.g.,* Q1 2024 Quarterly Progress Report (Apr. 30, 2024).

[123] *Id.*

report cards with regard to such data, the publication of monthly report cards with respect to customer and account information commenced on July 15, 2024.[124] Accordingly, the Financial Accountability Milestone related to Period 4 was completed on July 15, 2024.

(i) Phase 2e

The Q2 & Q3 2024 Quarterly Progress Report indicates that Phase 2e was fully implemented as of May 31, 2024.[125] Phase 2e Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order. ''Phase 2e Industry Member Data'' includes ''Customer Account Information and Customer Identifying Information, other than LTIDs, date account opened/Account Effective Date and Firm Designated ID type flag previously reported to the CAT.'' [126] LTIDs and Account Effective Date are both provided in Phases 2c and 2d in certain circumstances, as discussed above. Section 1.1 of the CAT NMS Plan defines the term ''Customer Account Information'' to

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

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

information of sufficient detail to identify a Customer, including, but not limited to, (a) with respect to individuals: name, address, date of birth, individual tax payer identification number (''ITIN'')/social security number (''SSN''), individual's role in the account (*e.g.,* primary holder, joint holder, guardian, trustee, person with the power of attorney); and (b) with respect to legal entities: name, address, Employer Identification Number (''EIN'')/Legal Entity Identifier (''LEI'') or other comparable common entity identifier, if applicable; provided, however, that an Industry Member that has an LEI for a Customer must submit the Customer's LEI in addition to other information of sufficient detail to identify a Customer.

(ii) Regulatory Access to Customer Information

The Financial Accountability Milestone related to Period 4 requires that CAT provide functionality that permits the Participants and the Commission to access Phase 2e Industry Member Data (in addition to the Phase 2a, 2b, 2c and 2d Industry Member Data, as discussed above). As CAT LLC reported on its Q2 & Q3 Quarterly Progress Report, regulators had efficient access to Phase 2e Industry Member Data via the query tool functionality required under the CAT NMS Plan by July 15, 2024.[127]

(C) Error Rate

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

(7) Participant Invoices

While CAT Fees charged to Industry Members become effective in accordance with the requirements of Section 19(b) of the Exchange Act,[128] CAT fees charged to Participants are implemented via an approval of the CAT fees by the Operating Committee in accordance with the requirements of the CAT NMS Plan.[129] On July 31, 2024, the Operating Committee approved the Participant fee related to CAT Fee 2024–1. Specifically, pursuant to the requirements of CAT NMS Plan,[130] each Participant would be required to pay a CAT fee calculated using the fee rate of $0.000035, which is the same fee rate that applies to CEBBs and CEBSs. Like CEBBs and CEBSs, each Participant would be required to pay such CAT fees on a monthly basis for four months, from November 2024 until February 2025, and each Participant's fee for each month would be calculated based on the transactions in Eligible Securities executed on the applicable exchange (for the Participant exchanges) or otherwise than on the exchange (for FINRA) in the prior month. Accordingly, each Participant will receive its first invoice in October 2024, and would receive an invoice each month thereafter until January 2025. Like with the CAT Fee 2024–1 applicable to CEBBs and CEBSs as described in proposed paragraph (a)(3)(C) to the Consolidated Audit Trail Funding Fees section of the Equities Price List and the Options Fee Schedule, notwithstanding the last invoice date of January 2025, Participants will continue to receive invoices for this fee each month until a new subsequent CAT Fee is in effect with regard to Industry Members. Furthermore, Section 11.4 of the CAT NMS Plan states that each Participant is required to pay such invoices as required by Section 3.7(b) of the CAT NMS Plan. Section 3.7(b) states, in part, that

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

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of the Exchange Act. The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[131] 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

[124] Q2 & Q3 2024 Quarterly Progress Report (July 29, 2024).

[125] *Id.*

[126] Phase Reporting Exemptive Relief Order at 23080.

[127] Q2 & Q3 2024 Quarterly Progress Report (July 29, 2024).

[128] Section 11.3(a)(i)(A)(I) of the CAT NMS Plan.

[129] CAT Funding Model Approval Order at 62659.

[130] *See* Section 11.3(a)(ii) and Appendix B of the CAT NMS Plan.

[131] 15 U.S.C. 78f(b)(6).

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 Act,[132] because it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(8) of the Act,[133] which requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. These provisions also require that the Exchange be ''so organized and [have] the capacity to be able to carry out the purposes'' of the Act and ''to comply, and . . . to enforce compliance by its members and persons associated with its members,'' with the provisions of the Exchange Act.[134] Accordingly, a reasonable reading of the Act indicates that it intended that regulatory funding be sufficient to permit an exchange to fulfill its statutory responsibility under the Act, and contemplated that such funding would be achieved through equitable assessments on the members, issuers, and other users of an exchange's facilities.

The Exchange believes that this proposal is consistent with the Act because it implements provisions of the Plan and is designed to assist the Exchange in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [135] 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 Act.

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

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

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

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

Section 11.1(b) of the CAT NMS Plan states that ''[t]he Participants shall file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves.'' Per Section 11.1(b) of the CAT NMS Plan, the Exchange has filed this fee filing to implement the Industry Member CAT fees included in the CAT Funding Model. The Exchange believes that this proposal is consistent with the Exchange Act because it is consistent with, and implements, the CAT Funding Model in the CAT NMS Plan, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the CAT NMS Plan. In approving the CAT NMS Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [136] Similarly, in approving the CAT Funding Model, the SEC concluded that the CAT Funding Model met this standard.[137] As this proposal implements the Plan and the CAT Funding Model described therein, and applies specific requirements to Industry Members in compliance with the Plan, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Exchange Act.

(2) Calculation of Fee Rate for CAT Fee 2024–1 Is Reasonable

The SEC has determined that the CAT Funding Model is reasonable and satisfies the requirements of the Exchange Act. Specifically, the SEC has concluded that the method for determining CAT Fees as set forth in Section 11.3 of the CAT NMS Plan, including the formula for calculating the Fee Rate, the identification of the parties responsible for payment and the transactions subject to the fee rate for CAT Fees, is reasonable and satisfies the Exchange Act.[138] In each respect, as discussed above, CAT Fee 2024–1 is calculated, and would be applied, in accordance with the requirements applicable to CAT Fees as set forth in the CAT NMS Plan. Furthermore, as discussed below, the Exchange believes that each of the figures for the variables in the SEC-approved formula for calculating the fee rate for CAT Fee 2024–1 is reasonable and consistent with the Exchange Act. Calculation of Fee Rate 2024–1 for CAT Fee 2024–1 requires the figures for Budgeted CAT Costs 2024–1, the executed equivalent share volume for the prior twelve months, the determination of CAT Fee 2024–1 Period, and the projection of the executed equivalent share volume for CAT Fee 2024–1 Period. Each of these variables is reasonable and satisfies the Exchange Act, as discussed throughout this filing.

(A) Budgeted CAT Costs 2024–1

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

> The budget for the upcoming year (or remainder of the year, as applicable), including a brief description of each line item in the budget, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration and (6) public relations costs, a reserve and/or such other categories

[132] 15 U.S.C. 78f(b)(4).

[133] 15 U.S.C. 78f(b)(8).

[134] *See* Section 6(b)(1) of the Exchange Act.

[135] CAT NMS Plan Approval Order at 84697.

[136] *Id.* at 84696.

[137] CAT Funding Model Approval Order at 62686.

[138] *Id.* at 62662–63.

as reasonably determined by the Operating Committee to be included in the budget, and the reason for changes in each such line item from the prior CAT fee filing.

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

Section 11.3(a)(iii)(B) of the CAT NMS Plan also requires that the fee filing provide ''sufficient detail to demonstrate that the budget for the upcoming year, or part of year, as applicable, is reasonable and appropriate.'' As discussed below, the Exchange believes that the budget for the CAT Fee 2024–1 Period is ''reasonable and appropriate.'' Each of the costs included in CAT Fee 2024–1 are reasonable and appropriate because the costs are consistent with standard industry practice, based on the need to comply with the requirements of the CAT NMS Plan, incurred subject to negotiations performed on an arm's length basis, and/or are consistent with the needs of any legal entity, particularly one with no employees.

(i) Technology: Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover budgeted costs related to cloud hosting services as a part of CAT Fees.[139] CAT LLC determined that the budgeted costs related to cloud hosting services described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2024–1. As described above, the cloud hosting services costs reflect, among other things, the breadth of the CAT cloud activities, data volumes far in excess of the original volume estimates, the need for specialized cloud services given the volume and unique nature of the CAT, the processing time requirements of the Plan, and regular efforts to seek to minimize costs where permissible under the Plan. CAT LLC determined that use of cloud hosting services is necessary for implementation of the CAT, particularly given the substantial data volumes associated with the CAT, and that the fees for cloud hosting services negotiated by FCAT were reasonable, taking into consideration a variety of factors, including the expected volume of data and the breadth of services provided and market rates for similar services.[140] Indeed, the actual costs of the CAT are far in excess of the original estimated costs of the CAT due to various factors, including the higher volumes and greater complexity of the CAT than anticipated when Rule 613 was originally adopted.

To comply with the requirements of the Plan, the breadth of the cloud activities related to the CAT is substantial. The cloud services not only include the production environment for the CAT, but they also include two industry testing environments, support environments for quality assurance and stress testing and disaster recovery capabilities. Moreover, the cloud storage costs are driven by the requirements of the Plan, which requires the storage of multiple versions of the data, from the original submitted version of the data through various processing steps, to the final version of the data.

Data volume is a significant driver of costs for cloud hosting services. When the Commission adopted the CAT NMS Plan in 2016, it estimated that the CAT would need to receive 58 billion records per day [141] and that annual operating costs for the CAT would range from $36.5 million to $55 million.[142] Through 2023, the actual data volumes have been five times that original estimate. The data volumes to date for 2024 have continued this trend.

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

The costs for cloud hosting services also reflect the need for specialized cloud hosting services given the data volume and unique processing needs of the CAT. The data volume as well as the data processing needs of the CAT necessitate the use of cloud hosting services. The equipment, power and services required for an on-premises data model, the alternative to cloud hosting services, would be cost prohibitive. Moreover, as CAT was being developed, there were limited cloud hosting providers that could satisfy all the necessary CAT requirements, including the operational and security criteria. Over time, more providers offering cloud hosting services that would satisfy these criteria have entered the market. CAT LLC will continue to evaluate alternative cloud hosting services, recognizing that the time and cost to move to an alternative cloud provider would be substantial.

The reasonableness of the cloud hosting services costs is further supported by key cost discipline mechanisms for the CAT—a cost-based funding structure, cost transparency, cost management efforts (including regular efforts to lower compute and storage costs where permitted by the Plan) and oversight. Together, these mechanisms help ensure the ongoing reasonableness of the CAT's costs and the level of fees assessed to support those costs.[143]

(ii) Technology: Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted costs related to operating fees as a part of CAT Fees.[144] CAT LLC determined that the budgeted costs related to operating fees described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2024–1.

The operating fees would include the negotiated fees paid by CAT LLC to the Plan Processor to operate and maintain the system for order-related information and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.,* management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the selection of FCAT as the Plan Processor was reasonable and appropriate given its expertise with securities regulatory reporting, after a process of considering other potential candidates.[145] CAT LLC also determined that the fixed price contract, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, was reasonable and appropriate, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity.[146] The services to be performed by FCAT for CAT Fee 2024–

[139] Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan.

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

[141] Appendix D–4 of the CAT NMS Plan at n.262.

[142] CAT NMS Plan Approval Order at 84801.

[143] *See* Securities Exchange Act Rel. No. 97151 (Mar. 15, 2023), 88 FR 17086, 17117 (Mar. 21, 2023) (describing key cost discipline mechanisms for the CAT).

[144] Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan.

[145] *See* Section 3(a)(2)(C)(ii) above.

[146] *Id.*

1 Period and the budgeted costs related to such services are described above.[147]

The operating costs also include costs related to the receipt of market data. CAT LLC anticipates continuing to receive certain market data from Exegy during the CAT Fee 2024–1 Period. CAT LLC anticipates that Exegy will continue to provide data that meets the SIP Data requirements of the CAT NMS Plan and that the fees are reasonable and in line with market rates for market data received.[148]

(iii) Technology: CAIS Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted costs related to CAIS operating fees as a part of CAT Fees.[149] CAT LLC determined that the budgeted costs related to CAIS operating fees described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2024–1. The CAIS operating fees would include the fees paid to the Plan Processor to operate and maintain CAIS and to perform the business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.,* management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the fees for FCAT's CAIS-related services, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity, are reasonable and appropriate.[150] The services to be performed by FCAT for the CAT Fee 2024–1 Period and the budgeted costs for such services are described above.[151]

(iv) Technology: Change Request Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted costs related to change request fees as a part of CAT Fees.[152] CAT LLC determined that the budgeted costs related to change request fees described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2024–1. It is common practice to utilize a change request process to address evolving needs in technology projects. This is particularly true for a project like CAT that is the first of its kind, both in substance and in scale. The substance and costs of each of the change requests are evaluated by the Operating Committee and approved in accordance with the requirements for Operating Committee meetings. In each case, CAT LLC forecasts that the change requests will be necessary to implement the CAT. As described above,[153] CAT LLC has included a reasonable placeholder budget amount for potential change requests that may arise during the CAT Fee 2024–1 Period. As noted above, the total budgeted costs for change requests during the CAT Fee 2024–1 Period represent a small percentage of Budgeted CAT Costs 2024–1—that is, approximately 0.12% of Budgeted CAT Costs 2024–1.

(v) Capitalized Developed Technology Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted costs related to capitalized developed technology costs as a part of CAT Fees.[154] In general, capitalized developed technology costs would include costs related to, for example, certain development costs, costs related to certain modifications, upgrades and other changes to the CAT, CAIS implementation fees and license fees. The amount and type of budgeted capitalized developed technology costs for the CAT Fee 2024–1 Period, which relate to the CAIS software license fee and technology changes to be implemented by FCAT, are described in more detail above.[155] CAT LLC determined that these budgeted costs are reasonable and should be included as a part of Budgeted CAT Costs 2024–1.

(vi) Legal

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted costs related to legal fees as a part of CAT Fees.[156] CAT LLC determined that the budgeted legal costs described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2024–1. Given the unique nature of the CAT, the number of parties involved with the CAT (including, for example, the SEC, Participants, Industry Members, and vendors) and the many regulatory, contractual and other issues associated with the CAT, the scope of the necessary legal services is substantial. CAT LLC determined that the scope of the proposed legal services is necessary to implement and maintain the CAT and that the legal rates reflect the specialized services necessary for such a project. CAT LLC determined to hire and continue to use each law firm based on a variety of factors, including their relevant expertise and fees. In each case, CAT LLC determined that the fee rates were in line with market rates for specialized legal expertise. In addition, CAT LLC determined that the budgeted costs for the legal projects were appropriate given the breadth of the services provided. The services to be performed by each law firm for the CAT Fee 2024–1 Period and the budgeted costs related to such services are described above.[157]

(vii) Consulting

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted consulting costs as a part of CAT Fees.[158] CAT LLC determined that the budgeted consulting costs described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2024–1. Because there are no CAT employees [159] and because of the significant number of issues associated with the CAT, the consultants are budgeted to provide assistance in the management of various CAT matters and the processes related to such matters.[160] CAT LLC determined the budgeted consulting costs were appropriate, as the consulting services were to be provided at reasonable market rates that were comparable to the rates charged by other consulting firms for similar work. Moreover, the total budgeted costs for such consulting services were appropriate in light of the breadth of services provided by Deloitte. The services budgeted to be performed by Deloitte and the budgeted costs related to such services are described above.[161]

(viii) Insurance

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted insurance costs as

[147] *Id.*

[148] *Id.*

[149] Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan.

[150] *See* Section 3(a)(2)(C)(iii) above.

[151] *Id.*

[152] Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan.

[153] *See* Section 3(a)(2)(C)(iv) above.

[154] Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan.

[155] *See* Section 3(a)(2)(C)(v) above.

[156] Section 11.3(a)(iii)(B)(B)(2) of the CAT NMS Plan.

[157] *See* Section 3(a)(2)(B)(vi) above.

[158] Section 11.3(b)(iii)(B)(B)(3) of the CAT NMS Plan.

[159] As stated in the filing of the proposed CAT NMS Plan, ''[i]t is the intent of the Participants that the Company have no employees.'' Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614, 30621 (May 17, 2016).

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

[161] Section 3(a)(2)(C)(vii) of the CAT NMS Plan.

a part of CAT Fees.[162] CAT LLC determined that the budgeted insurance costs described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2024–1. CAT LLC determined that it is common practice to have directors' and officers' liability insurance, and errors and omissions liability insurance. CAT LLC further determined that it was important to have cyber security insurance given the nature of the CAT, and such a decision is consistent with the CAT NMS Plan, which states that the cyber incident response plan may include ''[i]nsurance against security breaches.'' [163] As discussed above,[164] CAT LLC determined that the budgeted insurance costs were appropriate given its prior experience with this market and an analysis of the alternative insurance offerings. Based on this analysis, CAT LLC determined that the selected insurance policies provided appropriate coverage at reasonable market rates.[165]

(ix) Professional and Administration

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted professional and administration costs as a part of CAT Fees.[166] CAT LLC determined that the budgeted professional and administration costs described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2024–1. Because there are no CAT employees, all required accounting, financial, tax, cash management and treasury functions for CAT LLC have been outsourced at market rates. In addition, the required annual financial statement audit of CAT LLC is included in professional and administration costs, which costs are also at market rates. The services performed by Anchin and Grant Thornton and the costs related to such services are described above.[167]

CAT LLC anticipates continuing to make use of Anchin, a financial advisory firm, to assist with financial matters for the CAT. CAT LLC determined that the budgeted costs for Anchin were appropriate, as the financial advisory services were to be provided at reasonable market rates that were comparable to the rates charged by other such firms for similar work. Moreover, the total budgeted costs for such financial advisory services were appropriate in light of the breadth of services provided by Anchin. The services budgeted to be performed by Anchin and the budgeted costs related to such services are described above.[168]

CAT LLC anticipates continuing to make use of Grant Thornton, an independent accounting firm, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC determined that the budgeted costs for Grant Thornton were appropriate, as the accounting services were to be provided at reasonable market rates that were comparable to the rates charged by other such firms for similar work. Moreover, the total budgeted costs for such accounting services were appropriate in light of the breadth of services provided by Grant Thornton. The services budgeted to be performed by Grant Thornton and the budgeted costs related to such services are described above.[169]

(x) Public Relations Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted public relations costs as a part of CAT Fees.[170] CAT LLC determined that the budgeted public relations costs described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2024–1. CAT LLC determined that the types of public relations services to be utilized were beneficial to the CAT and market participants more generally. Public relations services are important for various reasons, including monitoring comments made by market participants about CAT and understanding issues related to the CAT discussed on the public record.[171] By continuing to engage a public relations firm, CAT LLC will be better positioned to understand and address CAT issues to the benefit of all market participants.[172] Moreover, CAT LLC determined that the budgeted rates charged for such services were in line with market rates.[173] As noted above, the total budgeted public relations costs for the CAT Fee 2024–1 Period represent a small percentage of Budgeted CAT Costs 2024–1—that is, approximately 0.03% of Budgeted CAT Costs 2024–1.

(xi) Reserve

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted reserve costs as a part of CAT Fees.[174] CAT LLC determined that the inclusion of a reserve in the amount of 25% of Budgeted CAT Costs 2024–1 complies with the requirements of the CAT NMS Plan related to a reserve, is a reasonable amount and should be included as a part of Budgeted CAT Costs 2024–1.

In its approval order for the CAT Funding Model, the Commission stated that it would be reasonable for the annual operating budget for the CAT to ''include a reserve of not more than 25% of the annual budget.'' [175] In making this statement, the Commission noted the following:

> Because the CAT is a critical regulatory tool/system, the CAT needs to have a stable funding source to build financial stability to support the Company as a going concern. Funding for the CAT, as noted in Section 11.1(b), is the responsibility of the Participants and the industry. Because CAT fees are charged based on the budget, which is based on anticipated volume, it is reasonable to have a reserve on hand to prevent a shortfall in the event there is an unexpectedly high volume in a given year. A reserve would help to assure that the CAT has sufficient resources to cover costs should there be unanticipated costs or costs that are higher than expected.[176]

The SEC also recognized that that a reserve would help address the difficulty in predicting certain variable CAT costs, like trading volume.[177] The SEC also recognized that CAT fees will be collected approximately three months after trading activity on which a CAT fee is based, or 25% of the year, and that the reserve would be available to address funding needs related to this three-month delay.[178] The inclusion of the proposed reserve in Budgeted CAT Costs 2024–1 would provide each of these benefits to the CAT. The reserve is discussed further above.[179]

(B) Reconciliation of Budget to the Collected Fees

The CAT NMS Plan also requires fee filings for Prospective CAT Fees to include ''a discussion of how the budget is reconciled to the collected fees.'' [180] To date, CAT LLC has not collected any CAT fees. Accordingly, there are no

[162] Section 11.3(b)(iii)(B)(B)(4) of the CAT NMS Plan.

[163] Section 4.1.5 of Appendix D of the CAT NMS Plan.

[164] *See* Section 3(a)(2)(C)(viii) above.

[165] *Id.*

[166] Section 11.3(a)(iii)(B)(B)(5) of the CAT NMS Plan.

[167] *See* Section 3(a)(2)(C)(ix) above.

[168] *Id.*

[169] *Id.*

[170] Section 11.3(a)(iii)(B)(B)(6) of the CAT NMS Plan.

[171] *See* Section 3(a)(2)(C)(x) above.

[172] *Id.*

[173] *Id.*

[174] Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan.

[175] CAT Funding Model Approval Order at 62657.

[176] *Id.*

[177] *Id.*

[178] *Id.*

[179] *See* Section 3(a)(2)(C)(xi) above.

[180] Section 11.3(a)(iii)(B)(C) of the CAT NMS Plan.

collected fees to be reconciled with the budget.

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

The total executed equivalent share volume of transactions in Eligible Securities for the period from June 2023 through May 2024 was 3,980,753,840,905.21 executed equivalent shares. CAT LLC determined the total executed equivalent share volume for the prior twelve months by counting executed equivalent shares in the same manner as it counts executed equivalent shares for CAT billing purposes.[181]

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

CAT LLC has determined to calculate the projected total executed equivalent share volume for the four months in which CAT Fee 2024–1 Period would be payable by multiplying by 4/12ths (*i.e.,* one-third) the executed equivalent share volume for the prior 12 months.[182] CAT LLC determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has remained relatively constant in recent years. For example, the executed equivalent share volume for 2021 was 3,963,697,612,395 executed equivalent shares, the executed equivalent share volume for 2022 was 4,039,821,841,560.31 executed equivalent shares, and the executed equivalent share volume for 2023 was 3,868,940,345,680.6. Accordingly, the projected total executed equivalent share volume for the four-month period for CAT Fee 2024–1 is 1,326,917,946,968.403 executed equivalent shares.[183]

(E) Actual Fee Rate for CAT Fee 2 024–1

(i) Decimal Places

As noted in the approval order for the CAT Funding Model, as a practical matter, the fee filing for a CAT Fee would provide the exact fee per executed equivalent share to be paid for each CAT Fee, by multiplying the Fee Rate by one-third and describing the relevant number of decimal places for the fee rate.[184] Accordingly, proposed paragraph (a)(3)(B) to the Consolidated Audit Trail Funding Fees section of the Equities Price List and the Options Fee Schedule would set forth a fee rate of $0.000035 per executed equivalent share. This fee rate is calculated by multiplying Fee Rate 2024–1 by one-third and rounding the result to six decimal places. CAT LLC determined that the use of six decimal places is reasonable as it balances the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.[185]

(ii) Reasonable Fee Level

The Exchange believes that imposing CAT Fee 2024–1 with a fee rate of $0.000035 per executed equivalent share is reasonable because it provides for a revenue stream for the Company that is aligned with Budgeted CAT Costs 2024–1 and such budgeted costs would be spread out over a four-month period. Moreover, the Exchange believes that the level of the fee rate is reasonable, as it is comparable to other transaction-based fees. Indeed, CAT Fee 2024–1 is significantly lower than fees assessed pursuant to Section 31 (*e.g.,* $0.0009 per share to 0.0004 per share),[186] and, as a result, the magnitude of CAT Fee 2024–1 is small, and therefore will mitigate any potential adverse economic effects or inefficiencies.[187]

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

CAT Fee 2024–1 provides for an equitable allocation of fees, as it equitably allocates CAT costs between and among the Participants and Industry Members. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfied the requirements of the Exchange Act, including the formula for calculating CAT Fees as well as the Industry Members to be charged the CAT Fees.[188] In approving the CAT Funding Model, the SEC stated that ''[t]he Participants have sufficiently demonstrated that the proposed allocation of fees is reasonable.'' [189] Accordingly, the CAT Funding Model sets forth the requirements for allocating fees related to Budgeted CAT Costs among Participants and Industry Members, and the fee filings for CAT Fees must comply with those requirements.

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

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

(4) CAT Fee 2024–1 Is Not Unfairly Discriminatory

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

[181] *See* Section 3(a)(2)(D) above.

[182] *Id.*

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

[184] CAT Funding Model Approval Order at 62658, n.658.

[185] *See* Section 3(a)(4)(A) above.

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

[187] *Id.*

[188] *See* Section 11.3(b) of the CAT NMS Plan.

[189] CAT Funding Model Approval Order at 62629.

CAT Fee 2024–1 is reasonable. Therefore, CAT Fee 2024–1 does not impose an unfairly discriminatory fee on Industry Members.

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

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

Section 6(b)(8) of the Act [190] requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that CAT Fee 2024–1 implements provisions of the CAT NMS Plan that were approved by the Commission and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan.

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

Furthermore, in approving the CAT Funding Model, the SEC analyzed the potential competitive impact of the CAT Funding Model, including competitive issues related to market services, trading services and regulatory services, efficiency concerns, and capital formation.[191] The SEC also analyzed the potential effect of CAT fees calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. Based on this analysis, the SEC approved the CAT Funding Model as compliant with the Exchange Act. CAT Fee 2024–1 is calculated and implemented in accordance with the CAT Funding Model as approved by the SEC.

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

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

No written comments were 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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act [192] and Rule 19b–4(f)(2) thereunder,[193] because it establishes or changes a due, or fee.

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

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEAMER–2024–50 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–NYSEAMER–2024–50. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEAMER–2024–50 and should be submitted on or before September 25, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[194]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–19757 Filed 9–3–24; 8:45 am]

BILLING CODE 8011–01–P

[190] 15 U.S.C. 78f(b)(8).

[191] CAT Funding Model Approval Order at 62676–86.

[192] 15 U.S.C. 78s(b)(3)(A)(ii).

[193] 17 CFR 240.19b–4(f)(2).

[194] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100850; File No. SR–NYSENAT–2024–23]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Fees for Industry Members Related to Reasonably Budgeted Costs of the National Market System Plan Governing the Consolidated Audit Trail for the Period From July 16, 2024 Through December 31, 2024

August 28, 2024

Pursuant to Section 19(b)(1) under the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 16, 2024, NYSE National, Inc. (''NYSE National'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the NYSE National Schedule of Fees and Rebates (''Fee Schedule'') to establish fees for Industry Members [3] related to reasonably budgeted CAT costs of the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'') for the period from July 16, 2024 through December 31, 2024. These fees would be payable to Consolidated Audit Trail, LLC (''CAT LLC'' or the ''Company'') and referred to as CAT Fee 2024–1, and would be described in a section of the Fee Schedule titled ''Consolidated Audit Trail Funding Fees. '' The fee rate for CAT Fee 2024–1 would be $0.000035 per executed equivalent share. CAT Executing Brokers will receive their first monthly invoice for CAT Fee 2024–1 in October 2024 calculated based on their transactions as CAT Executing Brokers for the Buyer (''CEBB'') and/or CAT Executing Brokers for the Seller (''CEBS'') in September 2024. The proposed change is available on the Exchange's website at *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 Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 11, 2012, the Commission adopted Rule 613 of Regulation NMS, which required the self-regulatory organizations (''SROs'') to submit a national market system (''NMS'') plan to create, implement and maintain a consolidated audit trail that would capture customer and order event information for orders in NMS securities across all markets, from the time of order inception through routing, cancellation, modification or execution.[4] On November 15, 2016, the Commission approved the CAT NMS Plan.[5] Under the CAT NMS Plan, the Operating Committee has the discretion to establish funding for CAT LLC to operate the CAT, including establishing fees for Industry Members to be assessed by CAT LLC that would be implemented on behalf of CAT LLC by the Participants.[6] The Operating Committee adopted a revised funding model to fund the CAT (''CAT Funding Model''). On September 6, 2023, the Commission approved the CAT Funding Model after concluding that the model was reasonable and that it satisfied the requirements of Section 11A of the Exchange Act and Rule 608 thereunder.[7]

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

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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] An ''Industry Member'' is defined as ''a member of a national securities exchange or a member of a national securities association.'' *See* NYSE National Rule 6.6810(u). *See also* Section 1.1 of the CAT NMS Plan. Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the CAT NMS Plan and/or the CAT Compliance Rule. *See* NYSE National Rule 6.6810.

[4] Securities Exchange Act Rel. No. 67457 (July 18, 2012), 77 FR 45722 (Aug. 1, 2012).

[5] Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (''CAT NMS Plan Approval Order'').

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

[7] Securities Exchange Act Rel. No. 98290 (Sept. 6, 2023), 88 FR 62628 (Sept. 12, 2023) (''CAT Funding Model Approval Order'').

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

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

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

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

CAT LLC proposes to charge CEBBs and CEBSs (as described in more detail below) CAT Fee 2024–1 to recover the reasonably budgeted CAT costs for July 16, 2024 through December 31, 2024, in accordance with the CAT Funding Model. To implement this fee on behalf of CAT LLC, the CAT NMS Plan requires the Participants to ''file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves, and such fees shall be labeled as 'Consolidated Audit Trail Funding Fees.''' [17] The Plan further states that ''[o]nce the Operating Committee has approved such Fee Rate, the Participants shall be required to file with the SEC pursuant to Section 19(b) of the Exchange Act CAT Fees to be charged to Industry Members calculated using such Fee Rate.'' [18] Accordingly, the purpose of this filing is to implement a CAT Fee on behalf of CAT LLC for Industry Members, referred to as CAT Fee 2024–1, in accordance with the CAT NMS Plan.

(1) CAT Executing Brokers

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

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

The following fields of the Participant Technical Specifications indicate the CAT Executing Brokers for the transactions executed on an exchange:

EQUITY ORDER TRADE (EOT) [21]

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

OPTION TRADE (OT) [22]

No.	Field name	Data type	Description	Include key
16.n.13/17.n.13	member	Member Alias	The identifier for the member firm that is responsible for the order.	R

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

[10] In approving the CAT Funding Model, the Commission stated that, ''[t]he proposed recovery of Prospective CAT Costs is appropriate.'' CAT Funding Model Approval Order at 62651.

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

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

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

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

[15] CAT Funding Model Approval Order at 62659.

[16] *See* Section 11.3(a)(ii) and appendix B of the CAT NMS Plan.

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

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

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

[20] Section 1.1 of the CAT NMS Plan. Note that CEBBs and CEBSs may, but are not required to, pass-through their CAT Fees to their clients, who may, in turn, pass their fees to their clients until they are imposed ultimately on the account that executed the transaction. *See* CAT Funding Model Approval Order at 62649.

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

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

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

No.	Field name	Data type	Description	Include key
26	reportingExecuting-Mpid.	Member Alias	MPID of the executing party	R
28	contraExecutingMpid	Member Alias	MPID of the contra-side executing party.	C

(2) Calculation of Fee Rate 2024–1

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

(A) CAT Fee 2024–1 Period

CAT LLC proposes to implement CAT Fee 2024–1 as the first CAT Fee related to Prospective CAT Costs. CAT LLC proposes to commence CAT Fee 2024–1 during the year, rather than at the beginning of the year. Accordingly, CAT Fee 2024–1 ''would be calculated as described in paragraph II'' of Section 11.3(a)(i)(A) of the CAT NMS Plan, which states that ''[d]uring each year, the Operating Committee will calculate a new Fee Rate by dividing the reasonably budgeted CAT costs for the remainder of the year by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for the remainder of the year.'' [25] For CAT Fee 2024–1, the reasonably budgeted CAT costs for ''the remainder of the year'' are the reasonably budgeted CAT costs from July 16, 2024 through December 31, 2024. This period is referred to as the CAT Fee 2024–1 Period. Such costs would be recovered over a four-month period, where the first invoices are sent in October 2024 based on transactions in September 2024.

(B) Executed Equivalent Shares for Transactions in Eligible Securities

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

(C) Budgeted CAT Costs 2024–1

The CAT NMS Plan states that ''[t]he budgeted CAT costs for the year shall be comprised of all reasonable fees, costs and expenses reasonably budgeted to be incurred by or for the Company in connection with the development, implementation and operation of the CAT as set forth in the annual operating budget approved by the Operating Committee pursuant to Section 11.1(a) of the CAT NMS Plan, or as adjusted during the year by the Operating Committee.'' [27] Section 11.1(a) of the CAT NMS Plan describes the requirement for the Operating Committee to approve an operating budget for CAT LLC on an annual basis. It requires the budget to ''include the projected costs of the Company, including the costs of developing and operating the CAT for the upcoming year, and the sources of all revenues to cover such costs, as well as the funding of any reserve that the Operating Committee reasonably deems appropriate for the prudent operation of the Company.'' Section 11.1(a)(i) of the CAT NMS Plan further states that:

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

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

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

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

> the budget for the upcoming year (or remainder of the year, as applicable), including a brief description of each line item in the budget, including (1) technology line items of cloud hosting services,

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

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

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

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

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

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

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

operating fees, CAIS operating fees, change request fees and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration and (6) public relations costs, a reserve and/or such other categories as reasonably determined by the Operating Committee to be included in the budget, and the reason for changes in each such line item from the prior CAT fee filing.[30]

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

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

Budget category	Budgeted CAT costs 2024–1 *
Capitalized Developed Technology Costs **	$4,101,990
Technology Costs:	99,728,258
Cloud Hosting Services	76,278,426
Operating Fees	14,008,947.50
CAIS Operating Fees	9,278,384.50
Change Request Fees	162,500
Legal	4,484,554.50
Consulting	652,623
Insurance	1,342,345
Professional and administration	428,544.50
Public relations	43,225
Subtotal	110,781,540
Reserve	27,695,385
Total Budgeted CAT Costs 2024–1	138,476,925

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

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

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

(i) Technology Costs—Cloud Hosting Services

(a) Description of Cloud Hosting Services Costs

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

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

The cost for AWS cloud services for the CAT is a function of the volume of CAT Data. The greater the amount of CAT Data, the greater the cost of AWS services to CAT LLC. During the CAT 2024–1 Period, it is expected that AWS will provide cloud hosting services for volumes of CAT Data far in excess of the volume predictions set forth in the CAT NMS Plan. The CAT NMS Plan states, when all CAT Reporters are submitting their data to the CAT, it ''must be sized to receive[,] process and load more than 58 billion records per day,'' [33] and that ''[i]t is expected that the Central Repository will grow to more than 29 petabytes of raw, uncompressed data.'' [34] In contrast with those estimates, the Q1 2024 data volumes, which averaged 577 billion events per day, were up 45% compared to Q1 2023, which averaged 399 billion events per day, with peak volumes recorded on April 19, 2024 of 746 billion events. Even higher peak volumes were recorded in July and August 2024.

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

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

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

[33] Appendix D–4 of the CAT NMS Plan at n.262.

[34] Appendix D–5 of the CAT NMS Plan.

CAT LLC estimates that the budget for cloud hosting services costs during the CAT Fee 2024–1 Period will be approximately $76,278,426. The budget for cloud hosting services costs during the CAT Fee 2024–1 Period is calculated based on the Updated 2024 Budget. Specifically, this estimate was calculated by adding the budgeted amounts for cloud hosting services costs for the third and fourth quarter of 2024 as set forth in the Updated 2024 Budget and subtracting one half of the cloud hosting services costs incurred in July 2024 (as CAT Fee 2024–1 Period began half way through July, on July 16, 2024).[35]

CAT LLC estimated the budget for the cost for cloud hosting services for the CAT Fee 2024–1 Period based on an assumption of 30% annual year-over-year volume growth for the transaction database and an assumption of 5% annual year-over-year volume growth for CAIS. CAT LLC determined these growth assumptions in coordination with FCAT based on an analysis of a variety of existing data and alternative growth scenarios. In addition, the budget for cloud hosting services for the CAT Fee 2024–1 Period includes a budget for the cost of re-processing data as approved by the CAT Operating Committee.[36] The budget for re-processing data was based on expenditures for re-processing in prior years. This process for estimating the budget for cloud hosting services costs for the CAT Fee 2024–1 Period is the same process by which CAT LLC estimated the cloud hosting services costs for the Original 2024 Budget. The Original 2024 Budget estimated a budget for cloud hosting services of $71,384,109 for the first two quarters of 2024.[37] The actual costs for cloud hosting services for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were $66,737,810.[38] There is only an approximate 7% difference between the estimate and actuals for cloud hosting services costs. Accordingly, CAT LLC believes that the process for estimating the budgeted cloud hosting services costs for the CAT Fee 2024–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for cloud hosting services costs from the prior CAT Fee filing. CAT LLC's proposed annual budget for cloud hosting services costs for 2024 decreased about 3.5% from the Original 2024 Budget to the Updated 2024 Budget, from $154,624,108 to $148,789,981. Although there were expected cost increases related to data volume growth and the associated compute and storage of the increased data levels, as well as from additional capacity for OTQT systems that were added to meet the performance standards set forth in the requirements of the recent SEC exemptive order from November 2023,[39] these cost increases were offset by a variety of cost reduction efforts related to compute efficiencies, the implementation of single pass linker related to options quotes, and the implementation of compute and other efficiencies related to CAIS. Without such cost management efforts, the budgeted costs for cloud hosting services would have increased by approximately 15%, rather than decreased. Correspondingly, the proposed budget for cloud hosting services costs for the third and fourth quarters of 2024 did not change in a material way from the Original 2024 Budget to the Updated 2024 Budget. There was only an approximate 1% decrease from $83,239,999 in the Original 2024 Budget[40] to $82,052,171 in the Updated 2024 Budget for the third and fourth quarters of 2024.[41]

(ii) Technology Costs—Operating Fees

(a) Description of Operating Fees

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

Plan Processor: FCAT. Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT a negotiated monthly fixed price for the operation of the CAT. This fixed price contract was negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity. It is anticipated that FCAT will provide a variety of services to the CAT during the CAT Fee 2024–1 Period, including the following:

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

CAT LLC calcuated [*sic*] the budget for the FCAT technology costs for

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

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

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

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

[39] Securities Exchange Act Rel. No. 98848 (Nov. 2, 2023), 88 FR 77128 (Nov. 8, 2023).

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

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

operating fees for the CAT Fee 2024–1 Period based on the recurring monthly operating fees under the Plan Processor Agreement.

Market Data Provider: Exegy. It is anticipated that the operating fees costs for the CAT Fee 2024–1 Period will include costs related to the receipt of certain market data for the CAT pursuant to an agreement between FCAT and Exegy Incorporated (''Exegy''). CAT LLC determined that Exegy would provide market data that included all data elements required by the CAT NMS Plan,[42] and that the fees were reasonable and in line with market rates for the market data received. All costs under the contract would be treated as a direct pass through cost to CAT LLC. CAT LLC estimated the budget for the costs for Exegy for the CAT Fee 2024–1 Period based on the monthly rate set forth in the agreement between Exegy and FCAT.

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

As discussed above, CAT LLC estimated the budget for the operating fees during the CAT Fee 2024–1 Period based on monthly rates set forth in the Plan Processor Agreement and the agreement with Exegy. CAT LLC also recognized that the operating fees are generally consistent throughout the year. This process for estimating the budget for the operating fees for the CAT Fee 2024–1 Period is the same process by which CAT LLC estimated the operating fees for the Original 2024 Budget. The Original 2024 Budget estimated a budget for operating fees of $13,558,875 for the first two quarters of 2024.[44] The actual costs for operating fees for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were $12,608,540.[45] There was an approximate 7% decrease from estimates to actuals for the first two quarters. Accordingly, CAT LLC believes that the process for estimating the budgeted operating fees for the CAT Fee 2024–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for operating fees from the prior CAT Fee filing. As this is the first Prospective CAT Fee Filing, this filing describes the changes in the operating fees from the Original 2024 Budget. CAT LLC's proposed annual budget for operating fees for 2024 increased from $27,223,132 to $27,768,718[46] from the Original 2024 Budget to the Updated 2024 Budget, and the proposed budget for operating fees for the third and fourth quarters of 2024 increased from $13,664,256 in the Original 2024 Budget[47] to $15,160,178 in the Updated 2024 Budget.[48] This increase is due to a cyber insurance adjustment.

(iii) Technology Costs—CAIS Operating Fees

(a) Description of CAIS Operating Fees

Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the CAIS operating fees set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $9,278,384.50 in technology costs for CAIS operating fees for the CAT Fee 2024–1 Period. CAIS operating fees represent the fees paid to FCAT for services provided with regard to the operation and maintenance of CAIS, and to perform the business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.,* management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. The CAT is required under the CAT NMS Plan to capture and store Customer Identifying Information and Customer Account Information in a database separate from the transactional database and to create a CAT-Customer-ID for each Customer. As of May 31, 2024, the implementation of CAIS was completed.[49]

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

CAT LLC estimates that the budget for CAIS operating fees during the CAT Fee 2024–1 Period will be approximately $9,278,384.50. The budget for CAIS operating fees during the CAT Fee 2024–1 Period is calculated based on the Updated 2024 Budget. Specifically, this estimate was calculated by adding the budgeted amounts for CAIS operating fees for the third and fourth quarter of 2024 as set forth in the Updated 2024 Budget and subtracting one half of the actual CAIS operating fees costs incurred in July 2024 (as CAT Fee 2024–1 Period began half way through July, on July 16, 2024).[50]

CAT LLC calculated the budget for FCAT's CAIS-related services for the CAT Fee 2024–1 Period based on the recurring monthly CAIS operating fees under the Plan Processor Agreement. This process for estimating the budget for the CAIS operating fees for the CAT Fee 2024–1 Period is the same process by which CAT LLC estimated the CAIS operating fees for the Original 2024 Budget. The Original 2024 Budget estimated a budget for CAIS operating fees of $10,418,666 for the the [*sic*] first two quarters of 2024.[51] The actual costs for CAIS operating fees for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were $10,078,045.[52] There is only an approximate 3% difference between the estimate and actuals. Accordingly, CAT LLC believes that the process for estimating the budgeted CAIS operating fees for the CAT Fee 2024–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a

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

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

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

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

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

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

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

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

[50] This calculation is ($5,060,937 + $5,060,937) − $843,489.50 = $9,278,384.50.

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

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

Prospective CAT Fee to describe the reason for changes in the line item for CAIS operating fees from the prior CAT Fee filing. As this is the first Prospective CAT Fee Filing, this filing describes the changes in the CAIS operating fees from the Original 2024 Budget. CAT LLC's proposed annual budget for CAIS operating fees for 2024 had a small 2% percent decrease of $491,821 from the Original 2024 Budget to the Updated 2024 Budget, from $20,691,740 to $20,199,919. Correspondingly, the proposed budget for CAIS operating fees for the third and fourth quarters of 2024 had a small 1% percentage decrease of $151,202, from $10,273,076 in the Original 2024 Budget [53] to $10,121,874 in the Updated 2024 Budget.[54]

(iv) Technology Costs—Change Request Fees

(a) Description of Change Request Fees

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

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

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

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

CAT LLC estimated the budget for the potential change requests for the CAT Fee 2024–1 Period based on, among other things, a review of past change requests and potential future change request needs, as well as discussions with FCAT. This process for estimating the budget for the change requests for the CAT Fee 2024–1 Period is the same process by which CAT LLC estimated the change requests cost for the Original 2024 Budget. The Original 2024 Budget estimated a change request budget of $81,250 for the the [*sic*] first two quarters of 2024.[56] The actual costs for change requests for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were $0. Although the budget exceeded the actual costs of change requests during the first two quarters of 2024, CAT LLC believes that the process for estimating a placeholder amount for potential change requests is reasonable given the evolving technology needs of the CAT.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for change request fees from the prior CAT Fee filing. As this is the first Prospective CAT Fee Filing, this filing describes the changes in the change request fees from the Original 2024 Budget. CAT LLC's proposed annual budget for change requests for 2024 decreased by $81,250 from the Original 2024 Budget to the Updated 2024 Budget, from $243,750 to $162,500. CAT LLC has reduced the annual budget for a placeholder for change request fees for 2024 by one-third, as time has passed without additional change requests anticipated by this placeholder amount. Correspondingly, the proposed budget for change requests for the third and fourth quarters remained the same at $162,500 for the Original 2024 Budget [57] and the Updated 2024 Budget.[58]

(v) Technology Costs—Capitalized Developed Technology Costs

(a) Description of Capitalized Developed Technology Costs

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

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

CAT LLC estimated the budget for capitalized developed technology costs for the CAT Fee 2024–1 Period based on an analysis of a variety of factors, including information related to potential technology costs and related contractual and Plan requirements, and discussions with FCAT regarding such potential technology costs. The Original 2024 Budget estimated a budget for capitalized developed technology costs of $2,300,000 for the first two quarters

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

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

[55] This calculation is ($0 + $162,500) − $0 = $162,500.

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

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

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

[59] This calculation is ($3,810,990 + $291,000) − $0 = $4,101,990.

of 2024.[60] The actual costs for capitalized developed technology costs for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were $3,659,490.[61] The increase was due to a software license fee for CAIS. Accordingly, CAT LLC believes that the process for estimating the budgeted capitalized developed technology costs for the CAT Fee 2024–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for capitalized developed technology costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee Filing, this filing describes the changes in capitalized developed technology costs from the Original 2024 Budget. CAT LLC's proposed budget for capitalized developed technology costs for 2024 increased from the Original 2024 Budget to the Updated 2024 Budget. The annual budget for capitalized developed technology costs for 2024 increased by $5,461,480 from the Original 2024 Budget of $2,300,000 to the Updated 2024 Budget of $7,761,480.[62] Correspondingly, the budget for capitalized developed technology costs for the third and fourth quarters of 2024 increased from $0[63] in the Original 2024 Budget to $4,101,990 in the Updated 2024 Budget.[64] This increase in the capitalized developed technology costs budget in the Updated 2024 Budget over the Original 2024 Budget was the result of costs related to the software license fee for CAIS in accordance with the Plan Processor Agreement with FCAT, as well as costs related to a set of technology changes to be implemented by FCAT.

(vi) Legal Costs

(a) Description of Legal Costs

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

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

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

- Assist with CAT fee filings and related funding issues;
- Draft exemptive requests from CAT NMS Plan requirements and/or proposed amendments to the CAT NMS Plan;
- Provide legal interpretations of CAT NMS Plan requirements;
- Provide legal support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team;
- Draft SRO rule filings related to the CAT Compliance Rule;
- Manage corporate governance matters, including supporting Operating Committee meetings and preparing resolutions and consents;
- Assist with communications with the industry, including CAT Alerts and presentations;
- Provide guidance regarding the confidentiality of CAT Data;
- Assist with cost management analyses and proposals;
- Assist with commercial contract-related matters, including change orders, Plan Processor Agreement items, and subcontract matters;
- Provide support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues;
- Assist with CAT budget and FCAT costs;
- Assist other counsel for CAT on litigation-related matters; and
- Assist with legal responses related to third-party data requests.

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

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

During the CAT Fee 2024–1 Period, it is anticipated that Jenner will continue to provide legal assistance to CAT LLC regarding certain litigation matters, including: (1) CAT LLC's defense against a lawsuit filed in the Western District of Texas against Chair Gensler, the SEC and CAT LLC challenging the validity of the Rule 613 and the CAT and alleging various constitutional, statutory, and common law claims (''Texas Litigation'');[65] (2) CAT LLC's intervention in a lawsuit in the Eleventh Circuit filed by various parties against the SEC challenging the SEC's approval of the CAT Funding Model;[66] and (3) a lawsuit in the Eleventh Circuit filed by Citadel Securities LLC seeking review of the SEC's May 20, 2024 order[67] granting the Participants temporary conditional exemptive relief related to the reporting of bids and/or offers made in response to a request for quote or other form of solicitation response provided in standard electronic format that is not immediately actionable.[68] Litigation involving CAT LLC is an expense of operating the CAT, and, therefore, is appropriately an obligation of both

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

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

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

[63] This calculation is $0 + $0 = $0.

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

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

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

[67] Securities Exchange Act Rel. No. 100181 (May 20, 2024), 89 FR 45715 (May 23, 2024).

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

Participants and Industry Members under the CAT Funding Model.

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

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

CAT LLC estimated the budget for the legal services for the CAT Fee 2024–1 Period based on an analysis of a variety of factors, including law firm fee rates, historical legal fees, and information related to pending legal issues and potential future legal issues, and discussions with the law firms. This process for estimating the budget for the legal services for the CAT Fee 2024–1 Period is the same process by which CAT LLC estimated the legal cost for the Original 2024 Budget. The Original 2024 Budget estimated a budget for legal costs of $2,440,000 for the first two quarters of 2024.[70] The actual costs for legal services for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were $3,156,762.[71] Although there is an increase from the budgeted legal costs to the actual legal costs for the first two quarters of 2024, such increase was due to unanticipated issues that required additional legal efforts on behalf of CAT LLC that developed after the budget was created. Such additional costs including costs related to (1) the legal defense related to the Texas Litigation; and (2) additional regulatory and corporate legal issues, including (a) additional work for commercial contract-related matters, including change orders, Plan Processor Agreement items, and subcontract matters; (b) assistance regarding budget and FCAT costs; (c) assistance to other counsel for CAT on litigation-related matters; and (d) assistance related to CAT fee filings and CAT NMS Plan amendments. Accordingly, CAT LLC believes that the process for estimating the budgeted legal costs for the CAT Fee 2024–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for legal costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee Filing, this filing describes the changes in the legal costs from the Original 2024 Budget. CAT LLC's proposed budget for legal costs for 2024 increased from the Original 2024 Budget to the Updated 2024 Budget. The annual budget for legal costs for 2024 increased from the Original 2024 Budget to the Updated 2024 Budget, from $4,460,000 to $8,146,599. Correspondingly, the proposed budget for legal costs for the third and fourth quarters increased from $2,020,000[72] in the Original 2024 Budget to $4,989,837 in the Updated 2024 Budget.[73] This increase in the legal budget in the Updated 2024 Budget from the Original 2024 Budget was primarily due to unanticipated legal costs, including costs related to (1) the legal defense related to the Texas Litigation; and (2) additional regulatory and corporate legal issues, including (a) additional work for commercial contract-related matters, including change orders, Plan Processor Agreement items, and subcontract matters; (b) assistance regarding budget and FCAT costs; (c) assistance to other counsel for CAT on litigation-related matters; and (d) assistance related to CAT fee filings and CAT NMS Plan amendments. In addition, CAT LLC no longer anticipates incurring legal costs related to the law firms of Pillsbury Winthrop Shaw Pittman LLP and Covington & Burling LLP during the CAT Fee 2024–1 Period due to the conclusion of the relevant prior legal matters.

(vii) Consulting Costs

(a) Description of Consulting Costs

Section 11.3(a)(iii)(B)(B)(3) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the consulting costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $652,623 in consulting costs for the CAT Fee 2024–1 Period. The consulting costs represent the fees estimated to be paid to the consulting firm Deloitte & Touche LLP (''Deloitte'') as project manager during the CAT Fee 2024–1 Period. These consulting costs include costs for advisory services related to the operation of the CAT, and meeting facilitation and communications coordination, vendor support and financial analyses.

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

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

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

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

CAT LLC estimates that the budet [*sic*] for consulting costs during the CAT Fee 2024–1 Period will be approximately $652,623. The budget for consulting costs during the CAT Fee 2024–1 Period is calculated based on the Updated 2024 Budget. Specifically, this estimate was calculated by adding the budgeted amounts for consulting services for the third and fourth quarter of 2024 as set forth in the Updated 2024 Budget and

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

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

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

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

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

subtracting one half of the actual consulting costs incurred in July 2024 (as the CAT Fee 2024–1 Period began [*sic*] half way through July, on July 16, 2024).[74]

CAT LLC estimates the budget for the consulting costs for Deloitte for the CAT Fee 2024–1 Period based on the current statement of work with Deloitte, which took into consideration past consulting costs, potential future consulting needs, the proposed rates and other contractual issues, as well as discussions with Deloitte. The Original 2024 Budget estimated a budget for consulting cost of $800,000 for the first two quarters of 2024.[75] The actual costs for consulting services for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were $885,580.[76] There is only an approximate 10% difference between the estimate and actuals. Accordingly, CAT LLC believes that the process for estimating the budgeted consulting costs for the CAT Fee 2024–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for consulting costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee Filing, this filing describes the changes in the consulting costs from the Original 2024 Budget. CAT LLC's proposed annual budget for consulting costs for 2024 has not changed from the Original 2024 Budget to the Updated 2024 Budget; it remains $1,600,000. Correspondingly, the proposed budget for consulting costs for the third and fourth quarters of 2024 decreased by $85,580 (which is approximately 11%), from $800,000 in the Original 2024 Budget[77] to $714,420 in the Updated 2024 Budget.[78]

(viii) Insurance Costs

(a) Description of Insurance Costs

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

It is anticipated that the insurance costs for CAT during the CAT Fee 2024–1 Period will include costs related to cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance brokered by USI Insurance Services LLC (''USI''). Such policies are standard for corporate entities, and cyber security liability insurance is important for the CAT System. CAT LLC anticipates that it will continue to maintain this insurance during CAT Fee 2024–1 Period, and notes that the annual premiums for these policies were competitive for the coverage provided. CAT LLC estimated the budget for the insurance costs for the CAT Fee 2024–1 Period based on the actual insurance quote from USI for 2024. The annual premiums would be paid by CAT LLC to USI.[79]

(b) Changes From Prior Fee Filing

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

(ix) Professional and Administration Costs

(a) Description of Professional and Administration Costs

Section 11.3(a)(iii)(B)(B)(5) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the professional and administration costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $428,544.50 in professional and administration costs for the CAT Fee 2024–1 Period. In adopting the CAT NMS Plan, the Commission amended the Plan to add a requirement that CAT LLC's financial statements be prepared in compliance with GAAP, audited by an independent public accounting firm, and made publicly available.[80] The professional and administration costs would include costs related to accounting and accounting advisory services to support the operating and financial functions of CAT, financial statement audit services by an independent accounting firm, preparation of tax returns, and various cash management and treasury functions. The professional and administration costs represent the fees to be paid to Anchin Block & Anchin (''Anchin'') and Grant Thornton LLP (''Grant Thornton'') for financial services during CAT Fee 2024–1 Period.

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

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

- Update and maintain internal controls;
- Provide cash management and treasury functions;
- Faciliate [*sic*] bill payments;
- Provide monthly bookkeeping;
- Review vendor invoices and documentation in support of cash disbursements;
- Provide accounting research and consultations on various accounting, financial reporting and tax matters;
- Address not-for-profit tax and accounting considerations;
- Prepare tax returns;
- Address various accounting, financial reporting and operating inquiries from Participants;
- Develop and maintain annual operating and financial budgets, including budget to actual fluctuation analyses;
- Support compliance with the CAT NMS Plan;

[74] This calculation is ($359,926 + $354,495) − $61,798 = $652,623.

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

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

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

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

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

[80] Section 9.2 of the CAT NMS Plan.

• Work with and provide support to the Operating Committee and various CAT working groups;
• Prepare monthly, quarterly and annual financial statements;
• Support the annual financial statement audits by an independent auditor;
• Review historical costs from inception;
• Provide accounting and financial information in support of SEC filings; and
• Perform additional ad hoc accounting and financial advisory services, as requested by CAT LLC.

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

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

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

CAT LLC estimated the budget for the professional and administration costs for the CAT Fee 2024–1 Period based on a review of past professional and administration costs, potential future professional and administration needs, the proposed rates and other contractual issues, as well as discussions with Anchin and Grant Thornton. This process for estimating the budget for the professional and administration costs for the CAT Fee 2024–1 Period is the same process by which CAT LLC estimated the professional and administration costs for the Original 2024 Budget. The Original 2024 Budget estimated a budget for professional and administration costs of $395,930 for the first two quarters of 2024.[82] The actual costs for professional and administration services for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were $372,977.[83] There is only an approximate 6% difference between the estimate and actuals. Accordingly, CAT LLC believes that the process for estimating the budgeted professional and administration costs for the CAT Fee 2024–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for professional and administration costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee Filing, this filing describes the changes in the professional and administration costs from the Original 2024 Budget. CAT LLC's proposed annual budget for professional and administration costs for 2024 had a very minor increase of $2,666 from the Original 2024 Budget, from $821,264 to $823,930. CAT LLC's proposed annual budget for professional and administration costs for 2024 has not changed in a material way for Anchin and Grant Thornton costs. Correspondingly, the proposed budget for professional and administration costs for the third and fourth quarters of 2024 increased by $25,617 (which is approximately 6%), from $425,334 in the Original 2024 Budget[84] to $450,951 in the Updated 2024 Budget.[85]

(x) Public Relations Costs

(a) Desription [*sic*] of Public Relations Costs

Section 11.3(a)(iii)(B)(B)(6) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the public relations costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $43,225 in public relations costs for the CAT Fee 2024–1 Period. The public relations costs represent the fees paid to a public relations firm for professional communications services to CAT, including media relations consulting, strategy and execution. By engaging a public relations firm, CAT LLC will be better positioned to understand and address CAT matters to the benefit of all market participants.

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

CAT LLC estimates that the budget for public relations services during the CAT Fee 2024–1 Period will be approximately $43,225. The budget for public relations services during the CAT Fee 2024–1 Period is calculated based

[81] This calculation is ($157,269 + $293,682) − $22,406.50 = $428,544.50.

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

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

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

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

on the Updated 2024 Budget. Specifically, this estimate was calculated by adding the budgeted amounts for the public relations for the third and fourth quarter of 2024 as set forth in the Updated 2024 Budget and subtracting one half of the actual public relations costs incurred in July 2024 (as CAT Fee 2024–1 Period began half way through July, on July 16, 2024).[86] The fees for these services will be paid by CAT LLC to RF|Binder.

CAT LLC estimated the budget for the public relations costs for the CAT Fee 2024–1 Period based on a review of past public relations costs, potential future public relations needs, the proposed rates and other contractual issues, as well as discussions with RF|Binder. CAT LLC also recognized that public relations costs are generally consistent throughout the year. This process for estimating the budget for the public relations costs for the CAT Fee 2024–1 Period is the same process by which CAT LLC estimated the public relations costs for the Original 2024 Budget. The Original 2024 Budget estimated a budget for public relations costs of $46,200 for the the [*sic*] first two quarters of 2024.[87] The actual costs for public relations for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were $46,200.[88] They are the same. Accordingly, CAT LLC believes that the process for estimating the budgeted public relations costs for the CAT Fee 2024–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for public relations costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee Filing, this filing describes the changes in the public relations costs from the Original 2024 Budget. CAT LLC's proposed annual budget for public relations costs for 2024 had a very minor increase of $875 from the Original 2024 Budget to the Updated 2024 Budget, from $92,400 to $93,275. Correspondingly, the proposed budget for public relations costs for the third and fourth quarters of 2024 increased by $875, from $46,200 in the Original 2024 Budget[89] to $47,075 in the Updated 2024 Budget.[90] The minor change was made to reflect updated contractual terms.

(xi) Reserve

(a) Description of Reserve

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

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

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

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for a reserve from the prior CAT Fee filing. Prior to July 16, 2024, all CAT costs were paid by the Participants via notes. Accordingly, to date, CAT LLC has not maintained any reserve. With the commencement of CAT Fees, CAT LLC proposes to include costs for a reserve of $27,695,385 in Budgeted CAT Costs 2024–1.

(D) Projected Total Executed Equivalent Share Volume

The calculation of Fee Rate 2024–1 also requires the determination of the projected total executed equivalent share volume of transactions in Eligible Securities for the CAT Fee 2024–1 Period. Under the CAT NMS Plan, the Operating Committee is required to ''reasonably determine the projected total executed equivalent share volume of all transactions in Eligible Securities for each relevant period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months.'' [91] The Operating Committee is required to base its projection on the prior twelve months, but it may use its discretion to analyze the likely volume for the upcoming year. Such discretion would allow the Operating Committee to use its judgment when estimating projected total executed equivalent share volume if the volume over the prior twelve months was unusual or otherwise unfit to serve as the basis of a future volume estimate.[92]

The total executed equivalent share volume of transactions in Eligible Securities for the 12-month period from June 2023 through May 2024 was 3,980,753,840,905.21 executed equivalent shares. The Operating Committee has determined to calculate the projected total executed equivalent share volume for a four-month recovery period for CAT Fee 2024–1 by multiplying by 4/12ths the executed equivalent share volume for the prior 12 months. The Operating Committee determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has remained relatively constant. For example, the executed equivalent share volume for 2021 was 3,963,697,612,395, the executed equivalent share volume for 2022 was 4,039,821,841,560.31, and the executed equivalent share volume for 2023 was 3,868,940,345,680.6. Accordingly, the projected total executed equivalent share volume for the four-month period for CAT Fee 2024–1 is projected to be 1,326,917,946,968.403 executed equivalent shares.[93]

The projected total executed equivalent share volume of all transactions in Eligible Securities for the four-month recovery period for CAT Fee 2024–1 and a description of the calculation of the projection is provided

[86] This calculation is ($23,450 + $23,625) − $3,850 = $43,225.

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

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

[89] This calculation is $23,100 + $23,100 = $46,200.

[90] This calculation is $23,450 + $23,625 = $47,075.

[91] Section 11.3(a)(i)(D) of the CAT NMS Plan.

[92] CAT Funding Model Approval Order at 62651.

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

in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a CAT Fee.[94]

(E) Fee Rate 2024–1

Fee Rate 2024–1 would be calculated by dividing Budgeted CAT Costs 2024–1 by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for the four-month recovery period for CAT Fee 2024–1, as described in detail above.[95] Specifically, Fee Rate 2024–1 would be calculated by dividing $138,476,925 by 1,326,917,946,968.403 executed equivalent shares. As a result, Fee Rate 2024–1 would be $0.0001043598251997246 per executed equivalent share. Fee Rate 2024–1 is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide the Fee Rate in a fee filing for a CAT Fee.[96]

(3) Monthly Fees

CEBBs and CEBSs would be required to pay fees for CAT Fee 2024–1 on a monthly basis for four months, from November 2024 until February 2025.[97] A CEBB's or CEBS's fee for each month would be calculated based on the transactions in Eligible Securities executed by the CEBB or CEBS from the prior month.[98] Proposed paragraph (a)(3)(A) to the Consolidated Audit Trail Funding Fees section of the Fee Schedule would state that each CAT Executing Broker would receive its first invoice for CAT Fee 2024–1 in October 2024, and would receive an invoice for CAT Fee 2024–1 each month thereafter until January 2025. Proposed paragraph (a)(3)(B) to the Consolidated Audit Trail Funding Fees section of the Fee Schedule would state that ''Consolidated Audited Trail, LLC shall provide each CAT Executing Broker with an invoice for CAT Fee 2024–1 on a monthly basis.'' In addition, paragraph (b)(1) to the Consolidated Audit Trail Funding Fees section of the Fee Schedule would state that each CEBB and CEBS is required to pay its CAT fees ''each month.''

(4) Consolidated Audit Trail Funding Fees

To implement CAT Fee 2024–1, a ''Consolidated Audit Trail Funding Fees'' section would be added to the Exchange's Fee Schedule, to include the proposed paragraphs described below.

(A) Fee Schedule for CAT Fee 2024–1

The CAT NMS Plan states that:

Each Industry Member that is the CAT Executing Broker for the buyer in a transaction in Eligible Securities (''CAT Executing Broker for the Buyer'' or ''CEBB'') and each Industry Member that is the CAT Executing Broker for the seller in a transaction in Eligible Securities (''CAT Executing Broker for the Seller'' or ''CEBS'') will be required to pay a CAT Fee for each such transaction in in Eligible Securities in the prior month based on CAT Data. The CEBB's CAT Fee or CEBS's CAT Fee (as applicable) for each transaction in Eligible Securities will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate reasonably determined pursuant to paragraph (a)(i) of this Section 11.3.[99]

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

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

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

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

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

As noted in the Plan amendment for the CAT Funding Model, ''[a]s a practical matter, the fee filing would provide the exact fee per executed equivalent share to be paid for the CAT Fees, by multiplying the Fee Rate by one-third and describing the relevant number of decimal places for the fee.'' [100] Accordingly, proposed paragraph (a)(3)(B) to the Consolidated Audit Trail Funding Fees section of the Fee Schedule would set forth a fee rate of $0.000035 per executed equivalent share. This fee rate is calculated by multiplying Fee Rate 2024–1 of $0.0001043598251997246 by one-third, and rounding the result to six decimal places.[101] The Operating Committee determined to use six decimal places to balance the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.

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

Proposed paragraph (a)(3)(A) to the Consolidated Audit Trail Funding Fees section of the Fee Schedule also would describe the monthly cadence of the invoices for CAT Fee 2024–1. Specifically, after the first invoices are provided to CAT Executing Brokers in October 2024, invoices will be sent to CAT Executing Brokers each month thereafter until January 2025.

Proposed paragraph (a)(3)(B) to the Consolidated Audit Trail Funding Fees section of the Fee Schedule would describe the invoices for CAT Fee 2024–1. Proposed paragraph (a)(3)(B) to the Consolidated Audit Trail Funding Fees section of the Fee Schedule would state that ''Consolidated Audit Trail, LLC

[94] Section 11.3(a)(iii)(B) of the CAT NMS Plan.

[95] In approving the CAT Funding Model, the Commission stated that ''[t]he manner in which the Fee Rate for Prospective CAT Costs will be calculated (*i.e.,* by dividing the CAT costs reasonably budgeted for the upcoming year by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for the year) is reasonable.'' CAT Funding Model Approval Order at 62651.

[96] Section 11.3(a)(iii)(B) of the CAT NMS Plan.

[97] *See* Section 11.3(a)(iii)(A) of the CAT NMS Plan.

[98] *See* proposed paragraph (a)(3)(B) under the Consolidated Audit Trail Funding Fees section of the Fee Schedule.

[99] Section 11.3(a)(iii)(A) of the CAT NMS Plan.

[100] CAT Funding Model Approval Order at 62658, n.658.

[101] Dividing $0.0001043598251997246 by three equals $0.00003478660839990821. Rounding $0.00003478660839990821 to six decimal places equals $0.000035.

shall provide each CAT Executing Broker with an invoice for CAT Fee 2024–1 on a monthly basis.'' Proposed paragraph (a)(3)(B) to the Consolidated Audit Trail Funding Fees section of the Fee Schedule also would describe the fees to be set forth in the invoices for CAT Fee 2024–1. Specifically, it would state that ''[e]ach month, such invoices shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as a CAT Executing Broker for the Buyer ('CEBB') and/or the CAT Executing Broker for the Seller ('CEBS') (as applicable) from the prior month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of $0.000035 per executed equivalent share.''

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

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

Finally, proposed paragraph (a)(3)(D) to the Consolidated Audit Trail Funding Fees section of the Fee Schedule would set forth the requirement for the CAT Executing Brokers to pay the invoices for CAT Fee 2024–1. It would state that ''[e]ach CAT Executing Broker shall be required to pay each invoice for CAT Fee 2024–1 in accordance with paragraph (b).''

(B) Manner of Payment

The Exchange proposes to add paragraph (b)(1) to the Consolidated Audit Trail Funding Fees section of its Fee Schedule to describe the manner of payment of Industry Member CAT fees. The CAT NMS Plan requires the Operating Committee to establish a system for the collection of CAT fees.[102] The Plan Processor has established a billing system for CAT fees.[103] Therefore, the Exchange proposes to require CAT Executing Brokers to pay CAT Fee 2024–1 in accordance with such system. Accordingly, proposed paragraph (b)(1) would state that ''[e]ach CAT Executing Broker shall pay its CAT fees as required pursuant to paragraph (a) each month to the Consolidated Audit Trail, LLC in the manner prescribed by the Consolidated Audit Trail, LLC.''

(C) Failure to Pay CAT Fees

The CAT NMS Plan further states that:

> Participants shall require each Industry Member to pay all applicable fees authorized under this Article XI within thirty (30) days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If an Industry Member fails to pay any such fee when due (as determined in accordance with the preceding sentence), such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (a) the Prime Rate plus 300 basis points; or (b) the maximum rate permitted by applicable law.[104]

Accordingly, the Exchange proposes to add this requirement to the Exchange's Fee Schedule. Proposed paragraph (b)(2) to the Consolidated Audit Trail Funding Fees section of the Fee Schedule would state:

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

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

(5) CAT Fee Details

The CAT NMS Plan states that:

> Details regarding the calculation of a Participant or CAT Executing Broker's CAT Fees will be provided upon request to such Participant or CAT Executing Broker. At a minimum, such details would include each Participant or CAT Executing Broker's executed equivalent share volume and corresponding fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.[105]

Such information would provide CEBBs and CEBSs with the ability to understand the details regarding the calculation of their CAT Fee.[106] CAT LLC will provide CAT Executing Brokers with these details regarding the calculation of their CAT Fees on their monthly invoice for the CAT Fees.

In addition, CAT LLC will make certain aggregate statistics regarding CAT Fees publicly available. Specifically, the CAT NMS Plan states that, ''[f]or each CAT Fee, at a minimum, CAT LLC will make publicly available the aggregate executed equivalent share volume and corresponding aggregate fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.'' [107] Such aggregate statistics will be available on the CAT website.

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

---

[102] Section 11.4 of the CAT NMS Plan.

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

[104] Section 11.4 of the CAT NMS Plan.

[105] Section 11.3(a)(iv)(A) of the CAT NMS Plan.

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

[107] Section 11.3(a)(iv)(B) of the CAT NMS Plan. In approving the CAT Funding Model, the Commission stated that ''[t]he publication of the aggregate executed equivalent share volume and aggregate fee is appropriate because it would allow Participants and CAT Executing Brokers a high-level validation of executed volume and fees.'' CAT Funding Model Approval Order at 62667.

(6) Financial Accountability Milestones

The CAT NMS Plan states that ''[n]o Participant will make a filing with the SEC pursuant to Section 19(b) of the Exchange Act regarding any CAT Fee related to Prospective CAT Costs until the Financial Accountability Milestone related to Period 4 described in Section 11.6 has been satisfied.'' [108] The substantive requirements of the Financial Accountability Milestones related to Period 4 have been satisfied, as the CAT has completed the requirements for the ''Full Implementation of CAT NMS Plan Requirements.'' Section 1.1 of the CAT NMS Plan defines ''Full Implementation of CAT NMS Plan Requirements'' as:

> the point at which the Participants have satisfied all of their obligations to build and implement the CAT, such that all CAT system functionality required by Rule 613 and the CAT NMS Plan has been developed, successfully tested, and fully implemented at the initial Error Rates specified by Section 6.5(d)(i) or less, including functionality that efficiently permits the Participants and the Commission to access all CAT Data required to be stored in the Central Repository pursuant to Section 6.5(a), including Customer Account Information, Customer-ID, Customer Identifying Information, and Allocation Reports, and to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, including any related allocation information provided in an Allocation Report. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants' Quarterly Progress Reports. As indicated by the Participants' Quarterly Progress Report for the second and third quarter of 2024,[109] Full Implementation of CAT NMS Plan Requirements was completed on July 15, 2024.

(A) Transaction Reporting and Regulatory Access

The CAT system functionality required by Rule 613 and the CAT NMS Plan related to order and transaction data has been developed, successfully tested, and fully implemented, including the requirements related to regulatory access. The implementation of CAT requirements related to order and transaction data occurred over four phases: Phases 2a, 2b, 2c and 2d.[110] As described in the Quarterly Progress Reports and summarized below, each of these phases has been fully implemented.[111]

(i) Phase 2a

The Quarterly Progress Reports state that ''Phase 2a was fully implemented as of October 26, 2020.'' [112] The Phase 2a Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order, and includes the following data related to Eligible Securities that are equities:

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

In Phase 2a, Industry Members were not required to report modifications of a previously routed order in certain limited instances, nor were they required to report a cancellation of an order received from a Customer after the order has been executed.[113]

(ii) Phase 2b

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

[108] Section 11.3(a)(iii)(C) of the CAT NMS Plan.

[109] Q2 & Q3 2024 Quarterly Progress Report (July 29, 2024).

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

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

[112] *See, e.g.,* Q1 2024 Quarterly Progress Report (Apr. 30, 2024).

[113] Phased Reporting Exemptive Relief Order at 23076–78.

[114] *See, e.g.,* Q1 2024 Quarterly Progress Report (Apr. 30, 2024).

reported and marked as a combined order, but the linkage to the underlying orders is not required to be reported until Phase 2d.[115]

(iii) Phase 2c

The Quarterly Progress Reports state that ''Phase 2c was implemented as of April 26, 2021.'' [116] The Phase 2c Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order. That Order states that ''Phase 2c Industry Member Data'' is Industry Member Data related to Eligible Securities that are equities other than Phase 2a Industry Member Data, Phase 2d Industry Member Data, or Phase 2e Industry Member Data. Specifically, the Phase 2c Industry Member Data includes Industry Member Data that is related to Eligible Securities that are equities and that is related to: (1) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (2) quotes in unlisted Eligible Securities sent to an IDQS operated by a CAT Reporter (reportable by the Industry Member sending the quotes) (except for quotes reportable in Phase 2d, as discussed below); (3) electronic quotes in listed equity Eligible Securities (*i.e.,* NMS stocks) that are not sent to a national securities exchange or FINRA's Alternative Display Facility; (4) reporting changes to client instructions regarding modifications to algorithms; (5) marking as a representative order any order originated to work a customer order in price guarantee scenarios, such as a guaranteed VWAP; (6) flagging rejected external routes to indicate a route was not accepted by the receiving destination; (7) linkage of duplicate electronic messages related to a Manual Order Event between the electronic event and the original manual route; (8) special handling instructions on order route reports (other than the ISO, which is required to be reported in Phase 2a); (9) quote identifier on trade events; (10) reporting of LTIDs (if applicable) for accounts with Reportable Events that are reportable to CAT as of and including Phase 2c; (11) reporting of date account opened or Account Effective Date (as applicable) for accounts and reporting of a flag indicating the Firm Designated ID type as account or relationship; (12) order effective time for orders that are received by an Industry Member and do not become effective until a later time; (13) the modification or cancellation of an internal route of an order; and (14) linkages to the customer order(s) being represented for representative order scenarios, including agency average price trades, net trades, aggregated orders, and disconnected Order Management System (''OMS'')—Execution Management System (''EMS'') scenarios, as required in the Industry Member Technical Specifications.[117]

Phase 2c Industry Member Data also includes electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are equities and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: (1) an equity bid or offer is displayed publicly or has been communicated (a) for listed securities to the ADF operated by FINRA; or (b) for unlisted equity securities to an ''interdealer quotation system,'' as defined in FINRA Rule 6420(c); or (2) an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing; *i.e.,* no further manual or electronic action is required by the responder providing the quote in order to execute or cause a trade to be executed). With respect to OTC Equity Securities, OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter (other than such an IDQS that does not match and execute orders) are reportable by the Industry Member sending them in Phase 2c. Accordingly, any response to a request for quote or other form of solicitation response provided in a standard electronic format (*e.g.,* FIX) that meets this quote definition (*i.e.,* an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing) would be reportable in Phase 2c.[118]

(iv) Phase 2d

The Quarterly Progress Reports state that ''Phase 2d was fully implemented as of December 13, 2021.'' [119] The Phase 2d Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order. ''Phase 2d Industry Member Data'' is Industry Member Data that is related to Eligible Securities that are options other than Phase 2b Industry Member Data, Industry Member Data that is related to Eligible Securities that are equities other than Phase 2a Industry Member Data or Phase 2c Industry Member Data, and Industry Member Data other than Phase 2e Industry Member Data. Phase 2d Industry Member Data includes with respect to the Eligible Securities that are options: (1) simple manual orders; (2) electronic and manual paired orders; (3) all complex orders with linkages to all CAT-reportable legs; (4) LTIDs (if applicable) for accounts with Reportable Events for Phase 2d; (5) date account opened or Account Effective Date (as applicable) for accounts with an LTID and flag indicating the Firm Designated ID type as account or relationship for such accounts; (6) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (7) the modification or cancellation of an internal route of an order; and (8) linkage between a combined order and the original customer orders. Phase 2d Industry Member Data also would include electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are options and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: a listed option bid or offer which is accessible electronically by customers or other market participants and is immediately actionable (*i.e.,* no further action is required by the responder providing the quote in order to execute or cause a trade to be executed). Accordingly, any response to a request for quote or other form of solicitation response provided in standard electronic format (*e.g.,* FIX) that meets this definition is reportable in Phase 2d for options.[120]

Phase 2d Industry Member Data also includes with respect to Eligible Securities that are options or equities (1) receipt time of cancellation and modification instructions through Order Cancel Request and Order Modification Request events; (2) modifications of previously routed orders in certain instances; and (3) OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter that does not match and execute orders. In addition, subject to any exemptive or other relief, Phase 2d Industry Member Data includes verbal or manual quotes on an exchange floor or in the over-the-

[115] Phased Reporting Exemptive Relief Order at 23078.

[116] *See, e.g.,* Q1 2024 Quarterly Progress Report (Apr. 30, 2024).

[117] Phase Reporting Exemptive Relief Order at 23078–79.

[118] *Id.* at 23079.

[119] *See, e.g.,* Q1 2024 Quarterly Progress Report (Apr. 30, 2024).

[120] Phase Reporting Exemptive Relief Order at 23079.

counter market, where verbal quotes and manual quotes are defined as bids or offers in Eligible Securities provided verbally or that are provided or received other than via a CAT Reporter's order handling and execution system (*e.g.,* quotations provided via email or instant messaging).[121]

(v) Regulatory Access to Order and Transaction Data

The Financial Accountability Milestone related to Period 4 requires that CAT provide functionality that permits the Participants and the Commission to access Phase 2a, 2b, 2c and 2d data and to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, including any related allocation information provided in an Allocation Report. As CAT LLC reported on its Quarterly Progress Reports, the query tool functionality incorporating the data from Phases 2a, 2b, 2c and 2d was available to the Participants and to the Commission as of December 31, 2021.[122]

(B) CAIS Reporting and Regulatory Access

The CAT System functionality required by Rule 613 and the CAT NMS Plan related to Customer information has been developed, successfully tested, and fully implemented, including the requirements related to regulatory access. The implementation of CAT requirements related to Customer information occurred during Phase 2e. As described in the Quarterly Progress Reports and summarized below, Phase 2e has been fully implemented as of May 31, 2024.[123] Furthermore, because a month of customer and account information data is necessary to create report cards with regard to such data, the publication of monthly report cards with respect to customer and account information commenced on July 15, 2024.[124] Accordingly, the Financial Accountability Milestone related to Period 4 was completed on July 15, 2024.

(i) Phase 2e

The Q2 & Q3 2024 Quarterly Progress Report indicates that Phase 2e was fully implemented as of May 31, 2024.[125] Phase 2e Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order. ''Phase 2e Industry Member Data'' includes ''Customer Account Information and Customer Identifying Information, other than LTIDs, date account opened/Account Effective Date and Firm Designated ID type flag previously reported to the CAT.'' [126] LTIDs and Account Effective Date are both provided in Phases 2c and 2d in certain circumstances, as discussed above. Section 1.1 of the CAT NMS Plan defines the term ''Customer Account Information'' to

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

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

information of sufficient detail to identify a Customer, including, but not limited to, (a) with respect to individuals: name, address, date of birth, individual tax payer identification number (''ITIN'')/social security number (''SSN''), individual's role in the account (*e.g.,* primary holder, joint holder, guardian, trustee, person with the power of attorney); and (b) with respect to legal entities: name, address, Employer Identification Number (''EIN'')/Legal Entity Identifier (''LEI'') or other comparable common entity identifier, if applicable; provided, however, that an Industry Member that has an LEI for a Customer must submit the Customer's LEI in addition to other information of sufficient detail to identify a Customer.

(ii) Regulatory Access to Customer Information

The Financial Accountability Milestone related to Period 4 requires that CAT provide functionality that permits the Participants and the Commission to access Phase 2e Industry Member Data (in addition to the Phase 2a, 2b, 2c and 2d Industry Member Data, as discussed above). As CAT LLC reported on its Q2 & Q3 Quarterly Progress Report, regulators had efficient access to Phase 2e Industry Member Data via the query tool functionality required under the CAT NMS Plan by July 15, 2024.[127]

(C) Error Rate

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

(7) Participant Invoices

While CAT Fees charged to Industry Members become effective in accordance with the requirements of Section 19(b) of the Exchange Act,[128] CAT fees charged to Participants are implemented via an approval of the CAT fees by the Operating Committee in accordance with the requirements of the CAT NMS Plan.[129] On July 31, 2024, the Operating Committee approved the Participant fee related to CAT Fee 2024–1. Specifically, pursuant to the requirements of CAT NMS Plan,[130] each Participant would be required to pay a CAT fee calculated using the fee rate of $0.000035, which is the same fee rate that applies to CEBBs and CEBSs. Like CEBBs and CEBSs, each Participant would be required to pay such CAT fees on a monthly basis for four months, from November 2024 until February 2025, and each Participant's fee for each month would be calculated based on the transactions in Eligible Securities executed on the applicable exchange (for the Participant exchanges) or otherwise than on the exchange (for FINRA) in the prior month. Accordingly, each Participant will

[121] *Id.* at 23079–80.

[122] *See, e.g.,* Q1 2024 Quarterly Progress Report (Apr. 30, 2024).

[123] *Id.*

[124] Q2 & Q3 2024 Quarterly Progress Report (July 29, 2024).

[125] *Id.*

[126] Phase Reporting Exemptive Relief Order at 23080.

[127] Q2 & Q3 2024 Quarterly Progress Report (July 29, 2024).

[128] Section 11.3(a)(i)(A)(I) of the CAT NMS Plan.

[129] CAT Funding Model Approval Order at 62659.

[130] *See* Section 11.3(a)(ii) and appendix B of the CAT NMS Plan.

receive its first invoice in October 2024, and would receive an invoice each month thereafter until January 2025. Like with the CAT Fee 2024–1 applicable to CEBBs and CEBSs as described in proposed paragraph (a)(3)(C) to the Consolidated Audit Trail Funding Fees section of the Fee Schedule, notwithstanding the last invoice date of January 2025, Participants will continue to receive invoices for this fee each month until a new subsequent CAT Fee is in effect with regard to Industry Members. Furthermore, Section 11.4 of the CAT NMS Plan states that each Participant is required to pay such invoices as required by Section 3.7(b) of the CAT NMS Plan. Section 3.7(b) states, in part, that

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

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of the Exchange Act. The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[131] 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 Act,[132] because it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(8) of the Act,[133] which requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. These provisions also require that the Exchange be ''so organized and [have] the capacity to be able to carry out the purposes'' of the Act and ''to comply, and . . . to enforce compliance by its members and persons associated with its members,'' with the provisions of the Exchange Act.[134] Accordingly, a reasonable reading of the Act indicates that it intended that regulatory funding be sufficient to permit an exchange to fulfill its statutory responsibility under the Act, and contemplated that such funding would be achieved through equitable assessments on the members, issuers, and other users of an exchange's facilities.

The Exchange believes that this proposal is consistent with the Act because it implements provisions of the Plan and is designed to assist the Exchange in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [135] 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 Act.

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

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

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

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

Section 11.1(b) of the CAT NMS Plan states that ''[t]he Participants shall file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves.'' Per Section 11.1(b) of the CAT NMS Plan, the Exchange has filed this fee filing to implement the Industry Member CAT fees included in the CAT Funding Model. The Exchange believes that this proposal is consistent with the Exchange Act because it is consistent with, and implements, the CAT Funding Model in the CAT NMS Plan, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the CAT NMS Plan. In approving the CAT NMS Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [136] Similarly, in approving the CAT Funding Model, the SEC concluded that the CAT Funding Model met this standard.[137] As this proposal implements the Plan and the CAT Funding Model described therein, and applies specific requirements to Industry Members in compliance with the Plan, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Exchange Act.

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

The SEC has determined that the CAT Funding Model is reasonable and satisfies the requirements of the Exchange Act. Specifically, the SEC has concluded that the method for

[131] 15 U.S.C. 78f(b)(6).

[132] 15 U.S.C. 78f(b)(4).

[133] 15 U.S.C. 78f(b)(8).

[134] *See* Section 6(b)(1) of the Exchange Act.

[135] CAT NMS Plan Approval Order at 84697.

[136] *Id.* at 84696.

[137] CAT Funding Model Approval Order at 62686.

determining CAT Fees as set forth in Section 11.3 of the CAT NMS Plan, including the formula for calculating the Fee Rate, the identification of the parties responsible for payment and the transactions subject to the fee rate for CAT Fees, is reasonable and satisfies the Exchange Act.[138] In each respect, as discussed above, CAT Fee 2024–1 is calculated, and would be applied, in accordance with the requirements applicable to CAT Fees as set forth in the CAT NMS Plan. Furthermore, as discussed below, the Exchange believes that each of the figures for the variables in the SEC-approved formula for calculating the fee rate for CAT Fee 2024–1 is reasonable and consistent with the Exchange Act. Calculation of Fee Rate 2024–1 for CAT Fee 2024–1 requires the figures for Budgeted CAT Costs 2024–1, the executed equivalent share volume for the prior twelve months, the determination of CAT Fee 2024–1 Period, and the projection of the executed equivalent share volume for CAT Fee 2024–1 Period. Each of these variables is reasonable and satisfies the Exchange Act, as discussed throughout this filing.

(A) Budgeted CAT Costs 2024–1

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

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

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

Section 11.3(a)(iii)(B) of the CAT NMS Plan also requires that the fee filing provide ''sufficient detail to demonstrate that the budget for the upcoming year, or part of year, as applicable, is reasonable and appropriate.'' As discussed below, the Exchange believes that the budget for the CAT Fee 2024–1 Period is ''reasonable and appropriate.'' Each of the costs included in CAT Fee 2024–1 are reasonable and appropriate because the costs are consistent with standard industry practice, based on the need to comply with the requirements of the CAT NMS Plan, incurred subject to negotiations performed on an arm's length basis, and/or are consistent with the needs of any legal entity, particularly one with no employees.

(i) Technology: Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover budgeted costs related to cloud hosting services as a part of CAT Fees.[139] CAT LLC determined that the budgeted costs related to cloud hosting services described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2024–1. As described above, the cloud hosting services costs reflect, among other things, the breadth of the CAT cloud activities, data volumes far in excess of the original volume estimates, the need for specialized cloud services given the volume and unique nature of the CAT, the processing time requirements of the Plan, and regular efforts to seek to minimize costs where permissible under the Plan. CAT LLC determined that use of cloud hosting services is necessary for implementation of the CAT, particularly given the substantial data volumes associated with the CAT, and that the fees for cloud hosting services negotiated by FCAT were reasonable, taking into consideration a variety of factors, including the expected volume of data and the breadth of services provided and market rates for similar services.[140] Indeed, the actual costs of the CAT are far in excess of the original estimated costs of the CAT due to various factors, including the higher volumes and greater complexity of the CAT than anticipated when Rule 613 was originally adopted.

To comply with the requirements of the Plan, the breadth of the cloud activities related to the CAT is substantial. The cloud services not only include the production environment for the CAT, but they also include two industry testing environments, support environments for quality assurance and stress testing and disaster recovery capabilities. Moreover, the cloud storage costs are driven by the requirements of the Plan, which requires the storage of multiple versions of the data, from the original submitted version of the data through various processing steps, to the final version of the data.

Data volume is a significant driver of costs for cloud hosting services. When the Commission adopted the CAT NMS Plan in 2016, it estimated that the CAT would need to receive 58 billion records per day[141] and that annual operating costs for the CAT would range from $36.5 million to $55 million.[142] Through 2023, the actual data volumes have been five times that original estimate. The data volumes to date for 2024 have continued this trend.

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

The costs for cloud hosting services also reflect the need for specialized cloud hosting services given the data volume and unique processing needs of the CAT. The data volume as well as the data processing needs of the CAT necessitate the use of cloud hosting services. The equipment, power and services required for an on-premises data model, the alternative to cloud hosting services, would be cost prohibitive. Moreover, as CAT was being developed, there were limited cloud hosting providers that could satisfy all the necessary CAT requirements, including the operational and security criteria. Over time, more providers offering cloud hosting services that would satisfy these criteria have entered the market. CAT LLC will continue to evaluate alternative cloud hosting services, recognizing that the time and cost to move to an alternative cloud provider would be substantial.

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

[138] *Id.* at 62662–63.

[139] Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan.

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

[141] Appendix D–4 of the CAT NMS Plan at n.262.

[142] CAT NMS Plan Approval Order at 84801.

the level of fees assessed to support those costs.[143]

(ii) Technology: Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted costs related to operating fees as a part of CAT Fees.[144] CAT LLC determined that the budgeted costs related to operating fees described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2024–1.

The operating fees would include the negotiated fees paid by CAT LLC to the Plan Processor to operate and maintain the system for order-related information and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.,* management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the selection of FCAT as the Plan Processor was reasonable and appropriate given its expertise with securities regulatory reporting, after a process of considering other potential candidates.[145] CAT LLC also determined that the fixed price contract, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, was reasonable and appropriate, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity.[146] The services to be performed by FCAT for CAT Fee 2024–1 Period and the budgeted costs related to such services are described above.[147]

The operating costs also include costs related to the receipt of market data. CAT LLC anticipates continuing to receive certain market data from Exegy during the CAT Fee 2024–1 Period. CAT LLC anticipates that Exegy will continue to provide data that meets the SIP Data requirements of the CAT NMS Plan and that the fees are reasonable and in line with market rates for market data received.[148]

(iii) Technology: CAIS Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted costs related to CAIS operating fees as a part of CAT Fees.[149] CAT LLC determined that the budgeted costs related to CAIS operating fees described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2024–1. The CAIS operating fees would include the fees paid to the Plan Processor to operate and maintain CAIS and to perform the business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.,* management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the fees for FCAT's CAIS-related services, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity, are reasonable and appropriate.[150] The services to be performed by FCAT for the CAT Fee 2024–1 Period and the budgeted costs for such services are described above.[151]

(iv) Technology: Change Request Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted costs related to change request fees as a part of CAT Fees.[152] CAT LLC determined that the budgeted costs related to change request fees described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2024–1. It is common practice to utilize a change request process to address evolving needs in technology projects. This is particularly true for a project like CAT that is the first of its kind, both in substance and in scale. The substance and costs of each of the change requests are evaluated by the Operating Committee and approved in accordance with the requirements for Operating Committee meetings. In each case, CAT LLC forecasts that the change requests will be necessary to implement the CAT. As described above,[153] CAT LLC has included a reasonable placeholder budget amount for potential change requests that may arise during the CAT Fee 2024–1 Period. As noted above, the total budgeted costs for change requests during the CAT Fee 2024–1 Period represent a small percentage of Budgeted CAT Costs 2024–1—that is, approximately 0.12% of Budgeted CAT Costs 2024–1.

(v) Capitalized Developed Technology Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted costs related to capitalized developed technology costs as a part of CAT Fees.[154] In general, capitalized developed technology costs would include costs related to, for example, certain development costs, costs related to certain modifications, upgrades and other changes to the CAT, CAIS implementation fees and license fees. The amount and type of budgeted capitalized developed technology costs for the CAT Fee 2024–1 Period, which relate to the CAIS software license fee and technology changes to be implemented by FCAT, are described in more detail above.[155] CAT LLC determined that these budgeted costs are reasonable and should be included as a part of Budgeted CAT Costs 2024–1.

(vi) Legal

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted costs related to legal fees as a part of CAT Fees.[156] CAT LLC determined that the budgeted legal costs described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2024–1. Given the unique nature of the CAT, the number of parties involved with the CAT (including, for example, the SEC, Participants, Industry Members, and vendors) and the many regulatory, contractual and other issues associated with the CAT, the scope of the necessary legal services is substantial. CAT LLC determined that the scope of the proposed legal services is necessary to implement and maintain the CAT and that the legal rates reflect the specialized services necessary for such a project. CAT LLC determined to hire and continue to use each law firm based on a variety of factors, including their relevant expertise and fees. In each case, CAT LLC determined that the fee rates were in line with market rates for specialized legal expertise. In addition, CAT LLC determined that the budgeted costs for the legal projects were appropriate given the breadth of the services provided. The services to be performed by each law firm for the CAT Fee 2024–1 Period and the budgeted

[143] *See* Securities Exchange Act Rel. No. 97151 (Mar. 15, 2023), 88 FR 17086, 17117 (Mar. 21, 2023) (describing key cost discipline mechanisms for the CAT).

[144] Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan.

[145] *See* Section 3(a)(2)(C)(ii) above.

[146] *Id.*

[147] *Id.*

[148] *Id.*

[149] Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan.

[150] *See* Section 3(a)(2)(C)(iii) above.

[151] *Id.*

[152] Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan.

[153] *See* Section 3(a)(2)(C)(iv) above.

[154] Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan.

[155] *See* Section 3(a)(2)(C)(v) above.

[156] Section 11.3(a)(iii)(B)(B)(2) of the CAT NMS Plan.

costs related to such services are described above.[157]

(vii) Consulting

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted consulting costs as a part of CAT Fees.[158] CAT LLC determined that the budgeted consulting costs described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2024–1. Because there are no CAT employees [159] and because of the significant number of issues associated with the CAT, the consultants are budgeted to provide assistance in the management of various CAT matters and the processes related to such matters.[160] CAT LLC determined the budgeted consulting costs were appropriate, as the consulting services were to be provided at reasonable market rates that were comparable to the rates charged by other consulting firms for similar work. Moreover, the total budgeted costs for such consulting services were appropriate in light of the breadth of services provided by Deloitte. The services budgeted to be performed by Deloitte and the budgeted costs related to such services are described above.[161]

(viii) Insurance

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted insurance costs as a part of CAT Fees.[162] CAT LLC determined that the budgeted insurance costs described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2024–1. CAT LLC determined that it is common practice to have directors' and officers' liability insurance, and errors and omissions liability insurance. CAT LLC further determined that it was important to have cyber security insurance given the nature of the CAT, and such a decision is consistent with the CAT NMS Plan, which states that the cyber incident response plan may include ''[i]nsurance against security breaches.'' [163] As discussed above,[164] CAT LLC determined that the budgeted insurance costs were appropriate given its prior experience with this market and an analysis of the alternative insurance offerings. Based on this analysis, CAT LLC determined that the selected insurance policies provided appropriate coverage at reasonable market rates.[165]

(ix) Professional and Administration

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted professional and administration costs as a part of CAT Fees.[166] CAT LLC determined that the budgeted professional and administration costs described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2024–1. Because there are no CAT employees, all required accounting, financial, tax, cash management and treasury functions for CAT LLC have been outsourced at market rates. In addition, the required annual financial statement audit of CAT LLC is included in professional and administration costs, which costs are also at market rates. The services performed by Anchin and Grant Thornton and the costs related to such services are described above.[167]

CAT LLC anticipates continuing to make use of Anchin, a financial advisory firm, to assist with financial matters for the CAT. CAT LLC determined that the budgeted costs for Anchin were appropriate, as the financial advisory services were to be provided at reasonable market rates that were comparable to the rates charged by other such firms for similar work. Moreover, the total budgeted costs for such financial advisory services were appropriate in light of the breadth of services provided by Anchin. The services budgeted to be performed by Anchin and the budgeted costs related to such services are described above.[168]

CAT LLC anticipates continuing to make use of Grant Thornton, an independent accounting firm, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC determined that the budgeted costs for Grant Thornton were appropriate, as the accounting services were to be provided at reasonable market rates that were comparable to the rates charged by other such firms for similar work. Moreover, the total budgeted costs for such accounting services were appropriate in light of the breadth of services provided by Grant Thornton. The services budgeted to be performed by Grant Thornton and the budgeted costs related to such services are described above.[169]

(x) Public Relations Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted public relations costs as a part of CAT Fees.[170] CAT LLC determined that the budgeted public relations costs described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2024–1. CAT LLC determined that the types of public relations services to be utilized were beneficial to the CAT and market participants more generally. Public relations services are important for various reasons, including monitoring comments made by market participants about CAT and understanding issues related to the CAT discussed on the public record.[171] By continuing to engage a public relations firm, CAT LLC will be better positioned to understand and address CAT issues to the benefit of all market participants.[172] Moreover, CAT LLC determined that the budgeted rates charged for such services were in line with market rates.[173] As noted above, the total budgeted public relations costs for the CAT Fee 2024–1 Period represent a small percentage of Budgeted CAT Costs 2024–1—that is, approximately 0.03% of Budgeted CAT Costs 2024–1.

(xi) Reserve

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted reserve costs as a part of CAT Fees.[174] CAT LLC determined that the inclusion of a reserve in the amount of 25% of Budgeted CAT Costs 2024–1 complies with the requirements of the CAT NMS Plan related to a reserve, is a reasonable amount and should be included as a part of Budgeted CAT Costs 2024–1.

In its approval order for the CAT Funding Model, the Commission stated that it would be reasonable for the annual operating budget for the CAT to ''include a reserve of not more than 25% of the annual budget.'' [175] In making this

[157] *See* Section 3(a)(2)(B)(vi) above.

[158] Section 11.3(b)(iii)(B)(B)(3) of the CAT NMS Plan.

[159] As stated in the filing of the proposed CAT NMS Plan, ''[i]t is the intent of the Participants that the Company have no employees.'' Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614, 30621 (May 17, 2016).

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

[161] Section 3(a)(2)(C)(vii) of the CAT NMS Plan.

[162] Section 11.3(b)(iii)(B)(B)(4) of the CAT NMS Plan.

[163] Section 4.1.5 of appendix D of the CAT NMS Plan.

[164] *See* Section 3(a)(2)(C)(viii) above.

[165] *Id.*

[166] Section 11.3(a)(iii)(B)(B)(5) of the CAT NMS Plan.

[167] *See* Section 3(a)(2)(C)(ix) above.

[168] *Id.*

[169] *Id.*

[170] Section 11.3(a)(iii)(B)(B)(6) of the CAT NMS Plan.

[171] *See* Section 3(a)(2)(C)(x) above.

[172] *Id.*

[173] *Id.*

[174] Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan.

[175] CAT Funding Model Approval Order at 62657.

statement, the Commission noted the following:

> Because the CAT is a critical regulatory tool/system, the CAT needs to have a stable funding source to build financial stability to support the Company as a going concern. Funding for the CAT, as noted in Section 11.1(b), is the responsibility of the Participants and the industry. Because CAT fees are charged based on the budget, which is based on anticipated volume, it is reasonable to have a reserve on hand to prevent a shortfall in the event there is an unexpectedly high volume in a given year. A reserve would help to assure that the CAT has sufficient resources to cover costs should there be unanticipated costs or costs that are higher than expected.[176]

The SEC also recognized that that a reserve would help address the difficulty in predicting certain variable CAT costs, like trading volume.[177] The SEC also recognized that CAT fees will be collected approximately three months after trading activity on which a CAT fee is based, or 25% of the year, and that the reserve would be available to address funding needs related to this three-month delay.[178] The inclusion of the proposed reserve in Budgeted CAT Costs 2024–1 would provide each of these benefits to the CAT. The reserve is discussed further above.[179]

(B) Reconciliation of Budget to the Collected Fees

The CAT NMS Plan also requires fee filings for Prospective CAT Fees to include ''a discussion of how the budget is reconciled to the collected fees.'' [180] To date, CAT LLC has not collected any CAT fees. Accordingly, there are no collected fees to be reconciled with the budget.

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

The total executed equivalent share volume of transactions in Eligible Securities for the period from June 2023 through May 2024 was 3,980,753,840,905.21 executed equivalent shares. CAT LLC determined the total executed equivalent share volume for the prior twelve months by counting executed equivalent shares in the same manner as it counts executed equivalent shares for CAT billing purposes.[181]

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

CAT LLC has determined to calculate the projected total executed equivalent share volume for the four months in which CAT Fee 2024–1 Period would be payable by multiplying by 4/12ths (*i.e.,* one-third) the executed equivalent share volume for the prior 12 months.[182] CAT LLC determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has remained relatively constant in recent years. For example, the executed equivalent share volume for 2021 was 3,963,697,612,395 executed equivalent shares, the executed equivalent share volume for 2022 was 4,039,821,841,560.31 executed equivalent shares, and the executed equivalent share volume for 2023 was 3,868,940,345,680.6. Accordingly, the projected total executed equivalent share volume for the four-month period for CAT Fee 2024–1 is 1,326,917,946,968.403 executed equivalent shares.[183]

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

(i) Decimal Places

As noted in the approval order for the CAT Funding Model, as a practical matter, the fee filing for a CAT Fee would provide the exact fee per executed equivalent share to be paid for each CAT Fee, by multiplying the Fee Rate by one-third and describing the relevant number of decimal places for the fee rate.[184] Accordingly, proposed paragraph (a)(3)(B) to the Consolidated Audit Trail Funding Fees section of the Fee Schedule would set forth a fee rate of $0.000035 per executed equivalent share. This fee rate is calculated by multiplying Fee Rate 2024–1 by one-third and rounding the result to six decimal places. CAT LLC determined that the use of six decimal places is reasonable as it balances the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.[185]

(ii) Reasonable Fee Level

The Exchange believes that imposing CAT Fee 2024–1 with a fee rate of $0.000035 per executed equivalent share is reasonable because it provides for a revenue stream for the Company that is aligned with Budgeted CAT Costs 2024–1 and such budgeted costs would be spread out over a four-month period. Moreover, the Exchange believes that the level of the fee rate is reasonable, as it is comparable to other transaction-based fees. Indeed, CAT Fee 2024–1 is significantly lower than fees assessed pursuant to Section 31 (*e.g.,* $0.0009 per share to 0.0004 per share),[186] and, as a result, the magnitude of CAT Fee 2024–1 is small, and therefore will mitigate any potential adverse economic effects or inefficiencies.[187]

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

CAT Fee 2024–1 provides for an equitable allocation of fees, as it equitably allocates CAT costs between and among the Participants and Industry Members. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfied the requirements of the Exchange Act, including the formula for calculating CAT Fees as well as the Industry Members to be charged the CAT Fees.[188] In approving the CAT Funding Model, the SEC stated that ''[t]he Participants have sufficiently demonstrated that the proposed allocation of fees is reasonable.'' [189] Accordingly, the CAT Funding Model sets forth the requirements for allocating fees related to Budgeted CAT Costs among Participants and Industry Members, and the fee filings for CAT Fees must comply with those requirements.

CAT Fee 2024–1 provides for an equitable allocation of fees as it complies with the requirements regarding the calculation of CAT Fees as set forth in the CAT NMS Plan. For example, as described above, the calculation of CAT Fee 2024–1 complies with the formula set forth in Section 11.3(a) of the CAT NMS Plan. In addition, CAT Fee 2024–1 would be charged to CEBBs and CEBSs in

[176] *Id.*

[177] *Id.*

[178] *Id.*

[179] *See* Section 3(a)(2)(C)(xi) above.

[180] Section 11.3(a)(iii)(B)(C) of the CAT NMS Plan.

[181] *See* Section 3(a)(2)(D) above.

[182] *Id.*

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

[184] CAT Funding Model Approval Order at 62658, n.658.

[185] *See* Section 3(a)(4)(A) above.

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

[187] *Id.*

[188] *See* Section 11.3(b) of the CAT NMS Plan.

[189] CAT Funding Model Approval Order at 62629.

accordance with Section 11.3(a) of the CAT NMS Plan. Furthermore, the Participants would be charged for their designated share of Budgeted CAT Costs 2024–1 through a fee implemented via the CAT NMS Plan, which would have the same fee rate as CAT Fee 2024–1.

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

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

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

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

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

Section 6(b)(8) of the Act [190] requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that CAT Fee 2024–1 implements provisions of the CAT NMS Plan that were approved by the Commission and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan.

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

Furthermore, in approving the CAT Funding Model, the SEC analyzed the potential competitive impact of the CAT Funding Model, including competitive issues related to market services, trading services and regulatory services, efficiency concerns, and capital formation.[191] The SEC also analyzed the potential effect of CAT fees calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. Based on this analysis, the SEC approved the CAT Funding Model as compliant with the Exchange Act. CAT Fee 2024–1 is calculated and implemented in accordance with the CAT Funding Model as approved by the SEC.

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

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

No written comments were 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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act [192] and Rule 19b–4(f)(2) thereunder,[193] because it establishes or changes a due, or fee.

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

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSENAT–2024–23 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–NYSENAT–2024–23. 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

[190] 15 U.S.C. 78f(b)(8).

[191] CAT Funding Model Approval Order at 62676–86.

[192] 15 U.S.C. 78s(b)(3)(A)(ii).

[193] 17 CFR 240.19b–4(f)(2).

internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSENAT–2024–23 and should be submitted on or before September 25, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[194]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–19760 Filed 9–3–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100849; File No. SR–NYSEARCA–2024–69]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Fees for Industry Members Related to Reasonably Budgeted Costs of the National Market System Plan Governing the Consolidated Audit Trail for the Period From July 16, 2024 Through December 31, 2024

August 28, 2024.

Pursuant to Section 19(b)(1) under the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 16, 2024, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the NYSE Arca Equities Fees and Charges (''Equities Fee Schedule'') and the NYSE Arca Options Fees and Charges (''Options Fee Schedule'') to establish fees for Industry Members[3] related to reasonably budgeted CAT costs of the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'') for the period from July 16, 2024 through December 31, 2024. These fees would be payable to Consolidated Audit Trail, LLC (''CAT LLC'' or the ''Company'') and referred to as CAT Fee 2024–1, and would be described in a section of the Equities Fee Schedule and the Options Fee Schedule titled ''Consolidated Audit Trail Funding Fees.'' The fee rate for CAT Fee 2024–1 would be $0.000035 per executed equivalent share. CAT Executing Brokers will receive their first monthly invoice for CAT Fee 2024–1 in October 2024 calculated based on their transactions as CAT Executing Brokers for the Buyer (''CEBB'') and/or CAT Executing Brokers for the Seller (''CEBS'') in September 2024. The proposed rule change is available on the Exchange's website at *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 Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 11, 2012, the Commission adopted Rule 613 of Regulation NMS, which required the self-regulatory organizations (''SROs'') to submit a national market system (''NMS'') plan to create, implement and maintain a consolidated audit trail that would capture customer and order event information for orders in NMS securities across all markets, from the time of order inception through routing, cancellation, modification or execution.[4] On November 15, 2016, the Commission approved the CAT NMS Plan.[5] Under the CAT NMS Plan, the Operating Committee has the discretion to establish funding for CAT LLC to operate the CAT, including establishing fees for Industry Members to be assessed by CAT LLC that would be implemented on behalf of CAT LLC by the Participants.[6] The Operating Committee adopted a revised funding model to fund the CAT (''CAT Funding Model''). On September 6, 2023, the Commission approved the CAT Funding Model after concluding that the model was reasonable and that it satisfied the requirements of Section 11A of the Exchange Act and Rule 608 thereunder.[7]

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

[194] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] An ''Industry Member'' is defined as ''a member of a national securities exchange or a member of a national securities association.'' *See* NYSE Arca Rule 11.6810(u). *See also* Section 1.1 of the CAT NMS Plan. Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the CAT NMS Plan and/or the CAT Compliance Rule. *See* NYSE Arca Rule 11.6810.

[4] Securities Exchange Act Rel. No. 67457 (July 18, 2012), 77 FR 45722 (Aug. 1, 2012).

[5] Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (''CAT NMS Plan Approval Order'').

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

[7] Securities Exchange Act Rel. No. 98290 (Sept. 6, 2023), 88 FR 62628 (Sept. 12, 2023) (''CAT Funding Model Approval Order'').

[8] Under the CAT Funding Model, the Operating Committee may establish CAT Fees related to CAT costs going forward. Section 11.3(a) of the CAT NMS Plan. This filing only establishes CAT Fee 2024–1 related to reasonably budgeted CAT costs for the period from July 16, 2024 through December

Under the CAT Funding Model, Participants, CEBBs and CEBSs are subject to fees designed to cover the ongoing budgeted costs of the CAT, as determined by the Operating Committee. ''The Operating Committee will establish fees ('CAT Fees') to be payable by Participants and Industry Members with regard to CAT costs not previously paid by the Participants ('Prospective CAT Costs').'' [9] In establishing a CAT Fee, the Operating Committee will calculate a ''Fee Rate'' for the relevant period. Then, for each month in which a CAT Fee is in effect, each CEBB and CEBS would be required to pay the fee for each transaction in Eligible Securities executed by the CEBB or CEBS from the prior month as set forth in CAT Data, where the fee for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate.[10]

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

CAT LLC proposes to charge CEBBs and CEBSs (as described in more detail below) CAT Fee 2024–1 to recover the reasonably budgeted CAT costs for July 16, 2024 through December 31, 2024, in accordance with the CAT Funding Model. To implement this fee on behalf of CAT LLC, the CAT NMS Plan requires the Participants to ''file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves, and such fees shall be labeled as 'Consolidated Audit Trail Funding Fees.' '' [17] The Plan further states that ''[o]nce the Operating Committee has approved such Fee Rate, the Participants shall be required to file with the SEC pursuant to Section 19(b) of the Exchange Act CAT Fees to be charged to Industry Members calculated using such Fee Rate.'' [18] Accordingly, the purpose of this filing is to implement a CAT Fee on behalf of CAT LLC for Industry Members, referred to as CAT Fee 2024–1, in accordance with the CAT NMS Plan.

(1) CAT Executing Brokers

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

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

The following fields of the Participant Technical Specifications indicate the CAT Executing Brokers for the transactions executed on an exchange:

EQUITY ORDER TRADE (EOT) [21]

No.	Field name	Data type	Description	Include key
12.n.8/13.n.8	member	Member Alias	The identifier for the member firm that is responsible for the order on this side of the trade Not required if there is no order for the side as indicated by the NOBUYID/NOSELLID instruction. This must be provided if orderID is provided	C

31, 2024 as described herein; it does not address any other potential CAT Fees related to CAT costs. Any such other CAT Fee will be subject to a separate fee filing. In addition, under the CAT Funding Model, the Operating Committee may establish one or more Historical CAT Assessments. Section 11.3(b) of the CAT NMS Plan. This filing does not address any Historical CAT Assessments.

[9] Section 11.3(a) of the CAT NMS Plan.

[10] In approving the CAT Funding Model, the Commission stated that, ''[t]he proposed recovery of Prospective CAT Costs is appropriate.'' CAT Funding Model Approval Order at 62651.

[11] Section 11.3(a)(iii)(A) of the CAT NMS Plan.

[12] Section 11.3(a)(ii)(A) of the CAT NMS Plan.

[13] Section 11.3(a)(ii) of the CAT NMS Plan.

[14] Section 11.3(a)(i)(A)(I) of the CAT NMS Plan.

[15] CAT Funding Model Approval Order at 62659.

[16] *See* Section 11.3(a)(ii) and Appendix B of the CAT NMS Plan.

[17] Section 11.1(b) of the CAT NMS Plan.

[18] Section 11.3(a)(i)(A)(I) of the CAT NMS Plan.

[19] In its approval of the CAT Funding Model, the Commission determined that charging CAT fees to CAT Executing Brokers was reasonable. In reaching this conclusion, the Commission noted that the use of CAT Executing Brokers is appropriate because the CAT Funding Model is based upon the calculation of *executed* equivalent shares, and, therefore, charging CAT Executing Brokers would reflect their executing role in each transaction. Furthermore, the Commission noted that, because CAT Executing Brokers are already identified in transaction reports from the exchanges and FINRA's equity trade reporting facilities recorded in CAT Data, charging CAT Executing Brokers could streamline the billing process. CAT Funding Model Approval Order at 62629.

[20] Section 1.1 of the CAT NMS Plan. Note that CEBBs and CEBSs may, but are not required to, pass-through their CAT Fees to their clients, who may, in turn, pass their fees to their clients until they are imposed ultimately on the account that executed the transaction. *See* CAT Funding Model Approval Order at 62649.

[21] *See* Table 23, Section 4.7 (Order Trade Event) of the CAT Reporting Technical Specifications for Plan Participants, Version 4.1.0–r21 (Apr. 15, 2024), *https://www.catnmsplan.com/sites/default/files/2024-04/04.15.2024-CAT_Reporting_Technical_Specifications_for_Participants_4.1.0-r21.pdf* (''CAT Reporting Technical Specifications for Plan Participants'').

OPTION TRADE (OT) [22]

No.	Field name	Data type	Description	Include key
16.n.13/17.n.13	member	Member Alias	The identifier for the member firm that is responsible for the order.	R

In addition, the following fields of the Participant Technical Specifications would indicate the CAT Executing Brokers for the transactions executed otherwise than on an exchange:

TRF/ORF/ADF TRANSACTION DATA EVENT (TRF) [23]

No.	Field name	Data type	Description	Include key
26	reportingExecutingMpid	Member Alias	MPID of the executing party	R
28	contraExecutingMpid	Member Alias	MPID of the contra-side executing party	C

(2) Calculation of Fee Rate 2024–1

The Operating Committee determined the Fee Rate to be used in calculating CAT Fee 2024–1 (''Fee Rate 2024–1'') by dividing the reasonably budgeted CAT costs (''Budgeted CAT Costs 2024–1'') for the period from July 16, 2024 through December 31, 2024 (''CAT Fee 2024–1 Period'') by the reasonably projected total executed share volume of all transactions in Eligible Securities for the four-month recovery period, as discussed in detail below.[24] Based on this calculation, the Operating Committee has determined that Fee Rate 2024–1 would be $0.0001043598251997246 per executed equivalent share. This rate is then divided by three and rounded to determine the fee rate of $0.000035 per executed equivalent share that will be assessed to CEBBs and CEBSs, as also discussed in detail below.

(A) CAT Fee 2024–1 Period

CAT LLC proposes to implement CAT Fee 2024–1 as the first CAT Fee related to Prospective CAT Costs. CAT LLC proposes to commence CAT Fee 2024–1 during the year, rather than at the beginning of the year. Accordingly, CAT Fee 2024–1 ''would be calculated as described in paragraph II'' of Section 11.3(a)(i)(A) of the CAT NMS Plan, which states that ''[d]uring each year, the Operating Committee will calculate a new Fee Rate by dividing the reasonably budgeted CAT costs for the remainder of the year by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for the remainder of the year.'' [25] For CAT Fee 2024–1, the reasonably budgeted CAT costs for ''the remainder of the year'' are the reasonably budgeted CAT costs from July 16, 2024 through December 31, 2024. This period is referred to as the CAT Fee 2024–1 Period. Such costs would be recovered over a four-month period, where the first invoices are sent in October 2024 based on transactions in September 2024.

(B) Executed Equivalent Shares for Transactions in Eligible Securities

Under the CAT NMS Plan, for purposes of calculating CAT Fees, executed equivalent shares in a transaction in Eligible Securities will be reasonably counted as follows: (1) each executed share for a transaction in NMS Stocks will be counted as one executed equivalent share; (2) each executed contract for a transaction in Listed Options will be counted based on the multiplier applicable to the specific Listed Options (*i.e.,* 100 executed equivalent shares or such other applicable multiplier); and (3) each executed share for a transaction in OTC Equity Securities will be counted as 0.01 executed equivalent share.[26]

(C) Budgeted CAT Costs 2024–1

The CAT NMS Plan states that ''[t]he budgeted CAT costs for the year shall be comprised of all reasonable fees, costs and expenses reasonably budgeted to be incurred by or for the Company in connection with the development, implementation and operation of the CAT as set forth in the annual operating budget approved by the Operating Committee pursuant to Section 11.1(a) of the CAT NMS Plan, or as adjusted during the year by the Operating Committee.'' [27] Section 11.1(a) of the CAT NMS Plan describes the requirement for the Operating Committee to approve an operating budget for CAT LLC on an annual basis. It requires the budget to ''include the projected costs of the Company, including the costs of developing and operating the CAT for the upcoming year, and the sources of all revenues to cover such costs, as well as the funding of any reserve that the Operating Committee reasonably deems appropriate for the prudent operation of the Company.'' Section 11.1(a)(i) of the CAT NMS Plan further states that:

> [w]ithout limiting the foregoing, the reasonably budgeted CAT costs shall include technology (including cloud hosting services, operating fees, CAIS operating fees, change request fees and capitalized developed technology costs), legal, consulting, insurance, professional and administration, and public relations costs, a reserve and such other cost categories as reasonably determined by the Operating Committee to be included in the budget.

In accordance with the requirements under the CAT NMS Plan, the Operating Committee approved an annual budget for 2024 for CAT LLC in December 2023 (''Original 2024 Budget'').[28] In August 2024, the Operating Committee

[22] *See* Table 51, Section 5.2.5.1 (Simple Option Trade Event) of the CAT Reporting Technical Specifications for Plan Participants.

[23] *See* Table 61, Section 6.1 (TRF/ORF/ADF Transaction Data Event) of the CAT Reporting Technical Specifications for Plan Participants.

[24] Section 11.3(a)(i) of the CAT NMS Plan.

[25] Section 11.3(a)(i)(A)(II) of the CAT NMS Plan.

[26] Section 11.3(a)(i)(B) of the CAT NMS Plan. In approving the CAT Funding Model, the Commission concluded that ''the use of executed equivalent share volume as the basis of the proposed cost allocation methodology is reasonable and consistent with the approach taken by the funding principles of the CAT NMS Plan.'' CAT Funding Model Approval Order at 62640.

[27] Section 11.3(a)(i)(C) of the CAT NMS Plan.

[28] The Original 2024 Budget is available on the CAT website (*https://www.catnmsplan.com/sites/default/files/2024-07/07.09.2024-CAT%20LLC-2024-Financial-and-Operating-Budget.pdf*).

approved an updated budget for 2024 (''Updated 2024 Budget'').[29] The Updated 2024 Budget includes actual costs for each category for the months of January through July 2024, with estimated costs for the remaining months of 2024. The Operating Committee also approved the budgeted CAT costs for the CAT Fee 2024–1 Period (*i.e.,* Budgeted CAT Costs 2024–1), which are a subset of the costs set forth in the Updated 2024 Budget.

As described in detail below, the Budgeted CAT Costs 2024–1 would be $138,476,925. CEBBs collectively will be responsible for one-third of the Budged CAT Costs 2024–1 (which is $46,158,975), and CEBSs collectively will be responsible for one-third of Budgeted CAT Costs 2024–1 (which is $46,158,975).

The following describes in detail Budgeted CAT Costs 2024–1 for the CAT Fee 2024–1 Period. The following cost details are provided in accordance with the requirement in the CAT NMS Plan to provide in the fee filing the following:

> the budget for the upcoming year (or remainder of the year, as applicable), including a brief description of each line item in the budget, including (1) technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration and (6) public relations costs, a reserve and/or such other categories as reasonably determined by the Operating Committee to be included in the budget, and the reason for changes in each such line item from the prior CAT fee filing.[30]

Each of the costs described below are reasonable, appropriate and necessary for the creation, implementation and maintenance of CAT.

The following table breaks down Budgeted CAT Costs 2024–1 into the categories set forth in Section 11.3(a)(iii)(B) of the CAT NMS Plan.[31]

Budget category	Budgeted CAT costs 2024–1 *
Capitalized Developed Technology Costs **	$4,101,990
Technology Costs:	99,728,258
Cloud Hosting Services	76,278,426
Operating Fees	14,008,947.50
CAIS Operating Fees	9,278,384.50
Change Request Fees	162,500
Legal	4,484,554.50
Consulting	652,623
Insurance	1,342,345
Professional and administration	428,544.50
Public relations	43,225
Subtotal	110,781,540
Reserve	27,695,385
Total Budgeted CAT Costs 2024–1	138,476,925

* Budgeted CAT Costs 2024–1 described in this table of costs were determined based an analysis of a variety of factors, including historical costs/invoices, estimated costs from respective vendors/service providers, contractual terms with vendors/service providers, anticipated service levels and needs, and discussions with vendors and Participants.

** The non-cash amortization of these capitalized developed technology costs to be incurred during the CAT Fee 2024–1 Period have been appropriately excluded from the above table.[32]

To the extent that CAT LLC enters into notes with Participants or others to pay costs incurred during the period from July 16, 2024 through December 31, 2024, CAT LLC will use the proceeds from the CAT Fee 2024–1 and the related Participant CAT fees to repay such notes.

(i) Technology Costs—Cloud Hosting Services

(a) Description of Cloud Hosting Services Costs

Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the cloud hosting services costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $76,278,426 in technology costs for cloud hosting services for the CAT Fee 2024–1 Period. The technology costs for cloud hosting services represent costs reasonably budgeted to be incurred for services provided by the cloud services provider for the CAT, Amazon Web Services, Inc. (''AWS''), during the CAT Fee 2024–1 Period.

In the agreement between CAT LLC and the Plan Processor for the CAT (''Plan Processor Agreement''), FINRA CAT, LLC (''FCAT''), AWS was named as the subcontractor to provide cloud hosting services. Under the Plan Processor Agreement, CAT LLC is required to pay FCAT the fees incurred by the Plan Processor for cloud hosting services provided by AWS as FCAT's subcontrator [*sic*] on a monthly basis for the cloud hosting services, and FCAT, in turn, pays such fees to AWS. The fees for cloud hosting services were negotiated by FCAT on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the expected volume of data, the breadth of services provided and market rates for similar services. It is anticipated that AWS will provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools during the CAT Fee 2024–1 Period. Services provided by AWS include storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as

[29] The Updated 2024 Budget is available on the CAT website (*https://www.catnmsplan.com/sites/default/files/2024-08/07.31.24-CAT-LLC-2024-Financial_and_Operating-Budget.pdf*).

[30] Section 11.3(a)(iii)(B) of the CAT NMS Plan.

[31] Note that costs and related cost calculations provided in this filing may reflect minor variations from the budgeted costs due to rounding.

[32] With respect to certain costs that were ''appropriately excluded,'' such excluded costs relate to the amortization of capitalized technology costs, which are amortized over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

development, performance testing, test, and production environments. AWS will perform cloud hosting services for both the CAT transaction database as well as the CAT Customer and Account Information System (''CAIS'') during the CAT Fee 2024–1 Period.

The cost for AWS cloud services for the CAT is a function of the volume of CAT Data. The greater the amount of CAT Data, the greater the cost of AWS services to CAT LLC. During the CAT 2024–1 Period, it is expected that AWS will provide cloud hosting services for volumes of CAT Data far in excess of the volume predictions set forth in the CAT NMS Plan. The CAT NMS Plan states, when all CAT Reporters are submitting their data to the CAT, it ''must be sized to receive[,] process and load more than 58 billion records per day,'' [33] and that ''[i]t is expected that the Central Repository will grow to more than 29 petabytes of raw, uncompressed data.'' [34] In contrast with those estimates, the Q1 2024 data volumes, which averaged 577 billion events per day, were up 45% compared to Q1 2023, which averaged 399 billion events per day, with peak volumes recorded on April 19, 2024 of 746 billion events. Even higher peak volumes were recorded in July and August 2024.

CAT LLC estimates that the budget for cloud hosting services costs during the CAT Fee 2024–1 Period will be approximately $76,278,426. The budget for cloud hosting services costs during the CAT Fee 2024–1 Period is calculated based on the Updated 2024 Budget. Specifically, this estimate was calculated by adding the budgeted amounts for cloud hosting services costs for the third and fourth quarter of 2024 as set forth in the Updated 2024 Budget and subtracting one half of the cloud hosting services costs incurred in July 2024 (as CAT Fee 2024–1 Period began half way through July, on July 16, 2024).[35]

CAT LLC estimated the budget for the cost for cloud hosting services for the CAT Fee 2024–1 Period based on an assumption of 30% annual year-over-year volume growth for the transaction database and an assumption of 5% annual year-over-year volume growth for CAIS. CAT LLC determined these growth assumptions in coordination with FCAT based on an analysis of a variety of existing data and alternative growth scenarios. In addition, the budget for cloud hosting services for the CAT Fee 2024–1 Period includes a budget for the cost of re-processing data as approved by the CAT Operating Committee.[36] The budget for re-processing data was based on expenditures for re-processing in prior years. This process for estimating the budget for cloud hosting services costs for the CAT Fee 2024–1 Period is the same process by which CAT LLC estimated the cloud hosting services costs for the Original 2024 Budget. The Original 2024 Budget estimated a budget for cloud hosting services of $71,384,109 for the first two quarters of 2024.[37] The actual costs for cloud hosting services for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were $66,737,810.[38] There is only an approximate 7% difference between the estimate and actuals for cloud hosting services costs. Accordingly, CAT LLC believes that the process for estimating the budgeted cloud hosting services costs for the CAT Fee 2024–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for cloud hosting services costs from the prior CAT Fee filing. CAT LLC's proposed annual budget for cloud hosting services costs for 2024 decreased about 3.5% from the Original 2024 Budget to the Updated 2024 Budget, from $154,624,108 to $148,789,981. Although there were expected cost increases related to data volume growth and the associated compute and storage of the increased data levels, as well as from additional capacity for OTQT systems that were added to meet the performance standards set forth in the requirements of the recent SEC exemptive order from November 2023,[39] these cost increases were offset by a variety of cost reduction efforts related to compute efficiencies, the implementation of single pass linker related to options quotes, and the implementation of compute and other efficiencies related to CAIS. Without such cost management efforts, the budgeted costs for cloud hosting services would have increased by approximately 15%, rather than decreased. Correspondingly, the proposed budget for cloud hosting services costs for the third and fourth quarters of 2024 did not change in a material way from the Original 2024 Budget to the Updated 2024 Budget. There was only an approximate 1% decrease from $83,239,999 in the Original 2024 Budget [40] to $82,052,171 in the Updated 2024 Budget for the third and fourth quarters of 2024.[41]

(ii) Technology Costs—Operating Fees

(a) Description of Operating Fees

Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the operating fees set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $14,008,947.50 in technology costs for operating fees for the CAT Fee 2024–1 Period. Operating fees are those fees paid by CAT LLC to FCAT as the Plan Processor to operate and maintain the CAT and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.,* management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management as required by the CAT NMS Plan. Operating fees also include market data provider costs, as discussed below.

Plan Processor: FCAT. Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT a negotiated monthly fixed price for the operation of the CAT. This fixed price contract was negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity. It is anticipated that FCAT will provide a variety of services to the CAT during the CAT Fee 2024–1 Period, including the following:

- Provide the CAT-related functions and services as the Plan Processor as required by SEC Rule 613 and the CAT NMS Plan in connection with the operation and maintenance of the CAT;

[33] Appendix D–4 of the CAT NMS Plan at n.262.

[34] Appendix D–5 of the CAT NMS Plan.

[35] This calculation is ($38,132,441 + $43,919,730) − $5,773,745 = $76,278,426.

[36] Appendix D–19 of the CAT NMS Plan states that ''[i]f corrections are received after T+5, Participants' regulatory staff and the SEC must be notified and informed as to how re-processing will be completed. The Operating Committee will be involved with decisions on how to re-process the data; however, this does not relieve the Plan Processor of notifying the Participants' regulatory staff and the SEC.''

[37] This calculation is $33,217,468 + $38,166,641 = $71,384,109.

[38] This calculation is $30,343,917 + $36,393,893 = $66,737,810.

[39] Securities Exchange Act Rel. No. 98848 (Nov. 2, 2023), 88 FR 77128 (Nov. 8, 2023).

[40] This calculation is $39,961,511 + $43,278,488 = $83,239,999.

[41] This calculation is $38,132,441 + $43,919,730 = $82,052,171.

• Address compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
• Provide support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
• Assist with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
• Oversee the security of the CAT;
• Monitor the operation of the CAT, including with regard to Participant and Industry Member reporting;
• Provide support to subcontractors under the Plan Processor Agreement;
• Provide support in discussions with the Participants and the SEC and its staff;
• Operate the FINRA CAT Helpdesk;
• Facilitate communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
• Administer the CAT website and all of its content;
• Maintain cyber security insurance related to the CAT; and
• Provide technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

CAT LLC calcuated [*sic*] the budget for the FCAT technology costs for operating fees for the CAT Fee 2024–1 Period based on the recurring monthly operating fees under the Plan Processor Agreement.

Market Data Provider: Exegy. It is anticipated that the operating fees costs for the CAT Fee 2024–1 Period will include costs related to the receipt of certain market data for the CAT pursuant to an agreement between FCAT and Exegy Incorporated (''Exegy''). CAT LLC determined that Exegy would provide market data that included all data elements required by the CAT NMS Plan,[42] and that the fees were reasonable and in line with market rates for the market data received. All costs under the contract would be treated as a direct pass through cost to CAT LLC. CAT LLC estimated the budget for the costs for Exegy for the CAT Fee 2024–1 Period based on the monthly rate set forth in the agreement between Exegy and FCAT.

Operating Fee Estimates. CAT LLC estimates that the budget for operating fees during the CAT Fee 2024–1 Period will be approximately $14,008,947.50. The budget for operating fees during the CAT Fee 2024–1 Period is calculated based on the Updated 2024 Budget. Specifically, this estimate was calculated by adding the budgeted amounts for operating fees for the third and fourth quarter of 2024 as set forth in the Updated 2024 Budget and subtracting one half of the actual operating fees incurred in July 2024 (as CAT Fee 2024–1 Period began half way through July, on July 16, 2024).[43]

As discussed above, CAT LLC estimated the budget for the operating fees during the CAT Fee 2024–1 Period based on monthly rates set forth in the Plan Processor Agreement and the agreement with Exegy. CAT LLC also recognized that the operating fees are generally consistent throughout the year. This process for estimating the budget for the operating fees for the CAT Fee 2024–1 Period is the same process by which CAT LLC estimated the operating fees for the Original 2024 Budget. The Original 2024 Budget estimated a budget for operating fees of $13,558,875 for the first two quarters of 2024.[44] The actual costs for operating fees for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were $12,608,540.[45] There was an approximate 7% decrease from estimates to actuals for the first two quarters. Accordingly, CAT LLC believes that the process for estimating the budgeted operating fees for the CAT Fee 2024–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for operating fees from the prior CAT Fee filing. As this is the first Prospective CAT Fee Filing, this filing describes the changes in the operating fees from the Original 2024 Budget. CAT LLC's proposed annual budget for operating fees for 2024 increased from $27,223,132 to $27,768,718[46] from the Original 2024 Budget to the Updated 2024 Budget, and the proposed budget for operating fees for the third and fourth quarters of 2024 increased from $13,664,256 in the Original 2024 Budget[47] to $15,160,178 in the Updated 2024 Budget.[48] This increase is due to a cyber insurance adjustment.

(iii) Technology Costs—CAIS Operating Fees

(a) Description of CAIS Operating Fees

Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the CAIS operating fees set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $9,278,384.50 in technology costs for CAIS operating fees for the CAT Fee 2024–1 Period. CAIS operating fees represent the fees paid to FCAT for services provided with regard to the operation and maintenance of CAIS, and to perform the business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.,* management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. The CAT is required under the CAT NMS Plan to capture and store Customer Identifying Information and Customer Account Information in a database separate from the transactional database and to create a CAT-Customer-ID for each Customer. As of May 31, 2024, the implementation of CAIS was completed.[49]

During the CAT Fee 2024–1 Period, it is anticipated that FCAT will provide CAIS-related services. Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT for CAIS-related services provided by FCAT on a monthly basis. CAT LLC negotiated the fees for FCAT's CAIS-related services on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity. During the CAT Fee 2024–1 Period, it is anticipated that FCAT will continue to provide services relating to the ongoing operation, maintenance and support of CAIS.

CAT LLC estimates that the budget for CAIS operating fees during the CAT Fee 2024–1 Period will be approximately $9,278,384.50. The budget for CAIS operating fees during the CAT Fee 2024–1 Period is calculated based on the Updated 2024 Budget. Specifically, this estimate was calculated by adding the budgeted amounts for CAIS operating fees for the third and fourth quarter of 2024 as set forth in the Updated 2024 Budget and subtracting one half of the actual CAIS operating fees costs incurred in July 2024 (as CAT

[42] *See* Section 6.5(a)(ii) of the CAT NMS Plan.

[43] This calculation is ($6,907,383 + $904,664) + ($6,907,383 + $440,748) − $1,151,230.50 = $14,008,947.5.

[44] This calculation is $6,726,747 + $6,832,128 = $13,558,875.

[45] This calculation is $6,702,506 + $5,906,034 = $12,608,540.

[46] This calculation is $26,423,306 + $1,345,412 = $27,768,718.

[47] This calculation is $6,832,128 + $6,832,128 = $13,664,256.

[48] This calculation is ($6,907,383 + $904,664) + ($6,907,383 + $440,748) = $15,160,178.

[49] For a discussion of the implementation timeline for CAIS, *see* CAT Alert 2023–01.

Fee 2024–1 Period began half way through July, on July 16, 2024).[50]

CAT LLC calculated the budget for FCAT's CAIS-related services for the CAT Fee 2024–1 Period based on the recurring monthly CAIS operating fees under the Plan Processor Agreement. This process for estimating the budget for the CAIS operating fees for the CAT Fee 2024–1 Period is the same process by which CAT LLC estimated the CAIS operating fees for the Original 2024 Budget. The Original 2024 Budget estimated a budget for CAIS operating fees of $10,418,666 for the first two quarters of 2024.[51] The actual costs for CAIS operating fees for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were $10,078,045.[52] There is only an approximate 3% difference between the estimate and actuals. Accordingly, CAT LLC believes that the process for estimating the budgeted CAIS operating fees for the CAT Fee 2024–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for CAIS operating fees from the prior CAT Fee filing. As this is the first Prospective CAT Fee Filing, this filing describes the changes in the CAIS operating fees from the Original 2024 Budget. CAT LLC's proposed annual budget for CAIS operating fees for 2024 had a small 2% percent decrease of $491,821 from the Original 2024 Budget to the Updated 2024 Budget, from $20,691,740 to $20,199,919. Correspondingly, the proposed budget for CAIS operating fees for the third and fourth quarters of 2024 had a small 1% percentage decrease of $151,202, from $10,273,076 in the Original 2024 Budget[53] to $10,121,874 in the Updated 2024 Budget.[54]

(iv) Technology Costs—Change Request Fees

(a) Description of Change Request Fees

Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the change request fees set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $162,500 in technology costs for change request fees for the CAT Fee 2024–1 Period. The technology costs related to change request fees include costs related to certain modifications, upgrades or other changes to the CAT.

Change requests are standard practice and necessary to reflect operational changes, including changes related to new market developments, such as new market participants. In general, if CAT LLC determines that a modification, upgrade or other changes to the functionality or service is necessary and appropriate, CAT LLC will submit a request for such a change to the Plan Processor. The Plan Processor will then respond to the request with a proposal for implementing the change, including the cost (if any) of such a change. CAT LLC then determines whether to approve the proposed change.

During the CAT Fee 2024–1 Period, it is anticipated that CAT LLC will engage FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The budget for change requests for the CAT Fee 2024–1 Period includes a placeholder of $162,500 for potential change request fees that may be necessary in accordance with the Plan Processor Agreement. The placeholder amount was determined based on prior experience with change requests related to the CAT.

CAT LLC estimates that the budget for change requests during the CAT Fee 2024–1 Period will be approximately $162,500. The budget for change requests during the CAT Fee 2024–1 Period is calculated based on the Updated 2024 Budget. Specifically, this estimate was calculated by adding the budgeted amounts for the change requests for the third and fourth quarter of 2024 as set forth in the Updated 2024 Budget and subtracting one half of the actual change request costs incurred in July 2024 (as CAT Fee 2024–1 Period began half way through July, on July 16, 2024).[55]

CAT LLC estimated the budget for the potential change requests for the CAT Fee 2024–1 Period based on, among other things, a review of past change requests and potential future change request needs, as well as discussions with FCAT. This process for estimating the budget for the change requests for the CAT Fee 2024–1 Period is the same process by which CAT LLC estimated the change requests cost for the Original 2024 Budget. The Original 2024 Budget estimated a change request budget of $81,250 for the the [*sic*] first two quarters of 2024.[56] The actual costs for change requests for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were $0. Although the budget exceeded the actual costs of change requests during the first two quarters of 2024, CAT LLC believes that the process for estimating a placeholder amount for potential change requests is reasonable given the evolving technology needs of the CAT.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for change request fees from the prior CAT Fee filing. As this is the first Prospective CAT Fee Filing, this filing describes the changes in the change request fees from the Original 2024 Budget. CAT LLC's proposed annual budget for change requests for 2024 decreased by $81,250 from the Original 2024 Budget to the Updated 2024 Budget, from $243,750 to $162,500. CAT LLC has reduced the annual budget for a placeholder for change request fees for 2024 by one-third, as time has passed without additional change requests anticipated by this placeholder amount. Correspondingly, the proposed budget for change requests for the third and fourth quarters remained the same at $162,500 for the Original 2024 Budget[57] and the Updated 2024 Budget.[58]

(v) Technology Costs—Capitalized Developed Technology Costs

(a) Description of Capitalized Developed Technology Costs

Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the capitalized developed technology costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that includes $4,101,990 in technology costs for capitalized developed technology costs for the CAT Fee 2024–1 Period. This category of costs includes the budget for capitalizable application development costs incurred in the development of the CAT. It is anticipated that such costs will include certain costs related to the software license fee for CAIS in accordance with the Plan Processor Agreement with FCAT, as well as costs related to a set

[50] This calculation is ($5,060,937 + $5,060,937) − $843,489.50 = $9,278,384.50.

[51] This calculation is $5,282,128 + $5,136,538 = $10,418,666.

[52] This calculation is $5,017,108 + $5,060,937 = $10,078,045.

[53] This calculation is $5,136,538 + $5,136,538 = $10,273,076.

[54] This calculation is $5,060,937 + $5,060,937 = $10,121,874.

[55] This calculation is ($0 + $162,500) − $0 = $162,500.

[56] This calculation is $0 + $81,250 = $81,250.

[57] This calculation is $81,250 + $81,250 = $162,500.

[58] This calculation is $0 + $162,500 = $162,500.

of technology changes to be implemented by FCAT.

CAT LLC estimates that the budget for capitalized developed technology costs during the CAT Fee 2024–1 Period will be approximately $4,101,990. The budget for capitalized developed technology costs during the CAT Fee 2024–1 Period is calculated based on the Updated 2024 Budget. Specifically, this estimate was calculated by adding the budgeted amounts for capitalized developed technology costs for the third and fourth quarter of 2024 as set forth in the Updated 2024 Budget and subtracting one half of the actual capitalized developed technology costs incurred in July 2024 (as CAT Fee 2024–1 Period began half way through July, on July 16, 2024).[59]

CAT LLC estimated the budget for capitalized developed technology costs for the CAT Fee 2024–1 Period based on an analysis of a variety of factors, including information related to potential technology costs and related contractual and Plan requirements, and discussions with FCAT regarding such potential technology costs. The Original 2024 Budget estimated a budget for capitalized developed technology costs of $2,300,000 for the first two quarters of 2024.[60] The actual costs for capitalized developed technology costs for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were $3,659,490.[61] The increase was due to a software license fee for CAIS. Accordingly, CAT LLC believes that the process for estimating the budgeted capitalized developed technology costs for the CAT Fee 2024–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for capitalized developed technology costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee Filing, this filing describes the changes in capitalized developed technology costs from the Original 2024 Budget. CAT LLC's proposed budget for capitalized developed technology costs for 2024 increased from the Original 2024 Budget to the Updated 2024 Budget. The annual budget for capitalized developed technology costs for 2024 increased by $5,461,480 from the Original 2024 Budget of $2,300,000 to the Updated 2024 Budget of $7,761,480.[62] Correspondingly, the budget for capitalized developed technology costs for the third and fourth quarters of 2024 increased from $0[63] in the Original 2024 Budget to $4,101,990 in the Updated 2024 Budget.[64] This increase in the capitalized developed technology costs budget in the Updated 2024 Budget over the Original 2024 Budget was the result of costs related to the software license fee for CAIS in accordance with the Plan Processor Agreement with FCAT, as well as costs related to a set of technology changes to be implemented by FCAT.

(vi) Legal Costs

(a) Description of Legal Costs

Section 11.3(a)(iii)(B)(B)(2) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the legal costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that includes $4,484,554.50 in legal costs for the CAT Fee 2024–1 Period. This category of costs represents budgeted costs for legal services for this period. CAT LLC anticipates that it will receive legal services from two law firms, Wilmer Cutler Pickering Hale and Dorr LLP (''WilmerHale'') and Jenner & Block LLP (''Jenner''), during the CAT Fee 2024–1 Period.

Law Firm: WilmerHale. It is anticipated that legal costs during the CAT Fee 2024–1 Period will include costs related to the legal services performed by WilmerHale. CAT LLC anticipates that it will continue to employ WilmerHale during the CAT Fee 2024–1 Period based on, among other things, their expertise, long history with the project and recognition that the hourly fee rates for this law firm are anticipated to be in line with market rates for specialized legal expertise. WilmerHale's billing rates are negotiated on an annual basis and are determined with reference to the rates charged by other leading law firms for similar work. The Participants assess WilmerHale's performance and review prospective budgets and staffing plans submitted by WilmerHale on an annual basis. The legal fees will be paid by CAT LLC to WilmerHale.

During the CAT Fee 2024–1 Period, it is anticipated that WilmerHale will provide legal services related to the following:

- Assist with CAT fee filings and related funding issues;
- Draft exemptive requests from CAT NMS Plan requirements and/or proposed amendments to the CAT NMS Plan;
- Provide legal interpretations of CAT NMS Plan requirements;
- Provide legal support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team;
- Draft SRO rule filings related to the CAT Compliance Rule;
- Manage corporate governance matters, including supporting Operating Committee meetings and preparing resolutions and consents;
- Assist with communications with the industry, including CAT Alerts and presentations;
- Provide guidance regarding the confidentiality of CAT Data;
- Assist with cost management analyses and proposals;
- Assist with commercial contract-related matters, including change orders, Plan Processor Agreement items, and subcontract matters;
- Provide support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues;
- Assist with CAT budget and FCAT costs;
- Assist other counsel for CAT on litigation-related matters; and
- Assist with legal responses related to third-party data requests.

CAT LLC estimated the budget for the legal costs for WilmerHale for the CAT Fee 2024–1 Period through an analysis of a variety of factors, including WilmerHale fee rates, historical legal fees, information related to pending legal issues and potential future legal issues, and discussions with WilmerHale.

Law Firm: Jenner. It is anticipated that legal costs during the CAT Fee 2024–1 Period will include costs related to the legal services performed by Jenner. CAT LLC anticipates that it will continue to employ Jenner during the CAT Fee 2024–1 Period based on among other things, their expertise, history with the project and recognition that their hourly fee rates are in line with market rates for specialized legal expertise. The legal fees will be paid by CAT LLC to Jenner.

During the CAT Fee 2024–1 Period, it is anticipated that Jenner will continue to provide legal assistance to CAT LLC regarding certain litigation matters, including: (1) CAT LLC's defense against a lawsuit filed in the Western District of Texas against Chair Gensler,

[59] This calculation is ($3,810,990 + $291,000) − $0 = $4,101,990.

[60] This calculation is $2,300,000 + $0 = $2,300,000.

[61] This calculation is $2,300,000 + $1,359,490 = $3,659,490.

[62] This calculation is $2,591,000 + $5,170,480 = $7,761,480.

[63] This calculation is $0 + $0 = $0.

[64] This calculation is $3,810,990 + $291,000 = $4,101,990.

the SEC and CAT LLC challenging the validity of the Rule 613 and the CAT and alleging various constitutional, statutory, and common law claims (''Texas Litigation'');[65] (2) CAT LLC's intervention in a lawsuit in the Eleventh Circuit filed by various parties against the SEC challenging the SEC's approval of the CAT Funding Model;[66] and (3) a lawsuit in the Eleventh Circuit filed by Citadel Securities LLC seeking review of the SEC's May 20, 2024 order[67] granting the Participants temporary conditional exemptive relief related to the reporting of bids and/or offers made in response to a request for quote or other form of solicitation response provided in standard electronic format that is not immediately actionable.[68] Litigation involving CAT LLC is an expense of operating the CAT, and, therefore, is appropriately an obligation of both Participants and Industry Members under the CAT Funding Model.

CAT LLC estimated the budget for the legal costs for Jenner for the CAT Fee 2024–1 Period through an analysis of a variety of factors, including Jenner fee rates, historical legal fees, and information related to pending legal issues and potential future legal issues, and discussions with Jenner.

Legal Cost Estimates. CAT LLC estimates that the budget for legal services during the CAT Fee 2024–1 Period will be approximately $4,484,554.50. The budget for legal services during the CAT Fee 2024–1 Period is calculated based on the Updated 2024 Budget. Specifically, this estimate was calculated by adding the budgeted amounts for the legal services for the third and fourth quarter of 2024 as set forth in the Updated 2024 Budget and subtracting one half of the actual legal costs incurred in July 2024 (as the CAT Fee 2024–1 Period began half way through July, on July 16, 2024).[69]

CAT LLC estimated the budget for the legal services for the CAT Fee 2024–1 Period based on an analysis of a variety of factors, including law firm fee rates, historical legal fees, and information related to pending legal issues and potential future legal issues, and discussions with the law firms. This process for estimating the budget for the legal services for the CAT Fee 2024–1 Period is the same process by which CAT LLC estimated the legal cost for the Original 2024 Budget. The Original 2024 Budget estimated a budget for legal costs of $2,440,000 for the first two quarters of 2024.[70] The actual costs for legal services for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were $3,156,762.[71] Although there is an increase from the budgeted legal costs to the actual legal costs for the first two quarters of 2024, such increase was due to unanticipated issues that required additional legal efforts on behalf of CAT LLC that developed after the budget was created. Such additional costs including costs related to (1) the legal defense related to the Texas Litigation; and (2) additional regulatory and corporate legal issues, including (a) additional work for commercial contract-related matters, including change orders, Plan Processor Agreement items, and subcontract matters; (b) assistance regarding budget and FCAT costs; (c) assistance to other counsel for CAT on litigation-related matters; and (d) assistance related to CAT fee filings and CAT NMS Plan amendments. Accordingly, CAT LLC believes that the process for estimating the budgeted legal costs for the CAT Fee 2024–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for legal costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee Filing, this filing describes the changes in the legal costs from the Original 2024 Budget. CAT LLC's proposed budget for legal costs for 2024 increased from the Original 2024 Budget to the Updated 2024 Budget. The annual budget for legal costs for 2024 increased from the Original 2024 Budget to the Updated 2024 Budget, from $4,460,000 to $8,146,599. Correspondingly, the proposed budget for legal costs for the third and fourth quarters increased from $2,020,000[72] in the Original 2024 Budget to $4,989,837 in the Updated 2024 Budget.[73] This increase in the legal budget in the Updated 2024 Budget from the Original 2024 Budget was primarily due to unanticipated legal costs, including costs related to (1) the legal defense related to the Texas Litigation; and (2) additional regulatory and corporate legal issues, including (a) additional work for commercial contract-related matters, including change orders, Plan Processor Agreement items, and subcontract matters; (b) assistance regarding budget and FCAT costs; (c) assistance to other counsel for CAT on litigation-related matters; and (d) assistance related to CAT fee filings and CAT NMS Plan amendments. In addition, CAT LLC no longer anticipates incurring legal costs related to the law firms of Pillsbury Winthrop Shaw Pittman LLP and Covington & Burling LLP during the CAT Fee 2024–1 Period due to the conclusion of the relevant prior legal matters.

(vii) Consulting Costs

(a) Description of Consulting Costs

Section 11.3(a)(iii)(B)(B)(3) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the consulting costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $652,623 in consulting costs for the CAT Fee 2024–1 Period. The consulting costs represent the fees estimated to be paid to the consulting firm Deloitte & Touche LLP (''Deloitte'') as project manager during the CAT Fee 2024–1 Period. These consulting costs include costs for advisory services related to the operation of the CAT, and meeting facilitation and communications coordination, vendor support and financial analyses.

It is anticipated that the costs for CAT during CAT Fee 2024–1 Period will include costs related to consulting services performed by Deloitte. CAT LLC anticipates that it will continue to employ Deloitte during the CAT Fee 2024–1 Period based on, among other things, their expertise, long history with the project, and the recognition that it is anticipated that the consulting fees will remain in line with market rates for this type of specialized consulting work. Deloitte's fee rates are negotiated on an annual basis. CAT LLC assesses Deloitte's performance and reviews prospective budgets and staffing plans submitted by Deloitte on an annual basis. The consulting fees will be paid by CAT LLC to Deloitte.

It is anticipated that Deloitte will provide a variety of consulting services to the CAT during the CAT Fee 2024–1 Period, including the following:

- Implement program operations for the CAT project;

[65] *American Securities Ass'n* v. *Securities and Exchange Commission,* Case No. 23–13396 (11th Cir.).

[66] *Davidson* v. *Gensler,* Case No. 6:24-cv-197 (W.D. Tex.).

[67] Securities Exchange Act Rel. No. 100181 (May 20, 2024), 89 FR. 45715 (May 23, 2024).

[68] *Citadel Securities LLC* v. *United States Securities and Exchange Commission,* Case No. 24–12300 (11th Cir.).

[69] This calculation is ($2,647,277 + $2,342,562) − $505,284.50 = $4,484,554.50.

[70] This calculation is $1,220,000 + $1,220,000 = $ 2,440,000.

[71] This calculation is $791,912 + $2,364,850 = $3,156,762.

[72] This calculation is $1,047,500 + $972,500 = $2,020,000.

[73] This calculation is $2,647,277 + $2,342,560 = $4,989,837.

• Provide support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
• Assist with cost and funding matters for the CAT, including assistance with loans and the CAT bank account for CAT funding;
• Provide support for updating the SEC on the progress of the development of the CAT; and
• Provide support for third party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

In addition, the consulting costs include the compensation for the Chair of the CAT Operating Committee.

CAT LLC estimates that the budet [*sic*] for consulting costs during the CAT Fee 2024–1 Period will be approximately $652,623. The budget for consulting costs during the CAT Fee 2024–1 Period is calculated based on the Updated 2024 Budget. Specifically, this estimate was calculated by adding the budgeted amounts for consulting services for the third and fourth quarter of 2024 as set forth in the Updated 2024 Budget and subtracting one half of the actual consulting costs incurred in July 2024 (as the CAT Fee 2024–1 Period began [*sic*] half way through July, on July 16, 2024).[74]

CAT LLC estimates the budget for the consulting costs for Deloitte for the CAT Fee 2024–1 Period based on the current statement of work with Deloitte, which took into consideration past consulting costs, potential future consulting needs, the proposed rates and other contractual issues, as well as discussions with Deloitte. The Original 2024 Budget estimated a budget for consulting cost of $800,000 for the first two quarters of 2024.[75] The actual costs for consulting services for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were $885,580.[76] There is only an approximate 10% difference between the estimate and actuals. Accordingly, CAT LLC believes that the process for estimating the budgeted consulting costs for the CAT Fee 2024–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for consulting costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee Filing, this filing describes the changes in the consulting costs from the Original 2024 Budget. CAT LLC's proposed annual budget for consulting costs for 2024 has not changed from the Original 2024 Budget to the Updated 2024 Budget; it remains $1,600,000. Correspondingly, the proposed budget for consulting costs for the third and fourth quarters of 2024 decreased by $85,580 (which is approximately 11%), from $800,000 in the Original 2024 Budget[77] to $714,420 in the Updated 2024 Budget.[78]

(viii) Insurance Costs

(a) Description of Insurance Costs

Section 11.3(a)(iii)(B)(B)(4) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the insurance costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $1,342,345 in insurance costs for the CAT Fee 2024–1 Period. The insurance costs represent the costs to be incurred for insurance for CAT during the CAT Fee 2024–1 Period.

It is anticipated that the insurance costs for CAT during the CAT Fee 2024–1 Period will include costs related to cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance brokered by USI Insurance Services LLC (''USI''). Such policies are standard for corporate entities, and cyber security liability insurance is important for the CAT System. CAT LLC anticipates that it will continue to maintain this insurance during CAT Fee 2024–1 Period, and notes that the annual premiums for these policies were competitive for the coverage provided. CAT LLC estimated the budget for the insurance costs for the CAT Fee 2024–1 Period based on the actual insurance quote from USI for 2024. The annual premiums would be paid by CAT LLC to USI.[79]

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for insurance costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee Filing, this filing describes the changes in the insurance costs from the Original 2024 Budget. CAT LLC's proposed annual budget for insurance costs for 2024 decreased by $525,680 from the Original 2024 Budget, from $1,868,025 to $1,342,345. For the Original 2024 Budget, CAT LLC estimated the budget for the insurance costs for the CAT Fee 2024–1 Period based on the 2023 insurance premiums plus a 15% year-over-year increase. However, the budgeted insurance costs as set forth in the Updated 2024 Budget were based on the actual insurance quote from USI for 2024.

(ix) Professional and Administration Costs

(a) Description of Professional and Administration Costs

Section 11.3(a)(iii)(B)(B)(5) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the professional and administration costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $428,544.50 in professional and administration costs for the CAT Fee 2024–1 Period. In adopting the CAT NMS Plan, the Commission amended the Plan to add a requirement that CAT LLC's financial statements be prepared in compliance with GAAP, audited by an independent public accounting firm, and made publicly available.[80] The professional and administration costs would include costs related to accounting and accounting advisory services to support the operating and financial functions of CAT, financial statement audit services by an independent accounting firm, preparation of tax returns, and various cash management and treasury functions. The professional and administration costs represent the fees to be paid to Anchin Block & Anchin (''Anchin'') and Grant Thornton LLP (''Grant Thornton'') for financial services during CAT Fee 2024–1 Period.

Financial Advisory Firm: Anchin. It is anticipated that the professional and administration costs for the CAT Fee 2024–1 Period will include costs related to financial advisory services performed by Anchin. CAT LLC anticipates that it will continue to employ Anchin during CAT Fee 2024–1 Period based on, among other things, the firm's relevant expertise and fees, which are

[74] This calculation is ($359,926 + $354,495) − $61,798 = $652,623.

[75] This calculation is $400,000 + $400,000 = $800,000.

[76] This calculation is $264,101 + $621,479 = $885,580.

[77] This calculation is $400,000 + $400,000 = $800,000.

[78] This calculation is $359,925 + $354,495 = $714,420.

[79] Note that CAT LLC generally pays its USI insurance premiums once per year, and such payment is scheduled to occur during the third quarter of 2024.

[80] Section 9.2 of the CAT NMS Plan.

anticipated to remain in line with market rates for these financial advisory services. The fees for these services will be paid by CAT LLC to Anchin.

It is anticipated that Anchin will provide a variety of services to the CAT during the CAT Fee 2024–1 Period, including the following:

- Update and maintain internal controls;
- Provide cash management and treasury functions;
- Faciliate [*sic*] bill payments;
- Provide monthly bookkeeping;
- Review vendor invoices and documentation in support of cash disbursements;
- Provide accounting research and consultations on various accounting, financial reporting and tax matters;
- Address not-for-profit tax and accounting considerations;
- Prepare tax returns;
- Address various accounting, financial reporting and operating inquiries from Participants;
- Develop and maintain annual operating and financial budgets, including budget to actual fluctuation analyses;
- Support compliance with the CAT NMS Plan;
- Work with and provide support to the Operating Committee and various CAT working groups;
- Prepare monthly, quarterly and annual financial statements;
- Support the annual financial statement audits by an independent auditor;
- Review historical costs from inception;
- Provide accounting and financial information in support of SEC filings; and
- Perform additional ad hoc accounting and financial advisory services, as requested by CAT LLC.

CAT LLC estimated the annual budget for the costs for Anchin based on historical costs adjusted for cost of living rate increases, and projected incremental advisory and support services. The budgeted costs for the CAT Fee 2024–1 Period are based on the estimated annual costs, minus actual costs through June and estimated costs for July.

Accounting Firm: Grant Thornton. It is anticipated that the professional and administration costs for the CAT Fee 2024–1 Period will include costs related to accounting services performed by Grant Thornton. CAT LLC anticipates that it will continue to employ Grant Thornton during CAT Fee 2024–1 Period based on, among other things, the firm's relevant expertise and fees, which are anticipated to remain in line with market rates for these financial advisory services. It is anticipated that Grant Thornton will continue to be engaged as an independent accounting firm to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. The fees for these services will be paid by CAT LLC to Grant Thornton. CAT LLC estimated the budget for the accounting costs for Grant Thornton for the CAT Fee 2024–1 Period based on the anticipated hourly rates and the anticipated services plus an administrative fee.

Professional and Administration Cost Estimates. CAT LLC estimates that the budget for professional and administration services during the CAT Fee 2024–1 Period will be approximately $428,544.50. The budget for professional and administration services during the CAT Fee 2024–1 Period is calculated based on the Updated 2024 Budget. Specifically, this estimate was calculated by adding the budgeted amounts for the professional and administration services for the third and fourth quarter of 2024 as set forth in the Updated 2024 Budget and subtracting one half of the actual professional and administration costs incurred in July 2024 (as CAT Fee 2024–1 Period began half way through July, on July 16, 2024).[81]

CAT LLC estimated the budget for the professional and administration costs for the CAT Fee 2024–1 Period based on a review of past professional and administration costs, potential future professional and administration needs, the proposed rates and other contractual issues, as well as discussions with Anchin and Grant Thornton. This process for estimating the budget for the professional and administration costs for the CAT Fee 2024–1 Period is the same process by which CAT LLC estimated the professional and administration costs for the Original 2024 Budget. The Original 2024 Budget estimated a budget for professional and administration costs of $395,930 for the first two quarters of 2024.[82] The actual costs for professional and administration services for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were $372,977.[83] There is only an approximate 6% difference between the estimate and actuals. Accordingly, CAT LLC believes that the process for estimating the budgeted professional and administration costs for the CAT Fee 2024–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for professional and administration costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee Filing, this filing describes the changes in the professional and administration costs from the Original 2024 Budget. CAT LLC's proposed annual budget for professional and administration costs for 2024 had a very minor increase of $2,666 from the Original 2024 Budget, from $821,264 to $823,930. CAT LLC's proposed annual budget for professional and administration costs for 2024 has not changed in a material way for Anchin and Grant Thornton costs. Correspondingly, the proposed budget for professional and administration costs for the third and fourth quarters of 2024 increased by $25,617 (which is approximately 6%), from $425,334 in the Original 2024 Budget[84] to $450,951 in the Updated 2024 Budget.[85]

(x) Public Relations Costs

(a) Desription [*sic*] of Public Relations Costs

Section 11.3(a)(iii)(B)(B)(6) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the public relations costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included $43,225 in public relations costs for the CAT Fee 2024–1 Period. The public relations costs represent the fees paid to a public relations firm for professional communications services to CAT, including media relations consulting, strategy and execution. By engaging a public relations firm, CAT LLC will be better positioned to understand and address CAT matters to the benefit of all market participants.

It is anticipated that the public relations costs for the CAT Fee 2024–1 Period will include costs related to the public relations services performed by RF|Binder Partners Inc. (''RF|Binder''). CAT LLC anticipates that it will continue to employ RF|Binder during the CAT Fee 2024–1 Period based on, among other things, the firm's relevant expertise, history with the project, and fees, which are anticipated to remain in

[81] This calculation is ($157,269 + $293,682) − $22,406.50 = $428,544.50.

[82] This calculation is $213,600 + $182,330 = $395,930.

[83] This calculation is $110,542 + $262,435 = $372,977.

[84] This calculation is $150,000 + $275,334 = $425,334.

[85] This calculation is $157,269 + $293,682 = $450,951.

line with market rates for these public relations services. It is anticipated that, during the CAT Fee 2024–1 Period, RF|Binder will provide services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (*e.g.,* congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (*e.g.,* amendments to the CAT NMS Plan). Public relations services are important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record.

CAT LLC estimates that the budget for public relations services during the CAT Fee 2024–1 Period will be approximately $43,225. The budget for public relations services during the CAT Fee 2024–1 Period is calculated based on the Updated 2024 Budget. Specifically, this estimate was calculated by adding the budgeted amounts for the public relations for the third and fourth quarter of 2024 as set forth in the Updated 2024 Budget and subtracting one half of the actual public relations costs incurred in July 2024 (as CAT Fee 2024–1 Period began half way through July, on July 16, 2024).[86] The fees for these services will be paid by CAT LLC to RF|Binder.

CAT LLC estimated the budget for the public relations costs for the CAT Fee 2024–1 Period based on a review of past public relations costs, potential future public relations needs, the proposed rates and other contractual issues, as well as discussions with RF|Binder. CAT LLC also recognized that public relations costs are generally consistent throughout the year. This process for estimating the budget for the public relations costs for the CAT Fee 2024–1 Period is the same process by which CAT LLC estimated the public relations costs for the Original 2024 Budget. The Original 2024 Budget estimated a budget for public relations costs of $46,200 for the the [*sic*] first two quarters of 2024.[87] The actual costs for public relations for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were $46,200.[88] They are the same. Accordingly, CAT LLC believes that the process for estimating the budgeted public relations costs for the CAT Fee 2024–1 Period is reasonable.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for public relations costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee Filing, this filing describes the changes in the public relations costs from the Original 2024 Budget. CAT LLC's proposed annual budget for public relations costs for 2024 had a very minor increase of $875 from the Original 2024 Budget to the Updated 2024 Budget, from $92,400 to $93,275. Correspondingly, the proposed budget for public relations costs for the third and fourth quarters of 2024 increased by $875, from $46,200 in the Original 2024 Budget[89] to $47,075 in the Updated 2024 Budget.[90] The minor change was made to reflect updated contractual terms.

(xi) Reserve

(a) Description of Reserve

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the reserve costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that includes $27,695,385 for a reserve for the CAT Fee 2024–1 Period. Section 11.1(a)(i) of the CAT NMS Plan states that the budget shall include a reserve. Section 11.1(a)(ii) of the CAT NMS Plan further describes the reserve as follows:

> For the reserve referenced in paragraph (a)(i) of this Section, the budget will include an amount reasonably necessary to allow the Company to maintain a reserve of not more than 25% of the annual budget. To the extent collected CAT fees exceed CAT costs, including the reserve of 25% of the annual budget, such surplus shall be used to offset future fees. For the avoidance of doubt, the Company will only include an amount for the reserve in the annual budget if the Company does not have a sufficient reserve (which shall be up to but not more than 25% of the annual budget). For the avoidance of doubt, the calculation of the amount of the reserve would exclude the amount of the reserve from the budget.

In light of the fact that CAT LLC currently does not maintain any reserve, CAT LLC determined to include a reserve in the amount of 25% of Budgeted CAT Costs 2024–1 other than the reserve. Accordingly, the reserve for the CAT Fee 2024–1 Period was calculated by multiplying the Budgeted CAT Costs 2024–1 other than the reserve amount, which is $110,781,540, by 25%.

(b) Changes From Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for a reserve from the prior CAT Fee filing. Prior to July 16, 2024, all CAT costs were paid by the Participants via notes. Accordingly, to date, CAT LLC has not maintained any reserve. With the commencement of CAT Fees, CAT LLC proposes to include costs for a reserve of $27,695,385 in Budgeted CAT Costs 2024–1.

(D) Projected Total Executed Equivalent Share Volume

The calculation of Fee Rate 2024–1 also requires the determination of the projected total executed equivalent share volume of transactions in Eligible Securities for the CAT Fee 2024–1 Period. Under the CAT NMS Plan, the Operating Committee is required to ''reasonably determine the projected total executed equivalent share volume of all transactions in Eligible Securities for each relevant period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months.'' [91] The Operating Committee is required to base its projection on the prior twelve months, but it may use its discretion to analyze the likely volume for the upcoming year. Such discretion would allow the Operating Committee to use its judgment when estimating projected total executed equivalent share volume if the volume over the prior twelve months was unusual or otherwise unfit to serve as the basis of a future volume estimate.[92]

The total executed equivalent share volume of transactions in Eligible Securities for the 12-month period from June 2023 through May 2024 was 3,980,753,840,905.21 executed equivalent shares. The Operating Committee has determined to calculate the projected total executed equivalent share volume for a four-month recovery period for CAT Fee 2024–1 by multiplying by 4/12ths the executed equivalent share volume for the prior 12 months. The Operating Committee determined that such an approach was reasonable as the CAT's annual

[86] This calculation is ($23,450 + $23,625) − $3,850 = $43,225.

[87] This calculation is $23,100 + $23,100 = $46,200.

[88] This calculation is $23,100 + $23,100 = $46,200.

[89] This calculation is $23,100 + $23,100 = $46,200.

[90] This calculation is $23,450 + $23,625 = $47,075.

[91] Section 11.3(a)(i)(D) of the CAT NMS Plan.

[92] CAT Funding Model Approval Order at 62651.

executed equivalent share volume has remained relatively constant. For example, the executed equivalent share volume for 2021 was 3,963,697,612,395, the executed equivalent share volume for 2022 was 4,039,821,841,560.31, and the executed equivalent share volume for 2023 was 3,868,940,345,680.6. Accordingly, the projected total executed equivalent share volume for the four-month period for CAT Fee 2024–1 is projected to be 1,326,917,946,968.403 executed equivalent shares.[93]

The projected total executed equivalent share volume of all transactions in Eligible Securities for the four-month recovery period for CAT Fee 2024–1 and a description of the calculation of the projection is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a CAT Fee.[94]

(E) Fee Rate 2024–1

Fee Rate 2024–1 would be calculated by dividing Budgeted CAT Costs 2024–1 by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for the four-month recovery period for CAT Fee 2024–1, as described in detail above.[95] Specifically, Fee Rate 2024–1 would be calculated by dividing $138,476,925 by 1,326,917,946,968.403 executed equivalent shares. As a result, Fee Rate 2024–1 would be $0.0001043598251997246 per executed equivalent share. Fee Rate 2024–1 is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide the Fee Rate in a fee filing for a CAT Fee.[96]

(3) Monthly Fees

CEBBs and CEBSs would be required to pay fees for CAT Fee 2024–1 on a monthly basis for four months, from November 2024 until February 2025.[97] A CEBB's or CEBS's fee for each month would be calculated based on the transactions in Eligible Securities executed by the CEBB or CEBS from the prior month.[98] Proposed paragraph (a)(3)(A) to the Consolidated Audit Trail Funding Fees section of the Equities Fee Schedule and the Options Fee Schedule would state that each CAT Executing Broker would receive its first invoice for CAT Fee 2024–1 in October 2024, and would receive an invoice for CAT Fee 2024–1 each month thereafter until January 2025. Proposed paragraph (a)(3)(B) to the Consolidated Audit Trail Funding Fees section of the Equities Fee Schedule and the Options Fee Schedule would state that ''Consolidated Audited Trail, LLC shall provide each CAT Executing Broker with an invoice for CAT Fee 2024–1 on a monthly basis.'' In addition, paragraph (b)(1) would state that each CEBB and CEBS is required to pay its CAT fees ''each month.''

(4) Consolidated Audit Trail Funding Fees

To implement CAT Fee 2024–1, a ''Consolidated Audit Trail Funding Fees'' section would be added to the Equities Fee Schedule and the Options Fee Schedule, to include the proposed paragraphs described below.

(A) Fee Schedule for CAT Fee 2024–1

The CAT NMS Plan states that:

Each Industry Member that is the CAT Executing Broker for the buyer in a transaction in Eligible Securities (''CAT Executing Broker for the Buyer'' or ''CEBB'') and each Industry Member that is the CAT Executing Broker for the seller in a transaction in Eligible Securities (''CAT Executing Broker for the Seller'' or ''CEBS'') will be required to pay a CAT Fee for each such transaction in in Eligible Securities in the prior month based on CAT Data. The CEBB's CAT Fee or CEBS's CAT Fee (as applicable) for each transaction in Eligible Securities will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate reasonably determined pursuant to paragraph (a)(i) of this Section 11.3.[99]

Accordingly, based on the factors discussed above, the Exchange proposes to add paragraph (a)(3) to the Consolidated Audit Trail Funding Fees section of the Equities Fee Schedule and the Options Fee Schedule. Proposed paragraph (a)(3) would state the following:

(A) Each CAT Executing Broker shall receive its first invoice for CAT Fee 2024–1 in October 2024, which shall set forth the CAT Fee 2024–1 fees calculated based on transactions in September 2024, and shall receive an invoice for CAT Fee 2024–1 for each month thereafter until January 2025.

(B) Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for CAT Fee 2024–1 on a monthly basis. Each month, such invoices shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as a CAT Executing Broker for the Buyer (''CEBB'') and/or the CAT Executing Broker for the Seller (''CEBS'') (as applicable) from the prior month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of $0.000035 per executed equivalent share.

(C) Notwithstanding the last invoice date of January 2025 for CAT Fee-2024–1 in paragraph 3(A), CAT Fee 2024–1 shall continue in effect after January 2025, with each CAT Executing Broker receiving an invoice for CAT Fee 2024–1 each month, until a new subsequent CAT Fee is in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act. Consolidated Audit Trail, LLC will provide notice when CAT Fee 2024–1 will no longer be in effect.

(D) Each CAT Executing Broker shall be required to pay each invoice for CAT Fee 2024–1 in accordance with paragraph (b).

As noted in the Plan amendment for the CAT Funding Model, ''[a]s a practical matter, the fee filing would provide the exact fee per executed equivalent share to be paid for the CAT Fees, by multiplying the Fee Rate by one-third and describing the relevant number of decimal places for the fee.'' [100] Accordingly, proposed paragraph (a)(3)(B) to the Consolidated Audit Trail Funding Fees section of the Equities Fee Schedule and the Options Fee Schedule would set forth a fee rate of $0.000035 per executed equivalent share. This fee rate is calculated by multiplying Fee Rate 2024–1 of $0.0001043598251997246 by one-third, and rounding the result to six decimal places.[101] The Operating Committee determined to use six decimal places to balance the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.

The proposed language in paragraph (a)(3)(A) to the Consolidated Audit Trail Funding Fees section of the Equities Fee Schedule and the Options Fee Schedule would describe when CAT Executing Brokers would receive their first monthly invoice for CAT Fee 2024–1. Specifically, CAT Executing Brokers would receive their first monthly invoice for CAT Fee 2024–1 in October

[93] This projection was calculated by multiplying 3,980,753,840,905.21 executed equivalent shares by 4/12ths.

[94] Section 11.3(a)(iii)(B) of the CAT NMS Plan.

[95] In approving the CAT Funding Model, the Commission stated that ''[t]he manner in which the Fee Rate for Prospective CAT Costs will be calculated (*i.e.,* by dividing the CAT costs reasonably budgeted for the upcoming year by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for the year) is reasonable.'' CAT Funding Model Approval Order at 62651.

[96] Section 11.3(a)(iii)(B) of the CAT NMS Plan.

[97] *See* Section 11.3(a)(iii)(A) of the CAT NMS Plan.

[98] *See* proposed paragraph (a)(3)(B) under Consolidated Audit Trail Funding Fees on the Equities Fee Schedule and the Options Fee Schedule.

[99] Section 11.3(a)(iii)(A) of the CAT NMS Plan.

[100] CAT Funding Model Approval Order at 62658, n.658.

[101] Dividing $0.0001043598251997246 by three equals $0.00003478660839990821. Rounding $0.00003478660839990821 to six decimal places equals $0.000035.

2024 and the fees set forth in that invoice would be calculated based on transactions executed in September 2024. The payment for the first invoice would be required within 30 days after the receipt of the first invoice (unless a longer period is indicated), as described in paragraph (b)(2) of the fee schedule.

Proposed paragraph (a)(3)(A) to the Consolidated Audit Trail Funding Fees section of the Equities Fee Schedule and the Options Fee Schedule also would describe the monthly cadence of the invoices for CAT Fee 2024–1. Specifically, after the first invoices are provided to CAT Executing Brokers in October 2024, invoices will be sent to CAT Executing Brokers each month thereafter until January 2025.

Proposed paragraph (a)(3)(B) to the Consolidated Audit Trail Funding Fees section of the Equities Fee Schedule and the Options Fee Schedule would describe the invoices for CAT Fee 2024–1. Proposed paragraph (a)(3)(B) to the Consolidated Audit Trail Funding Fees section of the Equities Fee Schedule and the Options Fee Schedule would state that ''Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for CAT Fee 2024–1 on a monthly basis.'' Proposed paragraph (a)(3)(B) to the Consolidated Audit Trail Funding Fees section of the Equities Fee Schedule and the Options Fee Schedule also would describe the fees to be set forth in the invoices for CAT Fee 2024–1. Specifically, it would state that ''[e]ach month, such invoices shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as a CAT Executing Broker for the Buyer ('CEBB') and/or the CAT Executing Broker for the Seller ('CEBS') (as applicable) from the prior month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of $0.000035 per executed equivalent share.''

Since CAT Fee 2024–1 is a monthly fee based on actual transaction volume from the prior month, CAT Fee 2024–1 may collect more or less than two-thirds of Budgeted CAT Costs 2024–1. To the extent that CAT Fee 2024–1 collects more than two-thirds of Budgeted CAT Costs 2024–1, any excess money collected will be used to offset future fees and/or to fund the reserve for the CAT. To the extent that CAT Fee 2024–1 collects less than two-thirds of Budgeted CAT Costs 2024–1, the budget for the CAT in the ensuing months will reflect such shortfall.

Furthermore, proposed paragraph (a)(3)(C) to the Consolidated Audit Trail Funding Fees section of the Equities Fee Schedule and the Options Fee Schedule would describe how long CAT Fee 2024–1 would remain in effect. It would state that ''[n]otwithstanding the last invoice date of January 2025 for CAT Fee 2024–1 in paragraph 3(A), CAT Fee 2024–1 shall continue in effect after January 2025, with each CAT Executing Broker receiving an invoice for CAT Fee 2024–1 each month, until a new subsequent CAT Fee is in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act. Consolidated Audit Trail, LLC will provide notice when CAT Fee 2024–1 will no longer be in effect.''

Finally, proposed paragraph (a)(3)(D to the Consolidated Audit Trail Funding Fees section of the Equities Fee Schedule and the Options Fee Schedule would set forth the requirement for the CAT Executing Brokers to pay the invoices for CAT Fee 2024–1. It would state that ''[e]ach CAT Executing Broker shall be required to pay each invoice for CAT Fee 2024–1 in accordance with paragraph (b).''

(B) Manner of Payment

The Exchange proposes to add paragraph (b)(1) to the Consolidated Audit Trail Funding Fees section of the Equities Fee Schedule and the Options Fee Schedule to describe the manner of payment of Industry Member CAT fees. The CAT NMS Plan requires the Operating Committee to establish a system for the collection of CAT fees.[102] The Plan Processor has established a billing system for CAT fees.[103] Therefore, the Exchange proposes to require CAT Executing Brokers to pay CAT Fee 2024–1 in accordance with such system. Accordingly, proposed paragraph (b)(1) would state that ''[e]ach CAT Executing Broker shall pay its CAT fees as required pursuant to paragraph (a) each month to the Consolidated Audit Trail, LLC in the manner prescribed by the Consolidated Audit Trail, LLC.''

(C) Failure To Pay CAT Fees

The CAT NMS Plan further states that:

Participants shall require each Industry Member to pay all applicable fees authorized under this Article XI within thirty (30) days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If an Industry Member fails to pay any such fee when due (as determined in accordance with the preceding sentence), such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (a) the Prime Rate plus 300 basis points; or (b) the maximum rate permitted by applicable law.[104]

Accordingly, the Exchange proposes to add this requirement to the Equities Fee Schedule and the Options Fee Schedule. Proposed paragraph (b)(2) to the Consolidated Audit Trail Funding Fees section of the Equities Fee Schedule and the Options Fee Schedule would state:

Each CAT Executing Broker shall pay the CAT fees required pursuant to paragraph (a) within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If a CAT Executing Broker fails to pay any such CAT fee when due, such CAT Executing Broker shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of (i) the Prime Rate plus 300 basis points, or (ii) the maximum rate permitted by applicable law.

The requirements of paragraph (b)(2) would apply to CAT Fee 2024–1.

(5) CAT Fee Details

The CAT NMS Plan states that:

Details regarding the calculation of a Participant or CAT Executing Broker's CAT Fees will be provided upon request to such Participant or CAT Executing Broker. At a minimum, such details would include each Participant or CAT Executing Broker's executed equivalent share volume and corresponding fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.[105]

Such information would provide CEBBs and CEBSs with the ability to understand the details regarding the calculation of their CAT Fee.[106] CAT LLC will provide CAT Executing Brokers with these details regarding the calculation of their CAT Fees on their monthly invoice for the CAT Fees.

In addition, CAT LLC will make certain aggregate statistics regarding CAT Fees publicly available.

[102] Section 11.4 of the CAT NMS Plan.

[103] The billing process and system are described in CAT Alert 2023–02 as well as the CAT FAQs related to the billing of CAT fees, the Industry Member CAT Reporter Portal User Guide, the FCAT Industry Member Onboarding Guide, the FCAT Connectivity Supplement for Industry Members and the CAT Billing Webinars (dated Sept. 28, 2023 and Nov. 7, 2023), each available on the CAT website.

[104] Section 11.4 of the CAT NMS Plan.

[105] Section 11.3(a)(iv)(A) of the CAT NMS Plan.

[106] In approving the CAT Funding Model, the Commission stated that, ''[i]n the Commission's view, providing CAT Execut[ing] Brokers information regarding the calculation of their CAT Fees will aid in transparency and permit CAT Execut[ing] Brokers to confirm the accuracy of their invoices for CAT Fees.'' CAT Funding Model Approval Order at 62667.

Specifically, the CAT NMS Plan states that, ''[f]or each CAT Fee, at a minimum, CAT LLC will make publicly available the aggregate executed equivalent share volume and corresponding aggregate fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.'' [107] Such aggregate statistics will be available on the CAT website.

Furthermore, CAT LLC will make publicly available on the CAT website the total amount invoiced each month that CAT Fee 2024–1 is in effect as well as the total amount invoiced for CAT Fee 2024–1 for all months since its commencement. CAT LLC also will make publicly available on the CAT website the total costs to be collected from Industry Members for CAT Fee 2024–1.

(6) Financial Accountability Milestones

The CAT NMS Plan states that ''[n]o Participant will make a filing with the SEC pursuant to Section 19(b) of the Exchange Act regarding any CAT Fee related to Prospective CAT Costs until the Financial Accountability Milestone related to Period 4 described in Section 11.6 has been satisfied.'' [108] The substantive requirements of the Financial Accountability Milestones related to Period 4 have been satisfied, as the CAT has completed the requirements for the ''Full Implementation of CAT NMS Plan Requirements.'' Section 1.1 of the CAT NMS Plan defines ''Full Implementation of CAT NMS Plan Requirements'' as:

> the point at which the Participants have satisfied all of their obligations to build and implement the CAT, such that all CAT system functionality required by Rule 613 and the CAT NMS Plan has been developed, successfully tested, and fully implemented at the initial Error Rates specified by Section 6.5(d)(i) or less, including functionality that efficiently permits the Participants and the Commission to access all CAT Data required to be stored in the Central Repository pursuant to Section 6.5(a), including Customer Account Information, Customer-ID, Customer Identifying Information, and Allocation Reports, and to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, including any related allocation information provided in an Allocation Report. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants' Quarterly Progress Reports. As indicated by the Participants' Quarterly Progress Report for the second and third quarter of 2024,[109] Full Implementation of CAT NMS Plan Requirements was completed on July 15, 2024.

(A) Transaction Reporting and Regulatory Access

The CAT system functionality required by Rule 613 and the CAT NMS Plan related to order and transaction data has been developed, successfully tested, and fully implemented, including the requirements related to regulatory access. The implementation of CAT requirements related to order and transaction data occurred over four phases: Phases 2a, 2b, 2c and 2d.[110] As described in the Quarterly Progress Reports and summarized below, each of these phases has been fully implemented.[111]

(i) Phase 2a

The Quarterly Progress Reports state that ''Phase 2a was fully implemented as of October 26, 2020.'' [112] The Phase 2a Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order, and includes the following data related to Eligible Securities that are equities:

- All events and scenarios covered by OATS, which includes information related to the receipt or origination of orders, order transmittal, and order modifications, cancellations and executions;
- Reportable Events for: (1) proprietary orders, including market maker orders, for Eligible Securities that are equities; (2) electronic quotes in listed equity Eligible Securities (*i.e.,* NMS stocks) sent to a national securities exchange or FINRA's Alternative Display Facility (''ADF''); (3) electronic quotes in unlisted Eligible Securities (*i.e.,* OTC Equity Securities) received by an Industry Member operating an interdealer quotation system (''IDQS''); and (4) electronic quotes in unlisted Eligible Securities sent to an IDQS or other quotation system not operated by a Participant or Industry Member;
- Firm Designated IDs (''FDIDs''), which Industry Members must report to the CAT as required by Sections 6.3(d)(i)(A) and 6.4(d)(ii)(C) of the CAT NMS Plan;
- Industry Members would be required to report all street side representative orders, including both agency and proprietary orders and mark such orders as representative orders, except in certain limited exceptions as described in the Industry Member Technical Specifications;
- The link between the street side representative order and the order being represented when: (1) the representative order was originated specifically to represent a single order received either from a customer or another broker-dealer; and (2) there is (a) an existing direct electronic link in the Industry Member's system between the order being represented and the representative order and (b) any resulting executions are immediately and automatically applied to the represented order in the Industry Member's system;
- Manual and Electronic Capture Time for Manual Order Events;
- Special handling instructions for the original receipt or origination of an order during Phase 2a; and
- When routing an order, whether the order was routed as an intermarket sweep order (''ISO'').

In Phase 2a, Industry Members were not required to report modifications of a previously routed order in certain limited instances, nor were they required to report a cancellation of an order received from a Customer after the order has been executed.[113]

(ii) Phase 2b

The Quarterly Progress Reports state that ''Phase 2b was fully implemented as of January 4, 2021.'' [114] The Phase 2b Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order, and includes the Industry Member Data related to

[107] Section 11.3(a)(iv)(B) of the CAT NMS Plan. In approving the CAT Funding Model, the Commission stated that ''[t]he publication of the aggregate executed equivalent share volume and aggregate fee is appropriate because it would allow Participants and CAT Executing Brokers a high-level validation of executed volume and fees.'' CAT Funding Model Approval Order at 62667.

[108] Section 11.3(a)(iii)(C) of the CAT NMS Plan.

[109] Q2 & Q3 2024 Quarterly Progress Report (July 29, 2024).

[110] The SEC granted exemptive relief from certain provisions of the CAT NMS Plan to allow for the phased implementation of Industry Member reporting via five phases addressing the reporting requirements for Phase 2a Industry Member Data, Phase 2b Industry Member Data, Phase 2c Industry Member Data, Phase 2d Industry Member Data and Phase 2e Industry Member Data. Securities Exchange Rel. No. 88702 (Apr. 20, 2020), 85 FR 23075 (Apr. 24, 2020) (''Phased Reporting Exemptive Relief Order'').

[111] *See, e.g.,* Q1 2024 Quarterly Progress Report (Apr. 30, 2024).

[112] *See, e.g.,* Q1 2024 Quarterly Progress Report (Apr. 30, 2024).

[113] Phased Reporting Exemptive Relief Order at 23076–78.

[114] *See, e.g.,* Q1 2024 Quarterly Progress Report (Apr. 30, 2024).

Eligible Securities that are options and related to simple electronic option orders, excluding electronic paired option orders. A simple electronic option order is an order to buy or sell a single option that is not related to or dependent on any other transaction for pricing and timing of execution that is either received or routed electronically by an Industry Member. Electronic receipt of an order is defined as the initial receipt of an order by an Industry Member in electronic form in standard format directly into an order handling or execution system. Electronic routing of an order is the routing of an order via electronic medium in standard format from one Industry Member's order handling or execution system to an exchange or another Industry Member. An electronic paired option order is an electronic option order that contains both the buy and sell side that is routed to another Industry Member or exchange for crossing and/or price improvement as a single transaction on an exchange. Responses to auctions of simple orders and paired simple orders would be reportable in Phase 2b. Furthermore, combined orders in options would be treated in Phase 2b in the same way as equity representative orders are treated in Phase 2a. A combined order would mean, as permitted by SRO rules, a single, simple order in Listed Options created by combining individual, simple orders in Listed Options from a customer with the same exchange origin code before routing to an exchange. During Phase 2b, the single combined order sent to an exchange must be reported and marked as a combined order, but the linkage to the underlying orders is not required to be reported until Phase 2d.[115]

(iii) Phase 2c

The Quarterly Progress Reports state that ''Phase 2c was implemented as of April 26, 2021.'' [116] The Phase 2c Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order. That Order states that ''Phase 2c Industry Member Data'' is Industry Member Data related to Eligible Securities that are equities other than Phase 2a Industry Member Data, Phase 2d Industry Member Data, or Phase 2e Industry Member Data. Specifically, the Phase 2c Industry Member Data includes Industry Member Data that is related to Eligible Securities that are equities and that is related to: (1) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (2) quotes in unlisted Eligible Securities sent to an IDQS operated by a CAT Reporter (reportable by the Industry Member sending the quotes) (except for quotes reportable in Phase 2d, as discussed below); (3) electronic quotes in listed equity Eligible Securities (*i.e.,* NMS stocks) that are not sent to a national securities exchange or FINRA's Alternative Display Facility; (4) reporting changes to client instructions regarding modifications to algorithms; (5) marking as a representative order any order originated to work a customer order in price guarantee scenarios, such as a guaranteed VWAP; (6) flagging rejected external routes to indicate a route was not accepted by the receiving destination; (7) linkage of duplicate electronic messages related to a Manual Order Event between the electronic event and the original manual route; (8) special handling instructions on order route reports (other than the ISO, which is required to be reported in Phase 2a); (9) quote identifier on trade events; (10) reporting of LTIDs (if applicable) for accounts with Reportable Events that are reportable to CAT as of and including Phase 2c; (11) reporting of date account opened or Account Effective Date (as applicable) for accounts and reporting of a flag indicating the Firm Designated ID type as account or relationship; (12) order effective time for orders that are received by an Industry Member and do not become effective until a later time; (13) the modification or cancellation of an internal route of an order; and (14) linkages to the customer order(s) being represented for representative order scenarios, including agency average price trades, net trades, aggregated orders, and disconnected Order Management System (''OMS'')—Execution Management System (''EMS'') scenarios, as required in the Industry Member Technical Specifications.[117]

Phase 2c Industry Member Data also includes electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are equities and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: (1) an equity bid or offer is displayed publicly or has been communicated (a) for listed securities to the ADF operated by FINRA; or (b) for unlisted equity securities to an ''interdealer quotation system,'' as defined in FINRA Rule 6420(c); or (2) an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing; *i.e.,* no further manual or electronic action is required by the responder providing the quote in order to execute or cause a trade to be executed). With respect to OTC Equity Securities, OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter (other than such an IDQS that does not match and execute orders) are reportable by the Industry Member sending them in Phase 2c. Accordingly, any response to a request for quote or other form of solicitation response provided in a standard electronic format (*e.g.,* FIX) that meets this quote definition (*i.e.,* an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing) would be reportable in Phase 2c.[118]

(iv) Phase 2d

The Quarterly Progress Reports state that ''Phase 2d was fully implemented as of December 13, 2021.'' [119] The Phase 2d Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order. ''Phase 2d Industry Member Data'' is Industry Member Data that is related to Eligible Securities that are options other than Phase 2b Industry Member Data, Industry Member Data that is related to Eligible Securities that are equities other than Phase 2a Industry Member Data or Phase 2c Industry Member Data, and Industry Member Data other than Phase 2e Industry Member Data. Phase 2d Industry Member Data includes with respect to the Eligible Securities that are options: (1) simple manual orders; (2) electronic and manual paired orders; (3) all complex orders with linkages to all CAT-reportable legs; (4) LTIDs (if applicable) for accounts with Reportable Events for Phase 2d; (5) date account opened or Account Effective Date (as applicable) for accounts with an LTID and flag indicating the Firm Designated ID type as account or relationship for such accounts; (6) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (7) the modification or cancellation of an internal route of an order; and (8) linkage between a combined order and the original

[115] Phased Reporting Exemptive Relief Order at 23078.

[116] *See, e.g.,* Q1 2024 Quarterly Progress Report (Apr. 30, 2024).

[117] Phase Reporting Exemptive Relief Order at 23078–79.

[118] *Id.* at 23079.

[119] *See, e.g.,* Q1 2024 Quarterly Progress Report (Apr. 30, 2024).

customer orders. Phase 2d Industry Member Data also would include electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are options and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: a listed option bid or offer which is accessible electronically by customers or other market participants and is immediately actionable (*i.e.,* no further action is required by the responder providing the quote in order to execute or cause a trade to be executed). Accordingly, any response to a request for quote or other form of solicitation response provided in standard electronic format (*e.g.,* FIX) that meets this definition is reportable in Phase 2d for options.[120]

Phase 2d Industry Member Data also includes with respect to Eligible Securities that are options or equities (1) receipt time of cancellation and modification instructions through Order Cancel Request and Order Modification Request events; (2) modifications of previously routed orders in certain instances; and (3) OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter that does not match and execute orders. In addition, subject to any exemptive or other relief, Phase 2d Industry Member Data includes verbal or manual quotes on an exchange floor or in the over-the-counter market, where verbal quotes and manual quotes are defined as bids or offers in Eligible Securities provided verbally or that are provided or received other than via a CAT Reporter's order handling and execution system (*e.g.,* quotations provided via email or instant messaging).[121]

(v) Regulatory Access To Order and Transaction Data

The Financial Accountability Milestone related to Period 4 requires that CAT provide functionality that permits the Participants and the Commission to access Phase 2a, 2b, 2c and 2d data and to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, including any related allocation information provided in an Allocation Report. As CAT LLC reported on its Quarterly Progress Reports, the query tool functionality incorporating the data from Phases 2a, 2b, 2c and 2d was available to the Participants and to the Commission as of December 31, 2021.[122]

(B) CAIS Reporting and Regulatory Access

The CAT System functionality required by Rule 613 and the CAT NMS Plan related to Customer information has been developed, successfully tested, and fully implemented, including the requirements related to regulatory access. The implementation of CAT requirements related to Customer information occurred during Phase 2e. As described in the Quarterly Progress Reports and summarized below, Phase 2e has been fully implemented as of May 31, 2024.[123] Furthermore, because a month of customer and account information data is necessary to create report cards with regard to such data, the publication of monthly report cards with respect to customer and account information commenced on July 15, 2024.[124] Accordingly, the Financial Accountability Milestone related to Period 4 was completed on July 15, 2024.

(i) Phase 2e

The Q2 & Q3 2024 Quarterly Progress Report indicates that Phase 2e was fully implemented as of May 31, 2024.[125] Phase 2e Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order. ''Phase 2e Industry Member Data'' includes ''Customer Account Information and Customer Identifying Information, other than LTIDs, date account opened/Account Effective Date and Firm Designated ID type flag previously reported to the CAT.'' [126] LTIDs and Account Effective Date are both provided in Phases 2c and 2d in certain circumstances, as discussed above. Section 1.1 of the CAT NMS Plan defines the term ''Customer Account Information'' to

include, but not be limited to, account number, account type, customer type, date account opened, and large trader identifier (if applicable); except, however, that (a) in those circumstances in which an Industry Member has established a trading relationship with an institution but has not established an account with that institution, the Industry Member will (i) provide the Account Effective Date in lieu of the ''date account opened''; (ii) provide the relationship identifier in lieu of the ''account number''; and (iii) identify the ''account type'' as a ''relationship''; (b) in those circumstances in which the relevant account was established prior to the implementation date of the CAT NMS Plan applicable to the relevant CAT Reporter (as set forth in Rule 613(a)(3)(v) and (vi)), and no ''date account opened'' is available for the account, the Industry Member will provide the Account Effective Date in the following circumstances: (i) where an Industry Member changes back office providers or clearing firms and the date account opened is changed to the date the account was opened on the new back office/clearing firm system; (ii) where an Industry Member acquires another Industry Member and the date account opened is changed to the date the account was opened on the post-merger back office/clearing firm system; (iii) where there are multiple dates associated with an account in an Industry Member's system, and the parameters of each date are determined by the individual Industry Member; and (iv) where the relevant account is an Industry Member proprietary account.

The term ''Customer Identifying Information'' is defined in Section 1.1 of the CAT NMS Plan to mean

information of sufficient detail to identify a Customer, including, but not limited to, (a) with respect to individuals: name, address, date of birth, individual tax payer identification number (''ITIN'')/social security number (''SSN''), individual's role in the account (*e.g.,* primary holder, joint holder, guardian, trustee, person with the power of attorney); and (b) with respect to legal entities: name, address, Employer Identification Number (''EIN'')/Legal Entity Identifier (''LEI'') or other comparable common entity identifier, if applicable; provided, however, that an Industry Member that has an LEI for a Customer must submit the Customer's LEI in addition to other information of sufficient detail to identify a Customer.

(ii) Regulatory Access to Customer Information

The Financial Accountability Milestone related to Period 4 requires that CAT provide functionality that permits the Participants and the Commission to access Phase 2e Industry Member Data (in addition to the Phase 2a, 2b, 2c and 2d Industry Member Data, as discussed above). As CAT LLC reported on its Q2 & Q3 Quarterly Progress Report, regulators had efficient access to Phase 2e Industry Member Data via the query tool functionality required under the CAT NMS Plan by July 15, 2024.[127]

(C) Error Rate

The Financial Accountability Milestones related to Period 4 require the implementation of the CAT System ''at the initial Error Rates specified by Section 6.5(d)(i) or less.'' The average

[120] Phase Reporting Exemptive Relief Order at 23079.

[121] *Id.* at 23079–80.

[122] *See, e.g.,* Q1 2024 Quarterly Progress Report (Apr. 30, 2024).

[123] *Id.*

[124] Q2 & Q3 2024 Quarterly Progress Report (July 29, 2024).

[125] *Id.*

[126] Phase Reporting Exemptive Relief Order at 23080.

[127] Q2 & Q3 2024 Quarterly Progress Report (July 29, 2024).

overall error rate as of July 15, 2024, was less than 5%, which is the initial Error Rate specified by Section 6.5(d)(i) of the CAT NMS Plan. The average overall error rate was calculated by dividing the compliance errors by processed records.

(7) Participant Invoices

While CAT Fees charged to Industry Members become effective in accordance with the requirements of Section 19(b) of the Exchange Act,[128] CAT fees charged to Participants are implemented via an approval of the CAT fees by the Operating Committee in accordance with the requirements of the CAT NMS Plan.[129] On July 31, 2024, the Operating Committee approved the Participant fee related to CAT Fee 2024–1. Specifically, pursuant to the requirements of CAT NMS Plan,[130] each Participant would be required to pay a CAT fee calculated using the fee rate of $0.000035, which is the same fee rate that applies to CEBBs and CEBSs. Like CEBBs and CEBSs, each Participant would be required to pay such CAT fees on a monthly basis for four months, from November 2024 until February 2025, and each Participant's fee for each month would be calculated based on the transactions in Eligible Securities executed on the applicable exchange (for the Participant exchanges) or otherwise than on the exchange (for FINRA) in the prior month. Accordingly, each Participant will receive its first invoice in October 2024, and would receive an invoice each month thereafter until January 2025. Like with the CAT Fee 2024–1 applicable to CEBBs and CEBSs as described in proposed paragraph (a)(3)(C) to the Consolidated Audit Trail Funding Fees section of the Equities Fee Schedule and the Options Fee Schedule, notwithstanding the last invoice date of January 2025, Participants will continue to receive invoices for this fee each month until a new subsequent CAT Fee is in effect with regard to Industry Members. Furthermore, Section 11.4 of the CAT NMS Plan states that each Participant is required to pay such invoices as required by Section 3.7(b) of the CAT NMS Plan. Section 3.7(b) states, in part, that

> [e]ach Participant shall pay all fees or other amounts required to be paid under this Agreement within thirty (30) days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated) (the ''Payment Date''). The Participant shall pay interest on the outstanding balance from the Payment Date until such fee or amount is paid at a per annum rate equal to the lesser of: (i) Prime Rate plus 300 basis points; or (ii) the maximum rate permitted by applicable law.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of the Exchange Act. The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[131] 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 Act,[132] because it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(8) of the Act,[133] which requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. These provisions also require that the Exchange be ''so organized and [have] the capacity to be able to carry out the purposes'' of the Act and ''to comply, and . . . to enforce compliance by its members and persons associated with its members,'' with the provisions of the Exchange Act.[134] Accordingly, a reasonable reading of the Act indicates that it intended that regulatory funding be sufficient to permit an exchange to fulfill its statutory responsibility under the Act, and contemplated that such funding would be achieved through equitable assessments on the members, issuers, and other users of an exchange's facilities.

The Exchange believes that this proposal is consistent with the Act because it implements provisions of the Plan and is designed to assist the Exchange in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [135] 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 Act.

The Exchange believes that the proposed fees to be paid by the CEBBs and CEBSs are reasonable, equitably allocated and not unfairly discriminatory. First, the CAT Fee 2024–1 fees to be collected are directly associated with the budgeted costs of establishing and maintaining the CAT, where such costs include Plan Processor costs and costs related to technology, legal, consulting, insurance, professional and administration, and public relations costs.

The proposed CAT Fee 2024–1 fees would be charged to Industry Members in support of the maintenance of a consolidated audit trail for regulatory purposes. The proposed fees, therefore, are consistent with the Commission's view that regulatory fees be used for regulatory purposes and not to support the Exchange's business operations. The proposed fees would not cover Exchange services unrelated to the CAT. In addition, any surplus would be used as a reserve to offset future fees. Given the direct relationship between CAT fees and CAT costs, the Exchange believes that the proposed fees are reasonable, equitable and not unfairly discriminatory.

As further discussed below, the SEC approved the CAT Funding Model, finding it was reasonable and that it equitably allocates fees among Participants and Industry Members. The Exchange believes that the proposed fees adopted pursuant to the CAT Funding Model approved by the SEC are reasonable, equitably allocated and not unfairly discriminatory.

(1) Implementation of CAT Funding Model in CAT NMS Plan

Section 11.1(b) of the CAT NMS Plan states that ''[t]he Participants shall file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves.'' Per Section 11.1(b) of the CAT NMS Plan, the Exchange has filed this fee filing to implement the Industry Member CAT fees included in the CAT

[128] Section 11.3(a)(i)(A)(I) of the CAT NMS Plan.

[129] CAT Funding Model Approval Order at 62659.

[130] *See* Section 11.3(a)(ii) and Appendix B of the CAT NMS Plan.

[131] 15 U.S.C. 78f(b)(6).

[132] 15 U.S.C. 78f(b)(4).

[133] 15 U.S.C. 78f(b)(8).

[134] *See* Section 6(b)(1) of the Exchange Act.

[135] CAT NMS Plan Approval Order at 84697.

Funding Model. The Exchange believes that this proposal is consistent with the Exchange Act because it is consistent with, and implements, the CAT Funding Model in the CAT NMS Plan, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the CAT NMS Plan. In approving the CAT NMS Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [136] Similarly, in approving the CAT Funding Model, the SEC concluded that the CAT Funding Model met this standard.[137] As this proposal implements the Plan and the CAT Funding Model described therein, and applies specific requirements to Industry Members in compliance with the Plan, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Exchange Act.

(2) Calculation of Fee Rate for CAT Fee 2024–1 Is Reasonable

The SEC has determined that the CAT Funding Model is reasonable and satisfies the requirements of the Exchange Act. Specifically, the SEC has concluded that the method for determining CAT Fees as set forth in Section 11.3 of the CAT NMS Plan, including the formula for calculating the Fee Rate, the identification of the parties responsible for payment and the transactions subject to the fee rate for CAT Fees, is reasonable and satisfies the Exchange Act.[138] In each respect, as discussed above, CAT Fee 2024–1 is calculated, and would be applied, in accordance with the requirements applicable to CAT Fees as set forth in the CAT NMS Plan. Furthermore, as discussed below, the Exchange believes that each of the figures for the variables in the SEC-approved formula for calculating the fee rate for CAT Fee 2024–1 is reasonable and consistent with the Exchange Act. Calculation of Fee Rate 2024–1 for CAT Fee 2024–1 requires the figures for Budgeted CAT Costs 2024–1, the executed equivalent share volume for the prior twelve months, the determination of CAT Fee 2024–1 Period, and the projection of the executed equivalent share volume for CAT Fee 2024–1 Period. Each of these variables is reasonable and satisfies the Exchange Act, as discussed throughout this filing.

(A) Budgeted CAT Costs 2024–1

The formula for calculating a Fee Rate requires the amount of Budgeted CAT Costs to be recovered. Specifically, Section 11.3(a)(iii)(B) of the CAT NMS Plan requires a fee filing to provide:

> The budget for the upcoming year (or remainder of the year, as applicable), including a brief description of each line item in the budget, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration and (6) public relations costs, a reserve and/or such other categories as reasonably determined by the Operating Committee to be included in the budget, and the reason for changes in each such line item from the prior CAT fee filing.

In accordance with this requirement, the Exchange has set forth the amount and type of Budgeted CAT Costs 2024–1 for each of these categories above.

Section 11.3(a)(iii)(B) of the CAT NMS Plan also requires that the fee filing provide ''sufficient detail to demonstrate that the budget for the upcoming year, or part of year, as applicable, is reasonable and appropriate.'' As discussed below, the Exchange believes that the budget for the CAT Fee 2024–1 Period is ''reasonable and appropriate.'' Each of the costs included in CAT Fee 2024–1 are reasonable and appropriate because the costs are consistent with standard industry practice, based on the need to comply with the requirements of the CAT NMS Plan, incurred subject to negotiations performed on an arm's length basis, and/or are consistent with the needs of any legal entity, particularly one with no employees.

(i) Technology: Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover budgeted costs related to cloud hosting services as a part of CAT Fees.[139] CAT LLC determined that the budgeted costs related to cloud hosting services described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2024–1. As described above, the cloud hosting services costs reflect, among other things, the breadth of the CAT cloud activities, data volumes far in excess of the original volume estimates, the need for specialized cloud services given the volume and unique nature of the CAT, the processing time requirements of the Plan, and regular efforts to seek to minimize costs where permissible under the Plan. CAT LLC determined that use of cloud hosting services is necessary for implementation of the CAT, particularly given the substantial data volumes associated with the CAT, and that the fees for cloud hosting services negotiated by FCAT were reasonable, taking into consideration a variety of factors, including the expected volume of data and the breadth of services provided and market rates for similar services.[140] Indeed, the actual costs of the CAT are far in excess of the original estimated costs of the CAT due to various factors, including the higher volumes and greater complexity of the CAT than anticipated when Rule 613 was originally adopted.

To comply with the requirements of the Plan, the breadth of the cloud activities related to the CAT is substantial. The cloud services not only include the production environment for the CAT, but they also include two industry testing environments, support environments for quality assurance and stress testing and disaster recovery capabilities. Moreover, the cloud storage costs are driven by the requirements of the Plan, which requires the storage of multiple versions of the data, from the original submitted version of the data through various processing steps, to the final version of the data.

Data volume is a significant driver of costs for cloud hosting services. When the Commission adopted the CAT NMS Plan in 2016, it estimated that the CAT would need to receive 58 billion records per day [141] and that annual operating costs for the CAT would range from $36.5 million to $55 million.[142] Through 2023, the actual data volumes have been five times that original estimate. The data volumes to date for 2024 have continued this trend.

In addition to the effect of the data volume on the cloud hosting costs, the processing timelines set forth in the Plan contribute to the cloud hosting costs. Although CAT LLC has proactively sought to manage cloud hosting costs while complying with the Plan, including through requests to the Commission for exemptive relief and amendments to the CAT NMS Plan, stringent CAT NMS Plan requirements do not allow for any material flexibility in cloud architecture design choices,

[136] *Id.* at 84696.

[137] CAT Funding Model Approval Order at 62686.

[138] *Id.* at 62662–63.

[139] Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan.

[140] For a discussion of the amount and type of cloud hosting services fees, *see* Section 3(a)(2)(C)(i) above.

[141] Appendix D–4 of the CAT NMS Plan at n.262.

[142] CAT NMS Plan Approval Order at 84801.

processing timelines (*e.g.,* the use of non-peak processing windows), or lower-cost storage tiers. As a result, the required CAT processing timelines contribute to the cloud hosting costs of the CAT.

The costs for cloud hosting services also reflect the need for specialized cloud hosting services given the data volume and unique processing needs of the CAT. The data volume as well as the data processing needs of the CAT necessitate the use of cloud hosting services. The equipment, power and services required for an on-premises data model, the alternative to cloud hosting services, would be cost prohibitive. Moreover, as CAT was being developed, there were limited cloud hosting providers that could satisfy all the necessary CAT requirements, including the operational and security criteria. Over time, more providers offering cloud hosting services that would satisfy these criteria have entered the market. CAT LLC will continue to evaluate alternative cloud hosting services, recognizing that the time and cost to move to an alternative cloud provider would be substantial.

The reasonableness of the cloud hosting services costs is further supported by key cost discipline mechanisms for the CAT—a cost-based funding structure, cost transparency, cost management efforts (including regular efforts to lower compute and storage costs where permitted by the Plan) and oversight. Together, these mechanisms help ensure the ongoing reasonableness of the CAT's costs and the level of fees assessed to support those costs.[143]

(ii) Technology: Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted costs related to operating fees as a part of CAT Fees.[144] CAT LLC determined that the budgeted costs related to operating fees described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2024–1.

The operating fees would include the negotiated fees paid by CAT LLC to the Plan Processor to operate and maintain the system for order-related information and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.,* management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the selection of FCAT as the Plan Processor was reasonable and appropriate given its expertise with securities regulatory reporting, after a process of considering other potential candidates.[145] CAT LLC also determined that the fixed price contract, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, was reasonable and appropriate, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity.[146] The services to be performed by FCAT for CAT Fee 2024–1 Period and the budgeted costs related to such services are described above.[147]

The operating costs also include costs related to the receipt of market data. CAT LLC anticipates continuing to receive certain market data from Exegy during the CAT Fee 2024–1 Period. CAT LLC anticipates that Exegy will continue to provide data that meets the SIP Data requirements of the CAT NMS Plan and that the fees are reasonable and in line with market rates for market data received.[148]

(iii) Technology: CAIS Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted costs related to CAIS operating fees as a part of CAT Fees.[149] CAT LLC determined that the budgeted costs related to CAIS operating fees described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2024–1. The CAIS operating fees would include the fees paid to the Plan Processor to operate and maintain CAIS and to perform the business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.,* management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the fees for FCAT's CAIS-related services, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity, are reasonable and appropriate.[150] The services to be performed by FCAT for the CAT Fee 2024–1 Period and the budgeted costs for such services are described above.[151]

(iv) Technology: Change Request Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted costs related to change request fees as a part of CAT Fees.[152] CAT LLC determined that the budgeted costs related to change request fees described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2024–1. It is common practice to utilize a change request process to address evolving needs in technology projects. This is particularly true for a project like CAT that is the first of its kind, both in substance and in scale. The substance and costs of each of the change requests are evaluated by the Operating Committee and approved in accordance with the requirements for Operating Committee meetings. In each case, CAT LLC forecasts that the change requests will be necessary to implement the CAT. As described above,[153] CAT LLC has included a reasonable placeholder budget amount for potential change requests that may arise during the CAT Fee 2024–1 Period. As noted above, the total budgeted costs for change requests during the CAT Fee 2024–1 Period represent a small percentage of Budgeted CAT Costs 2024–1—that is, approximately 0.12% of Budgeted CAT Costs 2024–1.

(v) Capitalized Developed Technology Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted costs related to capitalized developed technology costs as a part of CAT Fees.[154] In general, capitalized developed technology costs would include costs related to, for example, certain development costs, costs related to certain modifications, upgrades and other changes to the CAT, CAIS implementation fees and license fees. The amount and type of budgeted capitalized developed technology costs for the CAT Fee 2024–1 Period, which relate to the CAIS software license fee and technology changes to be implemented by FCAT, are described in more detail above.[155] CAT LLC

[143] *See* Securities Exchange Act Rel. No. 97151 (Mar. 15, 2023), 88 FR 17086, 17117 (Mar. 21, 2023) (describing key cost discipline mechanisms for the CAT).

[144] Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan.

[145] *See* Section 3(a)(2)(C)(ii) above.

[146] *Id.*

[147] *Id.*

[148] *Id.*

[149] Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan.

[150] *See* Section 3(a)(2)(C)(iii) above.

[151] *Id.*

[152] Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan.

[153] *See* Section 3(a)(2)(C)(iv) above.

[154] Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan.

[155] *See* Section 3(a)(2)(C)(v) above.

determined that these budgeted costs are reasonable and should be included as a part of Budgeted CAT Costs 2024–1.

(vi) Legal

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted costs related to legal fees as a part of CAT Fees.[156] CAT LLC determined that the budgeted legal costs described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2024–1. Given the unique nature of the CAT, the number of parties involved with the CAT (including, for example, the SEC, Participants, Industry Members, and vendors) and the many regulatory, contractual and other issues associated with the CAT, the scope of the necessary legal services is substantial. CAT LLC determined that the scope of the proposed legal services is necessary to implement and maintain the CAT and that the legal rates reflect the specialized services necessary for such a project. CAT LLC determined to hire and continue to use each law firm based on a variety of factors, including their relevant expertise and fees. In each case, CAT LLC determined that the fee rates were in line with market rates for specialized legal expertise. In addition, CAT LLC determined that the budgeted costs for the legal projects were appropriate given the breadth of the services provided. The services to be performed by each law firm for the CAT Fee 2024–1 Period and the budgeted costs related to such services are described above.[157]

(vii) Consulting

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted consulting costs as a part of CAT Fees.[158] CAT LLC determined that the budgeted consulting costs described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2024–1. Because there are no CAT employees [159] and because of the significant number of issues associated with the CAT, the consultants are budgeted to provide assistance in the management of various CAT matters and the processes related to such matters.[160] CAT LLC determined the budgeted consulting costs were appropriate, as the consulting services were to be provided at reasonable market rates that were comparable to the rates charged by other consulting firms for similar work. Moreover, the total budgeted costs for such consulting services were appropriate in light of the breadth of services provided by Deloitte. The services budgeted to be performed by Deloitte and the budgeted costs related to such services are described above.[161]

(viii) Insurance

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted insurance costs as a part of CAT Fees.[162] CAT LLC determined that the budgeted insurance costs described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2024–1. CAT LLC determined that it is common practice to have directors' and officers' liability insurance, and errors and omissions liability insurance. CAT LLC further determined that it was important to have cyber security insurance given the nature of the CAT, and such a decision is consistent with the CAT NMS Plan, which states that the cyber incident response plan may include ''[i]nsurance against security breaches.'' [163] As discussed above,[164] CAT LLC determined that the budgeted insurance costs were appropriate given its prior experience with this market and an analysis of the alternative insurance offerings. Based on this analysis, CAT LLC determined that the selected insurance policies provided appropriate coverage at reasonable market rates.[165]

(ix) Professional and Administration

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted professional and administration costs as a part of CAT Fees.[166] CAT LLC determined that the budgeted professional and administration costs described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2024–1. Because there are no CAT employees, all required accounting, financial, tax, cash management and treasury functions for CAT LLC have been outsourced at market rates. In addition, the required annual financial statement audit of CAT LLC is included in professional and administration costs, which costs are also at market rates. The services performed by Anchin and Grant Thornton and the costs related to such services are described above.[167]

CAT LLC anticipates continuing to make use of Anchin, a financial advisory firm, to assist with financial matters for the CAT. CAT LLC determined that the budgeted costs for Anchin were appropriate, as the financial advisory services were to be provided at reasonable market rates that were comparable to the rates charged by other such firms for similar work. Moreover, the total budgeted costs for such financial advisory services were appropriate in light of the breadth of services provided by Anchin. The services budgeted to be performed by Anchin and the budgeted costs related to such services are described above.[168]

CAT LLC anticipates continuing to make use of Grant Thornton, an independent accounting firm, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC determined that the budgeted costs for Grant Thornton were appropriate, as the accounting services were to be provided at reasonable market rates that were comparable to the rates charged by other such firms for similar work. Moreover, the total budgeted costs for such accounting services were appropriate in light of the breadth of services provided by Grant Thornton. The services budgeted to be performed by Grant Thornton and the budgeted costs related to such services are described above.[169]

(x) Public Relations Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted public relations costs as a part of CAT Fees.[170] CAT LLC determined that the budgeted public relations costs described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2024–1. CAT LLC determined that the types of public relations services to be utilized were beneficial to the CAT and market participants more generally. Public relations services are important for

[156] Section 11.3(a)(iii)(B)(B)(2) of the CAT NMS Plan.

[157] *See* Section 3(a)(2)(B)(vi) above.

[158] Section 11.3(b)(iii)(B)(B)(3) of the CAT NMS Plan.

[159] As stated in the filing of the proposed CAT NMS Plan, ''[i]t is the intent of the Participants that the Company have no employees.'' Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614, 30621 (May 17, 2016).

[160] CAT LLC uses certain third parties to perform tasks that may be performed by administrators for other NMS Plans. *See, e.g.,* CTA Plan and CQ Plan.

[161] Section 3(a)(2)(C)(vii) of the CAT NMS Plan.

[162] Section 11.3(b)(iii)(B)(B)(4) of the CAT NMS Plan.

[163] Section 4.1.5 of Appendix D of the CAT NMS Plan.

[164] *See* Section 3(a)(2)(C)(viii) above.

[165] *Id.*

[166] Section 11.3(a)(iii)(B)(B)(5) of the CAT NMS Plan.

[167] *See* Section 3(a)(2)(C)(ix) above.

[168] *Id.*

[169] *Id.*

[170] Section 11.3(a)(iii)(B)(B)(6) of the CAT NMS Plan.

various reasons, including monitoring comments made by market participants about CAT and understanding issues related to the CAT discussed on the public record.[171] By continuing to engage a public relations firm, CAT LLC will be better positioned to understand and address CAT issues to the benefit of all market participants.[172] Moreover, CAT LLC determined that the budgeted rates charged for such services were in line with market rates.[173] As noted above, the total budgeted public relations costs for the CAT Fee 2024–1 Period represent a small percentage of Budgeted CAT Costs 2024–1—that is, approximately 0.03% of Budgeted CAT Costs 2024–1.

(xi) Reserve

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted reserve costs as a part of CAT Fees.[174] CAT LLC determined that the inclusion of a reserve in the amount of 25% of Budgeted CAT Costs 2024–1 complies with the requirements of the CAT NMS Plan related to a reserve, is a reasonable amount and should be included as a part of Budgeted CAT Costs 2024–1.

In its approval order for the CAT Funding Model, the Commission stated that it would be reasonable for the annual operating budget for the CAT to ''include a reserve of not more than 25% of the annual budget.'' [175] In making this statement, the Commission noted the following:

> Because the CAT is a critical regulatory tool/system, the CAT needs to have a stable funding source to build financial stability to support the Company as a going concern. Funding for the CAT, as noted in Section 11.1(b), is the responsibility of the Participants and the industry. Because CAT fees are charged based on the budget, which is based on anticipated volume, it is reasonable to have a reserve on hand to prevent a shortfall in the event there is an unexpectedly high volume in a given year. A reserve would help to assure that the CAT has sufficient resources to cover costs should there be unanticipated costs or costs that are higher than expected.[176]

The SEC also recognized that that a reserve would help address the difficulty in predicting certain variable CAT costs, like trading volume.[177] The SEC also recognized that CAT fees will be collected approximately three months after trading activity on which a CAT fee is based, or 25% of the year, and that the reserve would be available to address funding needs related to this three-month delay.[178] The inclusion of the proposed reserve in Budgeted CAT Costs 2024–1 would provide each of these benefits to the CAT. The reserve is discussed further above.[179]

(B) Reconciliation of Budget to the Collected Fees

The CAT NMS Plan also requires fee filings for Prospective CAT Fees to include ''a discussion of how the budget is reconciled to the collected fees.'' [180] To date, CAT LLC has not collected any CAT fees. Accordingly, there are no collected fees to be reconciled with the budget.

(C) Total Executed Equivalent Share Volume for the Prior 12 Months

The total executed equivalent share volume of transactions in Eligible Securities for the period from June 2023 through May 2024 was 3,980,753,840,905.21 executed equivalent shares. CAT LLC determined the total executed equivalent share volume for the prior twelve months by counting executed equivalent shares in the same manner as it counts executed equivalent shares for CAT billing purposes.[181]

(D) Projected Executed Equivalent Share Volume for the CAT Fee 2024–1 Period

CAT LLC has determined to calculate the projected total executed equivalent share volume for the four months in which CAT Fee 2024–1 Period would be payable by multiplying by 4/12ths (*i.e.,* one-third) the executed equivalent share volume for the prior 12 months.[182] CAT LLC determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has remained relatively constant in recent years. For example, the executed equivalent share volume for 2021 was 3,963,697,612,395 executed equivalent shares, the executed equivalent share volume for 2022 was 4,039,821,841,560.31 executed equivalent shares, and the executed equivalent share volume for 2023 was 3,868,940,345,680.6. Accordingly, the projected total executed equivalent share volume for the four-month period for CAT Fee 2024–1 is 1,326,917,946,968.403 executed equivalent shares.[183]

(E) Actual Fee Rate for CAT Fee 2024–1

(i) Decimal Places

As noted in the approval order for the CAT Funding Model, as a practical matter, the fee filing for a CAT Fee would provide the exact fee per executed equivalent share to be paid for each CAT Fee, by multiplying the Fee Rate by one-third and describing the relevant number of decimal places for the fee rate.[184] Accordingly, proposed paragraph (a)(3)(B) to the Consolidated Audit Trail Funding Fees section of the Equities Fee Schedule and the Options Fee Schedule would set forth a fee rate of $0.000035 per executed equivalent share. This fee rate is calculated by multiplying Fee Rate 2024–1 by one-third and rounding the result to six decimal places. CAT LLC determined that the use of six decimal places is reasonable as it balances the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.[185]

(ii) Reasonable Fee Level

The Exchange believes that imposing CAT Fee 2024–1 with a fee rate of $0.000035 per executed equivalent share is reasonable because it provides for a revenue stream for the Company that is aligned with Budgeted CAT Costs 2024–1 and such budgeted costs would be spread out over a four-month period. Moreover, the Exchange believes that the level of the fee rate is reasonable, as it is comparable to other transaction-based fees. Indeed, CAT Fee 2024–1 is significantly lower than fees assessed pursuant to Section 31 (*e.g.,* $0.0009 per share to 0.0004 per share),[186] and, as a result, the magnitude of CAT Fee 2024–1 is small, and therefore will mitigate

[171] *See* Section 3(a)(2)(C)(x) above.

[172] *Id.*

[173] *Id.*

[174] Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan.

[175] CAT Funding Model Approval Order at 62657.

[176] *Id.*

[177] *Id.*

[178] *Id.*

[179] *See* Section 3(a)(2)(C)(xi) above.

[180] Section 11.3(a)(iii)(B)(C) of the CAT NMS Plan.

[181] *See* Section 3(a)(2)(D) above.

[182] *Id.*

[183] This projection was calculated by multiplying 3,980,753,840,905.21 executed equivalent shares by 4/12ths.

[184] CAT Funding Model Approval Order at 62658, n.658.

[185] *See* Section 3(a)(4)(A) above.

[186] CAT Funding Model Approval Order at 62663, 62682. In explaining the comparison of Section 31 fees to CAT fees in the CAT Funding Model Approval Order, the SEC noted that ''Section 31 fees are expressed per dollar volume traded. Translating this to a per share range involves identifying reasonable high and low trade sizes. The lower end of this range comes from the 25th percentile in $ trade size of 1,200 and share trade size of 71 from the first quarter of 2021. The higher end of this range comes from the 75th percentile in $ trade size of 5,200 and share trade size of 300 from the first quarter of 2021. Section 31 fees have ranged from $5.10 per $Million to $23.10 per $Million from Oct. 1, 2016 to Mar. 1, 2023.'' *Id.* at 62682., n.1100. In 2024, Section 31 fees were raised further to $27.80 per million dollars.

any potential adverse economic effects or inefficiencies.[187]

(3) CAT Fee 2024–1 Provides for an Equitable Allocation of Fees

CAT Fee 2024–1 provides for an equitable allocation of fees, as it equitably allocates CAT costs between and among the Participants and Industry Members. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfied the requirements of the Exchange Act, including the formula for calculating CAT Fees as well as the Industry Members to be charged the CAT Fees.[188] In approving the CAT Funding Model, the SEC stated that ''[t]he Participants have sufficiently demonstrated that the proposed allocation of fees is reasonable.'' [189] Accordingly, the CAT Funding Model sets forth the requirements for allocating fees related to Budgeted CAT Costs among Participants and Industry Members, and the fee filings for CAT Fees must comply with those requirements.

CAT Fee 2024–1 provides for an equitable allocation of fees as it complies with the requirements regarding the calculation of CAT Fees as set forth in the CAT NMS Plan. For example, as described above, the calculation of CAT Fee 2024–1 complies with the formula set forth in Section 11.3(a) of the CAT NMS Plan. In addition, CAT Fee 2024–1 would be charged to CEBBs and CEBSs in accordance with Section 11.3(a) of the CAT NMS Plan. Furthermore, the Participants would be charged for their designated share of Budgeted CAT Costs 2024–1 through a fee implemented via the CAT NMS Plan, which would have the same fee rate as CAT Fee 2024–1.

In addition, as discussed above, each of the inputs into the calculation of CAT Fee 2024–1—Budgeted CAT Costs 2024–1, the count for the executed equivalent share volume for the prior 12 months, and the projected executed equivalent share volume for the CAT Fee 2024–1 Period—are reasonable. Moreover, these inputs lead to a reasonable fee rate for CAT Fee 2024–1 that is lower than other fee rates for transaction-based fees. A reasonable fee rate allocated in accordance with the requirements of the CAT Funding Model provides for an equitable allocation of fees.

(4) CAT Fee 2024–1 Is Not Unfairly Discriminatory

CAT Fee 2024–1 is not an unfairly discriminatory fee. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfied the requirements of the Exchange Act. In reaching this conclusion, the SEC analyzed the potential effect of CAT Fees calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. CAT Fee 2024–1 complies with the requirements regarding the calculation of CAT Fees as set forth in the CAT NMS Plan. In addition, as discussed above, each of the inputs into the calculation of CAT Fee 2024–1 and the resulting fee rate for CAT Fee 2024–1 is reasonable. Therefore, CAT Fee 2024–1 does not impose an unfairly discriminatory fee on Industry Members.

The Exchange believes the proposed fees established pursuant to the CAT Funding Model promote just and equitable principles of trade, and, in general, protect investors and the public interest, and are provided in a transparent manner and with specificity in the Equities Fee Schedule and the Options Fee Schedule. The Exchange also believes that the proposed fees are reasonable because they would provide ease of calculation, ease of billing and other administrative functions, and predictability of a fee based on fixed rate per executed equivalent share. Such factors are crucial to estimating a reliable revenue stream for CAT LLC and for permitting Exchange members to reasonably predict their payment obligations for budgeting purposes.

B. Self-Regulatory Organization's Statement on Burden on Competition

Section 6(b)(8) of the Act [190] requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that CAT Fee 2024–1 implements provisions of the CAT NMS Plan that were approved by the Commission and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan.

In addition, all Participants (including exchanges and FINRA) are proposing to introduce CAT Fee 2024–1 on behalf of CAT LLC to implement the requirements of the CAT NMS Plan. Therefore, this is not a competitive fee filing, and, therefore, it does not raise competition issues between and among the Participants.

Furthermore, in approving the CAT Funding Model, the SEC analyzed the potential competitive impact of the CAT Funding Model, including competitive issues related to market services, trading services and regulatory services, efficiency concerns, and capital formation.[191] The SEC also analyzed the potential effect of CAT fees calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. Based on this analysis, the SEC approved the CAT Funding Model as compliant with the Exchange Act. CAT Fee 2024–1 is calculated and implemented in accordance with the CAT Funding Model as approved by the SEC.

As discussed above, each of the inputs into the calculation of CAT Fee 2024–1 is reasonable and the resulting fee rate for CAT Fee 2024–1 calculated in accordance with the CAT Funding Model is reasonable. Therefore, CAT Fee 2024–1 would not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were 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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act [192] and Rule 19b–4(f)(2) thereunder,[193]

[187] *Id.*

[188] *See* Section 11.3(b) of the CAT NMS Plan.

[189] CAT Funding Model Approval Order at 62629.

[190] 15 U.S.C. 78f(b)(8).

[191] CAT Funding Model Approval Order at 62676–86.

[192] 15 U.S.C. 78s(b)(3)(A)(ii).

[193] 17 CFR 240.19b–4(f)(2).

because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEARCA–2024–69 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–2024–69. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEARCA–2024–69 and should be submitted on or before September 25, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[194]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–19759 Filed 9–3–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100859; File No. SR–BX–2024–031]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 3, Sections 15 and 25

August 28, 2024.

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 August 20, 2024, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''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 amend its Rules at Options 3, Sections 15 and 25.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

BX proposes to amend Options 3, Section 25, Anonymity, to permit trade reports to reveal certain additional information concerning contra parties. The Exchange also proposes an amendment to Options 3, Section 15, Risk Protections. Each change will be described below.

Anonymity

Today, transaction reports produced by the System indicate the details of the transactions, but do not reveal ''contra party identities'' pursuant to Options 3, Section 25(a). In limited circumstances, BX will reveal a Participant's identity as described in Options 3, Section 25(b).[3]

Background

Today, BX does not display any market participant capacity information[4] prior to execution, nor does BX provide transaction reports that include contra party identities.[5] For example, BX does not reveal the market capacity in its BX Top of Market (BX Top) feed.[6] Additionally, BX provides a

[194] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Pursuant to Options 3, Section 25(b), BX will reveal a Participant's identity: (1) when a registered clearing agency ceases to act for a participant, or the Participant's clearing firm, and the registered clearing agency determines not to guarantee the settlement of the Participant's trades; (2) for regulatory purposes or to comply with an order of an arbitrator or court; (3) if both Participants to the transaction consent; and (4) Unless otherwise instructed by a Member, BX will reveal to a member, no later than the end of the day on the date an anonymous trade was executed, when the member's Order has been decremented by another Order submitted by that same member.

[4] A market participant capacity is a code that correlates to the capacity of an order at The Options Clearing Corporation (''OCC'').

[5] The contra party identity is the mnemonic or house account for the contra side of the trade. The term ''mnemonic'' means an acronym comprised of letters and/or numbers assigned to Participants pursuant to Options 1, Section 1(a)(32). A Participant account may be associated with multiple mnemonics. A house account is a number provided by the Exchange to identify members.

[6] Pursuant to Options 3, Section 23(a)(2), BX Top of Market (BX Top) calculates and disseminates BX's best bid and offer and last sale information for trades executed on BX Options. The feed also

Continued

Clearing Trade Interface [7] message for post-trade reporting and a Trade Details report [8] that do not display contra party identities.

Unlike BX, other options exchanges are not anonymous and display market participant capacity prior to execution and provide transaction reports with contra party identities.[9] For example, Phlx displays market participants capacity information in its PHLX Orders feed,[10] and MIAX provides a Clearing Trade Drop report [11] with the contra party MPID displayed.

With this amendment, BX's CTI would provide the house account of the contra party and BX's Trade Detail report would provide the mnemonic, firm name, and other relevant clearing information of the contra party. These changes would be identical to the CTI and Trade Detail Report contra party information provided by Phlx, ISE, GEMX and MRX and analogous to the contra party information that MIAX provides its members.

Ovation

In terms of workflow, today, BX's System executes an order, the trade information for that order is sent to OCC and includes contra party identities. OCC then disseminates trade messages that contain a matched trade per record with both buy and sell sides of an order, also revealing contra party identities.

OCC announced that it will amend its platform, with project Ovation, in 2025.[12] Among other changes, OCC will amend trade reporting and will split the trade into two trade messages; one for the buyer and one for the seller. As a result of this change, OCC Clearing Members will only receive the clearing message relevant to their side(s) of the trade and exchanges will receive both messages and will need to link each trade by clearing sequence numbers, exchange and business date.[13] Therefore, BX Participants will no longer receive trade message information from OCC that reveals contra party identities. BX Participants have requested that the Exchange offer contra party identities, similar to other exchanges, on its post-trade reporting because this information is essential information for reconciliations when there are errors or clearing breaks especially on an expiring option or option with a pending corporate action. Additionally, contra party identities are important in the event of an obvious or catastrophic error. Without this information, a representing broker dealer would be less able to input trade detail to the Exchange in a timely manner.

Proposal

At this time, at the request of several BX Participants, BX proposes to amend Options 3, Section 25, Anonymity, to permit the Exchange to reveal contra party identities, post-trade, to provide BX Participants with information that OCC provides today and that other options exchanges also provide today.[14] Specifically, the Exchange proposes to amend Options 3, Section 25(a) which currently states, ''The transaction reports produced by the System will indicate the details of the transactions and shall not reveal contra party identities.'' As amended, Options 3, Section 25(a) would provide, ''Orders and quotes entered into the System will be displayed anonymously and, as such, will trade anonymously. Transaction reports produced by the System (*i.e.* the Clearing Trade Interface and the Trade Details report) will indicate the details of the transactions, and will include contra party identities.''

Today, options trades on BX are not completely anonymous through settlement as they are submitted by the Exchange to OCC with contra-side OCC member information. The Exchange believes that this amendment will continue to provide Participants with anonymity when transacting options orders on BX, while also providing Participants with post-trade contra party identities as a replacement for the data that OCC is providing today and will no longer be provided with OCC's technology migration. BX's post trade reporting (*i.e.* the Clearing Trade Interface and the Trade Details report) would provide information identical to or analogous to other options exchanges that display contra party identities.[15]

Acceptable Trade Range

The Exchange proposes to amend Options 3, Section 15(b)(1), which describes the Acceptable Trade Range. Today, BX's System calculates an Acceptable Trade Range to limit the range of prices at which an order and/or quote (except an All-or-None Order) will be allowed to execute. The Acceptable Trade Range is calculated by taking the Reference Price, plus or minus a value to be determined by the Exchange. (*i.e.,* the Reference Price—(x) for sell orders/quotes and the Reference Price + (x) for buy orders/quotes). Upon receipt of a new order/quote, the Reference Price is the better of the National Best Bid (''NBB'') or internal best bid for sell orders/quotes and the National Best Offer (''NBO'') or internal best offer for buy orders/quotes or the last price at which the order/quote is posted whichever is higher for a buy order/quote or lower for a sell order/quote.

If an order/quote reaches the outer limit of the Acceptable Trade Range (the ''Threshold Price'') without being fully executed, it will be posted at the Threshold Price for a brief period, not to exceed one second (''Posting Period''), to allow more liquidity to be collected, unless a Quote Exhaust has occurred, in which case the Quote Exhaust process in Options 3, Section 6(a)(ii)(B)(3) will ensue, triggering a new Reference Price. Upon posting, either the current Threshold Price of the order or an updated NBB for buy orders or the NBO for sell orders (whichever is higher for a buy order/lower for a sell order)

provides last trade information and for each options series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on BX and identifies if the series is available for closing transactions only.

[7] Pursuant to BX Options 3, Section 23(b)(1), the Clearing Trade Interface (''CTI'') is a real-time clearing trade update message that is sent to a member after an execution has occurred and contains trade details specific to that member. The information includes, among other things, the following: (i) The Clearing Member Trade Agreement or ''CMTA'' or ''OCC'' number; (ii) Exchange badge or house number; (iii) the Exchange internal firm identifier; (iv) an indicator which will distinguish electronic and non-electronically delivered orders; (v) liquidity indicators and transaction type for billing purposes; and (vi) capacity.

[8] The Trade Details report is a report containing all of a member's executed trades along with all relevant trade information, and clearing information.

[9] *See e.g.* Nasdaq Phlx, LLC (''Phlx''), Nasdaq ISE, LLC (''ISE''), Nasdaq GEMX, LLC (''GEMX'') and Nasdaq MRX, LLC (''MRX'') and MIAX.

[10] Pursuant to Options 3, Section 23(a)(2), PHLX Orders is a real-time full Limit Order book data feed that provides pricing information for orders on the PHLX Order book for displayed order types as well as market participant capacity. PHLX Orders is currently provided as part of the TOPO Plus Orders data product. PHLX Orders provides real-time information to enable users to keep track of the single and complex order book(s). The data provided for each options series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, leg information on complex strategies and whether the option series is available for trading on Phlx and identifies if the series is available for closing transactions only. The feed also provides auction and exposure notifications and order imbalances on opening/reopening (size of matched contracts and size of the imbalance).

[11] For example, *see* Miami International Securities Exchange LLC (''MIAX'') Clearing Trade Drop specifications at: *https://www.miaxglobal.com/sites/default/files/page-files/Clearing_Trade_Drop_CTD_v2.6c.pdf.*

[12] *See https://www.theocc.com/company-information/occ-transformation.*

[13] *See https://www.theocc.com/getmedia/0db1ac5e-ca85-43b6-a109-4354a572d912/Ovation-Platform-Changes-and-Enhancements_Trade-Sources_Jan2024.pdf.*

[14] *See supra* note 9.

[15] *See supra* note 9.

then becomes the Reference Price for calculating a new Acceptable Trade Range. If the order/quote remains unexecuted after the Posting Period, a New Acceptable Trade Range will be calculated and the order/quote will execute, route, or post up to the new Acceptable Trade Range Threshold Price, unless a member organization has requested that their orders be returned if posted at the outer limit of the Acceptable Trade Range (in which case, the order will be returned).

Today, the System permits a BX Participant to request that their order be returned to them if posted at the outer limit of the Acceptable Trade Range instead of executing, routing or posting to the order book. This functionality, which is not specified in the current rule, provides a BX Participant with additional choice as to the price at which their order could execute. The Exchange proposes to reflect this existing functionality in Options 3, Section 15(b)(1)(A) to make clear that the choice exists to have an order returned. Today, Phlx offers this functionality.[16]

Implementation

The Exchange proposes to implement the amendments to Options 3, Section 25 on or before March 31, 2025. The Exchange would announce the date of implementation in an Options Trader Alert ahead of the implementation date. No implementation is necessary for the change to the Acceptable Trade Range rule.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Section 6(b)(5) of the Act,[18] 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.

Anonymity

BX's proposal to amend Options 3, Section 25 to reveal contra party identities post-trade promotes just and equitable principles of trade, and removes impediments to and perfect the mechanism of a free and open market and a national market system because it would provide BX Participants with identical or analogous post trade information (*i.e.* the Clearing Trade Interface and the Trade Details report) that OCC and other options exchanges[19] provide these market participants today. BX Participants have requested that the Exchange offer contra party identities, similar to other exchanges, on its post-trade reporting because this information is essential information for reconciliations when there are errors or clearing breaks especially on an expiring option or option with a pending corporate action. Additionally, contra party identities are important in the event of an obvious or catastrophic error. Without this information, a representing broker dealer would be less able to input trade detail to the Exchange in a timely manner.

Today, options trades are not completely anonymous through settlement as they are submitted by the Exchange to OCC with contra-side identities. This amendment will continue to provide BX Participants with anonymity when transacting options orders on BX pre-trade, while also providing Participants with post-trade contra party identities as a replacement for the data that OCC is providing today and will no longer provide with OCC's technology migration.

Acceptable Trade Range

The Exchange's proposal to amend Options 3, Section 15(b)(1), which describes the Acceptable Trade Range, to note that, ''. . . . unless a Participants has requested that their orders be returned if posted at the outer limit of the Acceptable Trade Range (in which case, the order will be returned) . . .'' protects investors and the public interest because it permits BX Participants to elect to have their orders returned to them if posted at the outer limit of the Acceptable Trade Range instead of executing, routing or posting to the order book. This functionality provides Participants with additional choice as to the price at which their order could execute. The Acceptable Trade Range functionality is intended to reduce the negative impacts of sudden, unanticipated volatility in individual options, and serve to preserve an orderly market in a transparent and uniform manner, enhance the price-discovery process, increase overall market confidence, and promote fair and orderly markets and the protection of investors. The Exchange proposes to reflect this existing functionality in Options 3, Section 15(b)(1)(A) to make clear that the option exists to have an order returned. Today, Phlx offers this functionality.[20]

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.

Anonymity

The Exchange's proposal does not impose an undue burden on intramarket competition because all BX Participants currently have the ability to view contra party identities at OCC once the trade executes. With this amendment, all Participants will be able to continue to have the ability to view contra party identities through BX's post trade reporting. Further, to the extent that BX fails to provide equivalent post trade information to its Participants as other options exchanges provide today, it would be at a competitive disadvantage as market participants have expressed the importance to receiving this information.

The Exchange's proposal does not impose an undue burden on intermarket competition because other options exchanges[21] provide contra party identities today post-trade. Other options markets could also adopt an anonymity rule similar to BX.

Acceptable Trade Range

The Exchange's proposal to amend Options 3, Section 15(b)(1) does not impose an undue burden on intramarket competition because all Participants would have the ability to have their orders returned to them.

The Exchange's proposal to amend Options 3, Section 15(b)(1) does not impose an undue burden on intermarket competition because other options exchanges could adopt similar functionality.

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

Because the foregoing 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

[16] *See* Phlx Options 3, Section 15(b)(1)(B).

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] *See supra* note 9.

[20] *See* Phlx Options 3, Section 15(b)(1)(B).

[21] *See supra* note 9.

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)(iii) of the Act [22] and subparagraph (f)(6) of Rule 19b–4 thereunder.[23]

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 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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–BX–2024–031 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–BX–2024–031. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–BX–2024–031 and should be submitted on or before September 25, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–19769 Filed 9–3–24; 8:45 am]

BILLING CODE 8011–01–P

[22] 15 U.S.C. 78s(b)(3)(A)(iii).

[23] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100852; File No. SR–FICC–2024–803]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Extension of Review Period of Advance Notice To Host Certain Core Clearance and Settlement Systems in a Public Cloud

August 28, 2024.

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010 (''Clearing Supervision Act'') [1] and Rule 19b–4(n)(1)(i) [2] under the Securities Exchange Act of 1934 (''Act''),[3] notice is hereby given that on August 14, 2024, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') an advance notice as described in Items I, II and III below, which Items have been prepared primarily by the clearing agency. The Commission is publishing this notice to solicit comments on the advance notice from interested persons and to extend the review period of the advance notice.

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] 15 U.S.C. 78a *et seq.*

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

FICC files this advance notice seeking no objection to host a specified set of core clearance, settlement, and risk applications, including any Regulation Systems Compliance and Integrity (''Reg. SCI'') systems and Critical SCI systems,[4] (''Core C&S Systems'') on an on-demand network of configurable information technology resources running on a public cloud infrastructure (''Cloud'' or ''Cloud Infrastructure'') hosted by a single, third-party service provider (''Cloud Service Provider'' or ''CSP'') (altogether, the ''Cloud Proposal''), as described in greater detail below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the advance notice and discussed any comments it received on the advance notice. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A and B below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants or Others

FICC has not received or solicited any written comments relating to this proposal. If any written comments are received, FICC will amend this filing to publicly file such comments as an Exhibit 2 to this filing, as required by Form 19b–4 and the General Instructions thereto.

Persons submitting written comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b–4, the Securities and Exchange Commission (''Commission'') does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on How to Submit Comments, available at *www.;sec.gov/regulatory-actions/how-*

[4] 17 CFR 242.1000 *et seq.*

to-submitcomments. General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202–551–5777.

FICC reserves the right to not respond to any comments received.

(B) Advance Notices Filed Pursuant to Section 806(e) of the Clearing, and Settlement Supervision Act

I. Description of the Proposal

Pursuant to the Clearing Supervision Act and Rule 19b–4(n)(1)(i) under the Exchange Act,[5] FICC files this advance notice seeking no objection to the Cloud Proposal, as described herein.

The specified set of Core C&S Systems that the Clearing Agencies intend to host in the Cloud, and the transition schedule for such hosting, are listed in Exhibit 3 to this advance notice filing.[6] However, the Clearing Agencies recognize that it may become necessary to deviate from the proposed transition schedule as risks change over time and the proposed implementation would occur over several years. The Clearing Agencies' process for monitoring, assessing, and escalating such risks, which may result in a deviation, is described in Section I.D, below. If the Clearing Agencies would need to deviate from that schedule, they would provide Commission staff notice of such deviation, the reason for the deviation, and how the implementation schedule would be updated to account for the deviation. Further, the Clearing Agencies recognize that deviating from the proposed transition schedule would necessitate a separate analysis to determine whether such deviation could materially affect the nature or level of risk posed by each of the Clearing Agencies.

FICC's two affiliate clearing agencies, The Depository Trust Company (''DTC'') and National Securities Clearing Corporation (''NSCC'' and together with FICC and DTC, the ''Clearing Agencies'')[7] have each filed with the Commission advance notices to adopt the same Cloud Proposal. Accordingly, each respective advance notice filing is written from the perspective of the Clearing Agencies, collectively, instead of FICC, DTC, and NSCC individually.[8]

A. The Current System and Summary of Proposed Change

Today, the Clearing Agencies' Core C&S Systems are hosted using Compute,[9] Storage and Networking, as defined below, running in private data centers (*i.e.,* on-premises). The current data-center footprint consists of a single data center in each of two regions. Each regional data center has a corresponding data bunker used for synchronous data protection and restoration.[10]

The Clearing Agencies view the proposed transition to using a Cloud Infrastructure to host the specified set of Core C&S Systems as a natural progression of the Clearing Agencies' information technology strategy that aligns with their overall corporate strategy—to deliver on modernization and maximize the value of their platforms for stakeholders and continue to invest in risk management excellence.

For over 11 years, the Clearing Agencies have honed their expertise in operating non-Core C&S Systems within the Cloud.[11] Throughout that time, the Clearing Agencies have continually refined their capabilities across technical, risk, legal, and compliance dimensions, in tandem with the Cloud's own evolution and the industry's increasing adoption of it. Given this extensive maturity and development over the past decade, the Clearing Agencies believe that hosting Core C&S Systems in the Cloud, via a single CSP, is now appropriate and essential. By consolidating resources under a single CSP, the Clearing Agencies can optimize efficiency, reduce costs, mitigate risks, and maintain a cohesive environment for seamless collaboration and operation.

As described in greater detail in this advance notice, the Clearing Agencies propose to provision, within a single CSP, logically segregated sections of the Cloud Infrastructure that would provide the Clearing Agencies with the virtual equivalent of physical data center resources, including scalable resources that can (i) handle various computationally intensive applications with load-balancing and resource management (''Compute''); (ii) provide configurable storage (''Storage''); and (iii) provide network resources and services (''Network''). These resources would be logically segregated from other customers of the CSP. The Clearing Agencies would leverage the CSP's IaaS (*i.e.,* infrastructure as a service) and PaaS (*i.e.,* platform as a service) services for building and running Core C&S Systems.

The Clearing Agencies do not propose to transition all Core C&S Systems entirely out of their regional data centers at this time, but rather, to host a specified set of Core C&S Systems in a Cloud Infrastructure while maintaining the remaining applications in the Clearing Agencies' regional data centers for the near term. The proposed transition would be achieved incrementally over a course of several years and would result in the Clearing Agencies hosting some Core C&S Systems on-premises and others in a Cloud Infrastructure.[12]

This phased approach to transitioning to Cloud is to reduce risk. The Clearing Agencies believe that a ''big-bang'' approach of moving all applications at once introduces significant execution risk, primarily driven by the sheer scale and scope of such an effort. Moreover, many clearance and settlement applications on the Clearing Agencies' mainframe are still tightly coupled together. Even after such applications are modernized, many could experience latency dependencies with other applications that have not yet been modernized, hence the need to keep some applications in the Clearing Agencies' existing data centers for the near term. However, applications with little to no coupling, particularly those applications that have already been modernized, are ripe for Cloud

[5] 17 CFR 240.19b–4(n)(1)(i).

[6] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the proposed transition schedule (*i.e.,* the Core C&S Systems to Move to Cloud). The Clearing Agencies have provided this schedule in confidential Exhibit 3 to this advance notice filing.

[7] The Clearing Agencies are each a subsidiary of The Depository Trust & Clearing Corporation (''DTCC''). DTCC operates on a shared service model with respect to the Clearing Agencies. Most corporate functions are established and managed on an enterprise-wide basis pursuant to intercompany agreements under which it is generally DTCC that provides relevant services to the Clearing Agencies.

[8] Capitalized terms not otherwise defined herein have the meaning as set forth in respective rules of the Clearing Agencies, available at *https://www.dtcc.com/legal/rules-and-procedures.*

[9] The existing Compute platform consists of both on-premises mainframe and private cloud platforms.

[10] Note: The data bunkers cannot run applications, as they are only for data protection and restoration.

[11] Some of the non-Core C&S Systems already operating in Cloud include systems that support risk analysis, various reporting engines, and shared infrastructure capabilities. More specifically, for risk analysis, there are applications for certain risk testing and calculations used to assess industry risk postures for various Clearing Agency clients, as well as warehousing large sets of risk data for quantitative analytics. For the various report engines, there are applications that provide publicly disseminatable data sets and documentation, certificate imaging, as well as certain archival storage capabilities. For shared infrastructure capabilities, there are applications that support the Clearing Agencies' engineering and development departments for dev-op capabilities such as code scanning, code repositories, and infrastructure-as-code deployment pipelines.

[12] A result of the Cloud Proposal would be that the Clearing Agencies would operate Reg. SCI and Critical SCI systems both on-premises and on a Cloud Infrastructure.

transition and the subject of this Cloud Proposal. As for the remaining clearance and settlement applications that are not part of this proposal and would continue to be hosted on-premises, the Clearing Agencies have not thoroughly assessed when those applications would transition to Cloud, which may take several years, or whether such transition would be the subject of a later, separate advance notice proposal.

Integration between on-premises and Cloud-based Core C&S Systems would, as it is for non-Core C&S Systems that are already hosted in private and public cloud, leverage existing patterns and processes. The primary methods of application integration are application program interfaces (a/k/a APIs), messaging queues (a/k/a MQ messaging), and file transfer. All three are used to integrate internal and client applications, and all three methods provide interoperability between applications running on mainframe, private cloud, and public cloud.

For these reasons, the Clearing Agencies strongly believe that the phased approach enables the Clearing Agencies to best approach the transition to Cloud, safely and confidently.

B. Why Use Cloud

The Clearing Agencies believe there are very strong and compelling reasons to use Cloud as part of their diverse, platform strategy, including, as discussed below, the waning of the on-premises industry, improved resilience, expanded security capabilities, and increased scalability.

1. Waning On-Premises Industry

Although on-premises mainframes have been a stalwart for hosting critical applications for many years, it is the Clearing Agencies' experience that industry investment and development in on-premises platforms is waning, and the ability to source skilled and experienced staff to operate such platforms is increasingly challenging. Meanwhile, vendor consolidations are beginning to negatively affect investment and innovation in the private cloud space.[13] As investment dollars are increasingly allocated to Cloud, vendor choice, innovation, and support will continue to diminish for on-premises platforms. This poses a growing risk to the Clearing Agencies, who today continue to rely primarily upon on-premises mainframes and private cloud solutions from a resiliency perspective.[14] The Clearing Agencies believe the best way to manage against this risk at this time is to leverage a diverse platform strategy that will increase the use of and reliance upon Cloud. The use of Cloud, as part of a broader platform strategy, serves as an important tool in enabling the Clearing Agencies to anticipate and manage these and other risks more effectively.

2. Improved Resilience

The Clearing Agencies must ensure that any Core C&S Systems in the Cloud have resiliency and recovery capabilities commensurate with the Clearing Agencies' importance to the functioning of the U.S. financial markets. As explained in detail below, the Clearing Agencies believe that Cloud will enhance the resiliency of their Core C&S Systems by virtue of the Clearing Agencies' architectural design decisions, and the Cloud's redundancy, availability, and the Clearing Agencies' disciplined approach to deployment of Core C&S Systems to Cloud. In particular, the Clearing Agencies believe that Cloud will enhance their ability to withstand and recover from adverse conditions by provisioning redundant Compute, Storage, and Network resources in three availability zones, in each of two autonomous and geographically diverse regions, for a total of six availability zones that are comprised of many data centers.

The primary/hot region would be operational and accepting traffic, while the secondary/warm region would receive replicated data from the hot region with applications on stand-by. This solution significantly reduces operational complexity, mitigates the risk of human error by providing tools for automating routine tasks and orchestrating complex workflows, thereby reducing the need for manual intervention,[15] and provides resiliency and assured capacity (although, the Clearing Agencies would continue to periodically review the CSP's capacity planning process through quarterly reviews).[16]

The Clearing Agencies are assured of adequate capacity with the proposed hot/warm architecture because the Compute resources of the warm, ''recovery'' region would be already running with needed capacity. Additionally, the Clearing Agencies have reviewed the effect of a large, regional outage with the CSP, which indicated that a vast majority of the CSP's customers are not configured to use the secondary region as a failover region; thus, they would not be using capacity in that region. Moreover, a review of data from two large outages in the primary region did not show a change in capacity availability in the secondary region.

The Clearing Agencies also believe that Cloud reduces capacity-management risks when compared with on-premises platforms in three important ways: (1) capacity in Cloud can be added almost instantly; (2) such capacity can be added at magnitudes greater than what is possible with traditional, on-premises platforms; and (3) the risk of a supply chain effect on capacity realization (*i.e.,* the risks associated with receiving and deploying servers necessary to create more capacity) is greatly reduced.

The proposed hot/warm configuration also enables application rotation between regions. The Clearing Agencies would have the ability to operationally rotate either a single application, groups of applications, or all applications to the warm region for both planned and unplanned events. Collectively, the proposed design of the Cloud Infrastructure helps ensure that the Clearing Agencies can meet any applicable two-hour recovery time objective.

Each availability zone, in each of the two regions, would be comprised of multiple physical data centers. Each data center would have its own distinct physical infrastructure with separate staff and dedicated connections to utility power, standalone backup power sources, independent mechanical services, and independent network connectivity.

Although not dependent on each other, availability zones of a region are connected to each other with private, fiber-optic networking, enabling Core C&S Systems to automatically failover between a region's availability zones

[13] For example, the VBlock platform, which has been the core, private cloud distributed hosting platform of the Clearing Agencies for over a decade, is no longer available for purchase. Another example is the continued consolidation in the private cloud software space, which has concentrated the industry and reduce aggregate investment in innovation.

[14] In this context, ''resiliency'' is the ''ability to anticipate, withstand, recover from, and adapt to adverse conditions, stresses, attacks, or compromises on systems that include cyber resources.'' Systems Security Engineering: Cyber Resiliency Considerations for Engineering of Trustworthy Secure Systems, Spec. Publ. NIST SP No. 800–160, vol. 2 (2018).

[15] The CSP's built-in security features in its Cloud Infrastructure also can reduce the risk of security breaches caused by human error, such as misconfigurations or improper access controls.

[16] The Clearing Agencies would continue to perform periodic business continuity and disaster recovery tests to verify business continuity plans and disaster recovery infrastructure will support a two-hour recovery time objective for critical systems.

without interruption. Since each availability zone can operate independently, but failover capability is nearly instantaneous, a loss of one availability zone would not affect operation in another; therefore, no Core C&S System would be reliant on the functioning of a single availability zone.[17]

Altogether, the proposed Cloud Infrastructure would afford the Clearing Agencies six levels of redundancy (*i.e.,* three availability zones, made up of many data centers, in each of the two regions), with primary/secondary regions running in a hot/warm configuration, respectively, in geographically separate and segregated locations, and with each region containing multiple copies of the data. Thus, even if an availability zone is lost in the primary region, the Cloud can continue to seamlessly operate Core C&S Systems in the primary region, thereby significantly reducing availability risk and any attendant consequences for the Clearing Agencies' participants and customers. As a result, the Cloud Infrastructure offers the Clearing Agencies multiple redundancies within which to run Core C&S Systems, limits the effect of an incident at the CSP to the smallest footprint possible, and mitigates the possibility of the Clearing Agencies suffering an intra-, inter-, or multi-region outage.

By comparison, the Clearing Agencies' current on-premises hosting capabilities, both mainframe and private cloud, are operating on one primary data center in one region, with a second, recovery data center in a second region (excluding data bunkers, which do not have Compute capabilities). In other words, it is many times less likely that an unplanned, out of region failover would be needed for Core C&S Systems hosted in Cloud than currently hosted on-premises. (Even in the unlikely event that the Clearing Agencies needed to fail over to the secondary Cloud region, the decision and process of doing so would continue to be in the sole discretion of the Clearing Agencies.) This increased redundancy represents a material improvement in resiliency for the Clearing Agencies and a material reduction in risk for the industry.

Additionally, transitioning to Cloud offers the Clearing Agencies a more effective strategy for avoiding technical debt and system degradation because the CSP, in its role as such, would be performing regular system upgrades and maintenance, helping to ensure the Cloud's resiliency. Unlike on-premises solutions that may struggle to keep pace with evolving technology, due in part to the waning demand for on-premises infrastructure, CSPs take on the responsibility of regularly updating and maintaining their cloud infrastructure, which they do in a competitive environment. This approach helps ensure that the CSP's cloud infrastructure remains up to date, secure, and performs at its best, minimizing the likelihood of accumulating technical debt and preventing the decline of system capabilities and resiliency over time. This is not to say that on-premises infrastructures are not updated or maintained today but, instead, that the CSP does it better and faster. CSPs excel in ensuring that systems remain up to date, secure, and perform at their best by leveraging automation, scalability, built-in security measures, service level agreements (''SLAs''), economies of scale, and continuous monitoring and improvement processes. These advantages collectively enable CSPs to provide more reliable, resilient, and high-performance services compared to traditional on-premises environments.

3. Expanded Security Capabilities

Hosting Core C&S Systems in Cloud would not change the physical and cybersecurity standards to which the Clearing Agencies currently align—the National Institute of Standards and Technology (''NIST'') [18] and Center for internet Security (''CIS'').[19] Application of NIST is considered a best practice for financial services use of cloud.[20] Moreover, as discussed further below, the Clearing Agencies would continue to apply existing security processes and standards to include network and identity and access management (''IAM'') controls, security governance and controls for sensitive data, security configuration, provisioning, logging and monitoring, and security testing and validations.

By hosting in Cloud through the CSP that the Clearing Agencies have engaged, the Clearing Agencies would be able to add cloud-specific security capabilities and measures provided by the CSP, as well as third-party tools. For example, such capabilities and measures would include automation, monitoring, and security incident response capabilities, as well as default separation between Reg. SCI and non-Reg. SCI operating domains, and ubiquitous encryption, all of which are not available in the current on-premises data centers. Similarly, micro-segmentation of applications and infrastructure provided by the CSP, which also is not available in the Clearing Agencies data centers, limits the effect of a security incident and reduces the time to detection and recovery.[21]

4. Increased Scalability

Cloud implementation would allow for greater scalability of Compute, Storage, and Network resources that support Core C&S Systems.[22] With a Cloud Infrastructure, the Clearing Agencies could quickly provision or de-provision Compute, Storage, or Network resources to meet demands, including elevated trade volumes, and provide more flexibility to create development and test environments, as well as other system development needs.[23] For

[17] To further ensure the resiliency of the Compute, Storage, and Network capabilities, the CSP's services are divided into ''data plane'' and ''control plane'' services. The Clearing Agencies' applications would run using data plane services, while control plane services are used to configure the environment. Resources and requests are further partitioned into cells, or multiple instantiations of a service that are segregated from each other and invisible to the CSP's customers, on each plane, again minimizing the effect of a potential incident to the smallest footprint possible.

[18] National Institute of Standards and Technology (2023) The NIST Cybersecurity Framework 2.0. (National Institute of Standards and Technology, Gaithersburg, MD), NIST Cybersecurity White Paper (NIST CSWP) 29 ipd, Released August 8, 2023. *https://doi.org/10.6028/NIST.CSWP.29.ipd.*

[19] Center for internet Security Benchmarks, *cisecurity.org/cis-benchmarks.*

[20] U.S. Department of the Treasury, *The Financial Services Sector's Adoption of Cloud Services* (February 8, 2024), *available at https://home.treasury.gov/system/files/136/Treasury-Cloud-Report.pdf.*

[21] For example, the CSP provides infrastructure capable of withstanding Distributed Denial of Service (''DDoS'') attacks at far greater magnitudes than the Clearing Agencies' current capabilities, as the CSP has exponentially more internet bandwidth, given their business function, than the Clearing Agencies. (DDoS is a cyberattack in which the attacker floods a server with illegitimate traffic/requests to prevent legitimate users from accessing online services, websites, or computers connected to the attacked server.)

[22] The Clearing Agencies would continue to follow existing policies and procedures regarding capacity planning and change management. The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the Change Management Policy and the Technology Capacity and Demand Assessment Policy. The Clearing Agencies have provided these documents in confidential Exhibit 3 to this advance notice filing.

[23] The Clearing Agencies periodically perform capacity and availability planning analyses that result in capacity baselines and forecasts, as an input to technology delivery and strategic planning to ensure cost-justifiable support of operational business needs. These analyses are based on the collection of performance data, trending, scenarios, and periodic high-volume capacity stress tests and include storage capacity for log and record retention. Results are reported to senior technology management as inputs to performance management and investment planning. In addition, each quarter,

Continued

example, the CSP could support elastic workloads and scale dynamically without the need for the Clearing Agencies to procure, test, and install additional servers, storage, or other hardware.

The Clearing Agencies would pre-provision Compute and Storage resources proactively, in addition to scaling resources on-demand. This means that the Clearing Agencies would be able to increase Compute capacity in one or both regions via manual or automated processes for Core C&S Systems. The rapid deployment of Compute capacity would allow the Clearing Agencies to obtain access to resources far more quickly than with on-premises data centers. The Clearing Agencies would combine the pre-provisioning of primary capacity with regular capacity stress testing to verify that the underlying Compute can sustain required business volumes. The stress testing data would be used to determine the base levels of pre-provisioned capacity.

The ability to quickly scale workloads materially improves the Clearing Agencies ability to respond to unexpected market events and external scenarios, such as a global pandemic.[24] This capability also enables the Clearing Agencies to run risk calculations more frequently, at greater speeds, and with more compute-intensive models than is economically feasible compared to the Clearing Agencies' on-premises infrastructure.

In sum, transitioning to Cloud not only enhances scalability but also significantly improves agility beyond the Clearing Agencies' on-premises capabilities. The on-demand resources provided by the CSP enable dynamic scalability, helping to ensure optimal performance during peak times, efficient resource allocation during periods of lower demand, and the ability to innovate faster to meet evolving business requirements.

C. Why a Single CSP is Appropriate

The Clearing Agencies strongly believe that hosting Core C&S Systems with a single CSP is appropriate. The Clearing Agencies have assessed the capabilities of the CSP in adherence with the Clearing Agency Risk Management Framework,[25] which requires the respective Board of Directors of the Clearing Agencies to approve policies governing relationships with service providers, such as the CSP, thus helping to ensure alignment with the Clearing Agencies' risk management principles.

Beyond simply being a well-known, reputable, industry-leading, and capable CSP, the Clearing Agencies and the CSP have spent several years discussing the Clearing Agencies' needs, including operational, legal, and regulatory obligations; what-if scenarios; and commercial implications. That extensive effort led to a number of benefits, including the CSP introducing new products [26] and the establishment of an exhaustive contractual agreement between the Clearing Agencies and the CSP that addresses the Clearing Agencies' needs for hosting Core C&S Systems in Cloud (''Cloud Agreement'').[27] [28]

Meanwhile, it is generally understood that in the present environment adding a secondary CSP or an on-premises backup introduces significant complexity, costs, and risks that outweigh expected benefits.[29] An on-premises or secondary CSP backup would require the Clearing Agencies to engineer their primary Cloud Infrastructure to the lowest common denominator, so that the systems operating on the primary infrastructure also could run on a completely separate and distinct secondary, backup infrastructure. This approach would severely reduce the value that Cloud provides, introduce significant cost with little benefit, and greatly increase operational complexity, all of which would result in negative consequences for the efficiency and resiliency of the Clearing Agencies, their participants, and the industry.

Notwithstanding the extensive benefits from moving to Cloud, the Clearing Agencies fully appreciate and are committed to managing the risks presented in relying on a single CSP, as identified and discussed in Section II.A, further below.

D. Transition Timeframe

The Clearing Agencies believe that transitioning certain Core C&S Systems to the Cloud is critical to managing the risks that are inherent in technology and vendor selection. However, as stated above in Section I.A, the intent of the Cloud Proposal is not to move all Core C&S Systems to Cloud at one time. The Clearing Agencies believe that a ''big-bang'' transition would introduce unnecessary execution risk, primarily driven by the sheer scale and scope of such an effort. Moreover, many applications on the mainframe are still tightly coupled together and not ready to be moved to public cloud. Rather, at this time, the Clearing Agencies are proposing to move only a subset of the Core C&S Systems to the Cloud and to do so on an incremental basis, in consideration of the specifics of each application and the needs of the Clearing Agencies.[30] This approach helps enable the hosting of Core C&S Systems on the most appropriate platform, at the most appropriate time, in an efficient and secure manner.

The subset of Core C&S Systems selected for this proposal have been initially identified based on several

---

the Clearing Agencies review the CSP's capacity planning accuracy for the prior quarter and review the upcoming quarter's forecast, along with providing input to the CSP for anticipated major changes in the Clearing Agencies' proposed use of resources. The Clearing Agencies' IT Governance Committee is the designated escalation point for handling capacity management issues.

[24] Supply chain challenges during the Covid-19 pandemic highlighted a lack of resiliency and scalability in traditional IT vendors' abilities to deliver resources when needed. Lead times of up to 18 months were experienced and delayed many efforts to expand capacity. This was not the case with CSPs, which did not experience capacity constraints or an ability to meet demand. This further demonstrates how the option to host Core C&S Systems in Cloud is a critical risk mitigation tool for managing against the long-term risk of a waning on-premises industry.

[25] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the Clearing Agency Risk Management Framework. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[26] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding two examples of CSP Whitepapers. The Clearing Agencies have provided these documents in confidential Exhibit 3 to this advance notice filing.

[27] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the Cloud Agreement. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[28] Among other things, the Cloud Agreement sets forth the CSP's responsibility to maintain the hardware, software, networking, and facilities that run Cloud services. See also the separately submitted Table of Reg. SCI Provisions provided in confidential Exhibit 3 to this advance notice filing that provides a summary of the terms and conditions of the Cloud Agreement that the Clearing Agencies believe help enable their compliance with Reg. SCI.

[29] As noted in the U.S. Department of Treasury's report, *The Financial Services Sector's Adoption of Cloud Services,* ''No financial institution reported the capability to [run applications across multiple CSPs] for more complex use cases, such as running core operations on multiple public clouds. Running an application across multiple CSPs at the same time may also be less desirable, given the costs, staffing, and complexity involved in doing so, particularly given the complexity associated with identifying and managing risk across multiple cloud environments.'' *Available at https://home.treasury.gov/system/files/136/Treasury-Cloud-Report.pdf* at 6.

[30] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the DTCC Global Business Continuity and Resilience Policy and Standards, which defines the governance structure, high-level roles and responsibilities, and the framework for business continuity and resilience processes at the Clearing Agencies. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

preliminary criteria, including, but not limited to, whether:

- the application would benefit from the presence of data sets already present in Cloud;
- the application would benefit from elasticity enabled by Cloud (*e.g.,* user interfaces); and
- the application already meets certain architectural patterns for Cloud (*e.g.,* the application has already been modernized and currently hosted in private cloud and/or is a siloed application—little to no coupling with other applications).

Assuming the Clearing Agencies would receive no regulatory objection to this advance notice, each application of the proposed subset of Core C&S Systems then would undergo an in-depth, architectural review that would follow the Clearing Agencies' governance process, governed by the System Delivery Process.[31] The governance process includes, where applicable, a detailed review and approval by the Information Technology Architecture Review Board (''ARB''),[32] the New Initiatives process,[33] to include the Business Case Council and the Risk Assessment Council that vet the financials and risks of the proposed move, and the Investment Management Committee.[34] Further escalations would be made to the Executive Committee and applicable Board of Directors of the Clearing Agencies, as needed. Re-platforming efforts also would be communicated to regulators in accordance with the change reporting requirements of Section 1003(a)(1) of Reg. SCI, as applicable.[35]

The above-described governance process does not include a specific set of criteria or thresholds for the ultimate determination on whether an application should or should not be moved to Cloud—it is not a formulaic decision. Rather, the Clearing Agencies employ a more qualitative evaluation process that involves various reviews and considers high-level architectural principles that may be applicable to more than one application. However, at this time, none of the Core C&S Systems that have been initially identified as part of the Cloud Proposal, based on the preliminary criteria listed above, have completed that more detailed governance review process. Given the extensiveness of the process, it would not begin until after the Clearing Agencies would receive no regulatory objection to this advance notice.

Although the Clearing Agencies do not anticipate needing to deviate from the proposed transition schedule for the selected Core C&S Systems, the Clearing Agencies recognize that deviation may be necessary, given that the more in-depth governance review process has not completed and because risks could change over the proposed, multiyear implementation period. For example, a deviation may be necessary to address a business need or a change in industry or regulatory requirements or standards. Regardless, any deviation would follow the same detailed governance process, and the Clearing Agencies would provide notice of such deviation to Commission staff, the reason for the deviation, and how the proposed implementation schedule would be updated to account for the deviation. Further, the Clearing Agencies recognize that deviating from the proposed transition schedule would necessitate a separate analysis to determine whether such deviation could materially affect the nature or level of risk posed by each of the Clearing Agencies.

Even though certain on-premises infrastructure components would be decommissioned after applications are moved to Cloud, the Clearing Agencies' private cloud, mainframe services, and data-center facilities would remain available for no less than five more years to help facilitate exit plans from Cloud that rely on an on-premises option. However, to be clear, the on-premises option would not be available to address short-term disruptions, where the Cloud is temporarily unavailable. Management of such disruptions is discussed in Section II.B, further below.

II. Expected Effects on Risks to the Clearing Agencies, Their Participants, or the Market

Although the Clearing Agencies are not proposing to transition all Core C&S Systems to Cloud for the reasons described in Sections I.A and D, above, transitioning the proposed subset of Core C&S Systems from an on-premises infrastructure supported by a consolidating industry, as described in Section I.B.1, above, to a new Cloud Infrastructure maintained by an industry-leading CSP provides numerous advantages, as described in Sections I.B.2–4 and C, above. However, such transition is not without risk, as discussed below.

A. Risks Presented by the Cloud Proposal

1. Concentration Risk

The Clearing Agencies appreciate that reliance on a single CSP for hosting the subset of Core C&S Systems that are the subject of this proposal creates concentration risk, particularly in the event of the CSP choosing to terminate its services (*i.e.,* commercial risk) or is unexpectedly unavailable (*i.e.,* operational risk). The Clearing Agencies also appreciate that they would have some reliance on the CSP to help meet certain regulatory obligations of the Clearing Agencies (*i.e.,* regulatory risk), thus introducing the familiar concept of concentration risk in a relatively new context. However, concentration risk exists today as the Clearing Agencies are dependent on a single mainframe provider, a single database provider for the mainframe, and a single virtualization provider for private cloud. Moreover, the Clearing Agencies believe that they have adequately addressed these risks, as discussed throughout Sections II.B.1–4., below.

2. Cloud Management Risk

Managing the applicable subset of Core C&S Systems hosted on a Cloud Infrastructure presents different risks and challenges than managing such systems hosted on-premises because many activities and services previously provided by the Clearing Agencies would now be provided by the CSP. For example, the Clearing Agencies would be dependent upon the CSP for fulfilling all of its contractual obligations, including security of the Cloud, proper capacity planning, and protection of Cloud services from prolonged operational outages. As such, overseeing the CSP becomes a critical activity to ensure the CSP is delivering services that meet or exceed the Clearing Agencies' requirements for operating those select Core C&S Systems. As discussed in Sections II.B.1–4, below, the Clearing Agencies believe that they have adequately addressed this risk.

---

[31] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the DTCC System Delivery Policy. The System Delivery Policy defines requirements that support adherence to the System Delivery Process for application development projects. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[32] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the IT Architecture Policy (''ITA Policy''). The ITA Policy provides a set of controls that must be followed to adequately address applicable risks. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[33] The Clearing Agencies also have separately submitted a request for confidential treatment to the Commission regarding the New Initiatives Policy. The New Initiatives Policy provides the governance and oversight structure for the Clearing Agencies to bring initiatives to market timely and efficiently while minimizing risk. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[34] Such reviews and decisions are based on high-level architectural principles that may be applicable to more than one application.

[35] 17 CFR 242.1003, *et seq.*

B. Management and Mitigation of Identified Risks

1. Cloud Agreement

The Clearing Agencies believe that the Cloud Agreement, including all its amendments and addendums, is a strong tool in helping to effectively mitigate the commercial and regulatory risks borne from the concentration risk, as described in Section II.A.1, above, as well as risks in managing the CSP that would host the subset of selected Core C&S Systems in the Cloud, as described in Section II.A.2, above. Following is a summary of some of the key terms and conditions covered in the agreement and how they help mitigate these risks.

i. Adequate Notice

Under the Cloud Agreement, the CSP may not unilaterally terminate the relationship with the Clearing Agencies absent good cause or without sufficient notice to allow the Clearing Agencies to transition their applications elsewhere. Specifically, the CSP must provide an extensive notice if it wishes to terminate the Cloud Agreement for convenience or if it wishes to terminate an individual CSP service offering or lower an existing SLA on which the Clearing Agencies rely.[36]

The CSP is permitted to terminate the Cloud Agreement with shorter notice periods in the event of a critical breach [37] or an uncured material breach [38] [39] of the Cloud Agreement. In the highly unlikely event that a critical breach or uncured material breach occurs, the Clearing Agencies would have sufficient notice to shift their operations away from the CSP. Contract provisions that allow a party to terminate for uncured material breaches are designed to limit the types of actions that could lead to contract termination and to establish a period of time to resolve an aggrieved party's claim (often 30 days) followed by an additional extended period in which to remediate the claim. This gives the parties time and incentive to address the problem without having to resort to termination. In other words, even if the CSP notifies the Clearing Agencies of an alleged breach (material or critical), termination of services is not immediate. Additionally, regardless of the need to shift operations elsewhere—convenience or breach—the Cloud Agreement provides for the parties to work together and for the CSP to provide professional services to assist with such a shift.[40]

The Clearing Agencies believe the risk of termination under the above-discussed shorter notice period is minimal. In all cases of an alleged breach, the CSP must notify the Clearing Agencies in writing and provide time for them to cure the alleged breach (''Notice Period'').[41] With respect to an alleged material breach, which requires the CSP to extend the Notice Period if the Clearing Agencies demonstrate a good faith effort to cure the alleged material breach, the Clearing Agencies would use the Notice Period to attempt to cure the alleged material breach while also preparing to transition elsewhere. As a result, it is highly unlikely that a critical breach or a material breach would remain uncured beyond the Notice Period. If one does remain uncured, however, the CSP can only terminate the rights or accounts associated with the breach, not the entire Cloud Agreement;[42] meanwhile, and the Clearing Agencies would have ample notice to shift operations to avoid a disruption to Core C&S Systems, if needed.

As explained above, adequate notice under the Cloud Agreement plays an important role in managing concentration risk by providing the Clearing Agencies with advance warning of potential disruptions or changes in the agreement or services thereunder, which would allow the Clearing Agencies to take proactive measures in mitigating the potential impact of commercial and regulatory risk, thereby reducing concentration risk.

ii. Regulatory Compliance and CSP Oversight

The Clearing Agencies' transition to Cloud does not alter their responsibility to maintain compliance with applicable regulations. Consistent with FFIEC Guidance (as defined and discussed further below), the Clearing Agencies' will continue to fully comply with all applicable regulatory obligations, particularly Reg. SCI.[43]

The Clearing Agencies believe the combination of the following would provide them with reasonable assurance that the proposed transition to Cloud would enable them to continue to fully satisfy their regulatory obligations, including Reg. SCI, thus helping to mitigate the regulatory risk highlighted in Section II.A.1, above: (i) the Cloud Agreement; (ii) the CSP's compliance programs as described in its whitepapers [44] and publicly available policies (*e.g.,* its Penetration Testing Policy),[45] [46] [47] [48] and user guides; (iii)

[36] The Cloud Agreement permits an exception to this sufficient notice provision in the event the CSP must terminate the individual service offering if necessary to comply with the law or requests of a government entity or to respond to claims, litigation, or loss of license rights related to third-party intellectual property rights. In this event, the CSP must provide reasonable notice to the Clearing Agencies of the termination of the individual service offering. *See* Reg. SCI Addendum, Section 10 *Termination.* The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[37] Critical breaches are material breaches (i) for which the Clearing Agencies knew their behavior would cause a material breach (such as a willful violation of Cloud Agreement terms); (ii) that cause ongoing material harm to the CSP, its services, or its customers (*e.g.,* criminal misuse of the services); or (iii) for undisputed non-payment under the Cloud Agreement. *See* Reg. SCI Addendum, Section 10 *Termination.* The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[38] Typically, a breach is considered material only if it goes to the root of the agreement between the parties or is so substantial that it defeats the object of the parties in making the contract. *See* Reg. SCI Addendum, Section 10 *Termination.* The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[39] *See* Reg. SCI Addendum, Section 10 *Termination.* The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[40] *See* Reg. SCI Addendum, Section 11 *Post-Termination Services.* The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[41] *See* Reg. SCI Addendum, Section 10 *Termination.* The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[42] *See* Amendment 1, Section 8 *Temporary Suspension,* of the Cloud Agreement. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[43] Reg. SCI imposes certain information security and incident reporting standards on the Clearing Agencies and requires them to adopt an information technology governance framework reasonably designed to ensure that ''SCI systems,'' and for purpose of security, ''indirect SCI systems,'' have adequate levels of capacity, integrity, resiliency, availability, and security. 17 CFR 242.1000 *et seq.*

[44] *Supra* note 25.

[45] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the Operational & Technology Risk Technology Risk Management (''OTR CS&TRM'') Procedure—Application Penetration Test which describes the application penetration test procedures for the Clearing Agencies' web applications and supports compliance with the Information Systems Acquisition Policy, Development and Maintenance Policy Security Control Standards, and Ethical Application Penetration Testing (''EAPT'') Control Standards. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[46] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the EAPT Control Standards. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[47] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the DTCC Information Security—Systems Acquisition Development and Maintenance Policy and Control Standards, which governs the security aspects of information systems acquisition, development, and maintenance for DTCC and its subsidiaries. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[48] The Clearing Agencies have separately submitted a request for confidential treatment to the

the CSP's SLAs; [49] [50] [51] (iv) the CSP's Systems Organization Controls reports (*e.g.,* SOC 1, SOC 2, SOC 3) [52] and International Organization for Standardization (''ISO'') certifications (*e.g.,* ISO 27001); [53] (v) the CSP's size, scale, and ability to deploy extensive resources to protect and secure its facilities and services; and (vi) the CSP's commercial incentive to perform.

Moreover, as noted in Section II.B.ii., above, oversight of the CSP relationship and services has become a standing practice of the Clearing Agencies to ensure that the CSP is meeting or exceeding its contractual obligations, including helping the Clearing Agencies demonstrate their regulatory compliance. Such oversight, which also helps mitigate the cloud management risk raised in Section II.A.2, above, would include a strong relationship between the CSP and the Clearing Agencies, including between their senior management. Within the Cloud Agreement itself, there are established obligations on the CSP to provide the Clearing Agencies' information necessary for the Clearing Agencies to satisfy certain compliance and regulatory requirements, particularly Reg. SCI. For example, the Cloud Agreement obligates the CSP to provide the Clearing Agencies with immediate notification where a systems intrusion by an unauthorized party or a systems disruption is suspected.[54] The agreement also provides for detailed quarterly briefing meetings between the Clearing Agencies and the CSP, during which the Clearing Agencies would be provided information on and could review service level performance, material systems changes, capacity management, SLA updates, and important security notices.[55]

The Cloud Agreement permits the Clearing Agencies to perform an annual review of the CSP's documentation and services to gain comfort that the CSP is meeting its contractual requirements and that the notification procedures are in place to allow the Clearing Agencies to meet their regulatory requirements, particularly Reg. SCI. The agreement also allows a regulator of the Clearing Agencies to receive information about the Clearing Agencies' usage of the CSP services, and it allows the regulator to perform its own on-site review, if requested.[56]

2. Cloud Architecture

To mitigate operational risk associated with the concentration risk from relying on a single CSP, the Clearing Agencies would architect the Cloud Infrastructure hosting their Core C&S Systems to be highly resilient, improving the availability of such systems and related Clearing Agency services during any degradation in CSP services:

- *Use of multiple availability zones per region.* The Clearing Agencies would use at least three availability zones, in each of the two CSP regions, with each availability zone made up of multiple data centers.
- *Multi-regions.* In the event of a primary region outage, the Clearing Agencies would recover in the secondary region. Out-of-region recovery would be tested annually by the Clearing Agencies, and a primary/secondary (*i.e.,* hot/warm) model would be used to ensure continuous data replication and recovery is achieved.[57] Recovery exercises of non-Core C&S Systems currently hosted in cloud demonstrate the ability to recover applications within required recovery time objectives, including meeting a 2-hour recovery time objective for relevant applications in the event of an out-of-region recovery.
- *Multi-node, high availability clusters across availability zones.* Clusters (*i.e.,* three or more servers or nodes) protect against local hardware and service failures providing uninterrupted operations. Each cluster would be distributed across three availability zones. Clusters synchronously replicate data across all nodes to protect against data loss and provide continuous availability.
- *Static stability and static capacity models.* Static capacity would be pre-provisioned for compute, storage, and memory for applications based on capacity stress testing results and capacity requirements. The Clearing Agencies would pre-provision capacity needed for applications and services and would not rely on capacity on-demand models, thus reducing the risk of running out of capacity.
- *Exit plans.* The Clearing Agencies' existing policies require that all applications hosted in Cloud have documented exit plans, with each plan updated annually.[58] The Clearing Agencies' Cloud architecture also reduces ''vendor lock-in'' by using capabilities such as ''containers'' [59] that can exist in both the public and private cloud, where appropriate and applicable. For the foreseeable future, the Clearing Agencies plan to continue to own or lease private data center space to host private cloud and mainframe capabilities. The Clearing Agencies private, on-premises data centers help enable a long-term exit plan from Cloud, if needed. However, such data centers would not be a means to address a short-term incident at the CSP. Additionally, for the second CSP that the Clearing Agencies already have contracted and connected with for hosting non-Core C&S Systems, they are now working on the contractual and operational requirements that would be necessary to possibly host Core C&S

Commission regarding the DTCC Information Security—Communications and Operations Policy and Control Standards, which helps ensure the correct and secure operation of information processing facilities. The Clearing Agencies have provided this document in confidential Exhibit 3 The Clearing Agencies have provided this document in confidential Exhibit 3to this advance notice filing.

[49] The Clearing Agencies have provided the CSP's SLAs in confidential Exhibit 3 to this advance notice filing.

[50] Amendment 2, Section 2.2 *To the Service Level Agreements* of the Cloud Agreement provides that the CSP may change its SLAs from time to time but must provide prior notice to the Clearing Agencies before material reducing the benefits offered under the SLAs. The Clearing Agencies have provided Cloud Agreement in confidential Exhibit 3 to this advance notice filing.

[51] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the DTCC Legal Review of Third Party Vendor Contracts Policy, which (1) defines the scope of Vendor Contracts, (2) clarifies what agreements fall outside the scope and are excluded from the definition of Vendor Contracts, (3) details the process the Clearing Agencies follow when receiving requests to review Vendor Contracts and related materials from CPS Contracts, and (4) establishes the requirements around the creation, maintenance, update, review, and use of contract templates and negotiation guidelines for third party relationships. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[52] The FFIEC Guidance provides that the Clearing Agencies may obtain SOC reports, other independent audits, or ISO certification reports to gain assurance that the CSP's controls are operating effectively. *See* FFIEC, Security in a Cloud Computing Environment at 7. The Clearing Agencies review the CSP's SOC–2 on an annual basis.

[53] The CSP has certifications for the following frameworks: NIST, Cloud Security Alliance, Control Objectives for Information and Related Technology (''COBIT''), ISO, and the Federal Information Security Management Act (''FISMA'').

[54] *See* Reg. SCI Addendum, Sections 8.1 *Systems Intrusion Notification* and 4 *Briefing Meetings.* The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[55] *Id.*

[56] *See* Reg. SCI Addendum, Sections 3 *Customer Right of Access and Audit* and 4 *Briefing Meetings.* The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[57] *See* Reg. SCI Addendum, Section 5 *Customer Testing of CSP Systems.* The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[58] *Supra* note 29.

[59] A container is a standard unit of software that packages up code and all its dependencies, so the application runs reliably from one computing environment to another (*e.g.,* public and private clouds).

Systems in its Cloud to further enable exit plans from the primary CSP.

• *Regional Isolation Architecture.* A cross-regional outage is highly unlikely at the CSP, as the CSP has designed and implemented a series of controls to ensure that defects cannot be introduced to more than a single region at a time.[60] Services are regionally isolated with a single exception—the IAM service. The IAM service is not regionally isolated and depends on a single region. If the primary region for the IAM service fails, the service will continue to operate but as read-only. To mitigate this risk, the Clearing Agencies would architect applications and infrastructure services in such a manner that they would not require updates (*i.e.,* writes) to the IAM service in order to rotate out of region.

In summary, cloud architecture helps mitigate operational risk borne from concentration risk, as raised in Section II.A.1, above, by providing resilient infrastructure, scalable resources, robust security measures, and disaster recovery capabilities, all of which assist in minimizing the impact of disruptions.

3. Standing Risk Management Practices

The Clearing Agencies' standing risk management practices also help minimize operational risk by systemically identifying, assessing, mitigating, monitoring, and responding to risk. For example, the Clearing Agencies have considered the possibility of the CSP being completely and unexpectedly unavailable, whether due to technical issues or other reasons. The parallel risk exists today with respect to the Clearing Agencies' existing infrastructure. Just like with the CSP, it is possible that the Clearing Agencies' two existing data centers—one primary and one backup—become completely and unexpectedly unavailable. In fact, it is more likely that those two data centers become unavailable than the CSP's data centers because the CSP has so many more data centers for each availability zone, in both its primary and secondary regions, with each data center, not just the associated region or availability zone, having its own physical infrastructure, staff, power, backup power, mechanical services, and network connectivity, as discussed in Section I.B.2, above. Even for the CSP's IAM service that runs cross regions, the applications in each region operate off read-only versions of the IAM roles and responsibilities, such that loss of the primary would not affect operation of those applications. Nevertheless, to help manage a crisis event, such as the Clearing Agencies' or the CSP's data centers becoming unavailable, the Clearing Agencies have standing risk management plans and practices already in place, as described below.[61]

In the very unlikely event of an unexpected single- or multi-region outage in which the Clearing Agencies operate, or a complete and unexpected CSP outage, the Clearing Agencies would initiate the existing Major Incident Management (''MIM'') process, which is an existing process that involves evaluating the technical impact of the event, and if the event is deemed to have a material impact to the business, the Business Incident Management System (''BIMS'')[62] would be activated. Depending on the severity of the event, the DTCC Global Business Continuity and Resilience (''BCR'') Policy would provide a predictable structure to be utilized during crises and could be leveraged to address, respond to, and manage an outage.[63] In addition to internal risk management practices, the Clearing Agencies have plans to help address various outage scenarios and the potential effects of an outage.[64]

The BCR Policy and Standards is structured to employ existing DTCC and Clearing Agency teams and committees, which become the tactical leadership to react, respond, and manage a crisis situation.[65] The teams are comprised of the following:

• *Crisis Management Team.* Comprised of the Management Committee, site General Managers, Head of the Board Risk Committee,[66] and other SMEs, as needed.

• *Crisis Response Teams.*

○ *Business Continuity Coordinators and Plan Approvers*—These are individuals who manage business continuity at a plan level.

○ *Fair and Orderly Markets Groups*—These are crisis teams comprised of internal stakeholders and top executives from external firms deemed necessary to ensure a fair and orderly market. They would be activated (based on impact to the legal entity) to gather information during a large systemic event when operational coordination is required with clients and the sector.

○ *IT Management Team*—Comprised of Information Technology managing directors and SMEs.

○ *Management Risk Committee*—Comprised of senior members across the enterprise.

○ *Senior Site Management Team (''SSMT'')*—Each DTCC office with a facility level resilience plan (''FLRP'') has an SSMT, that is comprised of senior leadership from the site.

○ *Site Assessment Team (''SAT'')*—Sites with an FLRP have a SAT that responds to site-specific events. This team is comprised of a primary/back-up site General Manager and representatives from BCR, IT, Workplace Design and Service, Global Security Management, and Human Resources. A Data Center Services representative also is added for sites that have a data center.

[60] The CSP owns the control and has provided documentation of the control to the Clearing Agencies.

[61] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the Operational Response Capabilities Matrix. The Clearing Agencies have provided these documents in confidential Exhibit 3 to this advance notice filing.

[62] MIM is part of the IT organization that manages technology specific incidents at the Clearing Agencies that are typically resolved at the application or hardware level with support from the appropriate subject matter experts (''SMEs''). Incidents that have a business impact are escalated to BIMS and appropriate SMEs are added to manage the impact, which includes Business Continuity and Resilience. BIMS participants can request the Crisis Management Team be activated if the incident requires discussion or has escalated to a potential disaster that may require a declaration of disaster.

[63] The Clearing Agencies are taking into consideration the forthcoming requirements of adopted and effective Rule 17ad–25(i) under the Exchange Act, 17 CFR 240.17ad–25(i), and anticipate that the Clearing Agencies' approach in managing the risk presented by a CSP outage for Core C&S Systems would be consistent with those requirements.

[64] For example, there is an existing plan to manage a Fedwire protracted outage. A Fedwire protracted outage is an interruption or outage of Federal Reserve Bank hardware or software that prevents the bank from processing payment orders online and that is not expected to be resolved before the bank's next Fedwire Funds Service Funds Transfer Business Day. In the event of such an outage, the Clearing Agencies will assess the situation and employ, as needed and applicable, the steps outlined in the BCR Policy and Standards, the Federal Reserve Banks Operating Circulars (*see, e.g.,* Operating Circular No. 6, available at *https://www.frbservices.org/binaries/content/assets/crsocms/resources/rules-regulations/070123-operating-circular-6.pdf*), and any other regulatory guidance.

[65] The Clearing Agencies have established a list of situations that are covered under the BCR Policy and Standards, any of which could escalate to a disaster and trigger use of the Standards. The technology events include (i) infrastructure outage, (ii) external hosting provider service outage, and (iii) loss of logical access to a Clearing Agency facility. The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the BCR Policy and Standards which define the governance structure, high-level roles and responsibilities, and the framework for business continuity and resilience processes at the Clearing Agencies. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[66] The Board Risk Committee is a Board level committee established by the Boards of the Clearing Agencies to assist their respective Boards in fulfilling their responsibilities for oversight of risk management activities at the Clearing Agencies. This includes oversight of credit, market, liquidity, operational, and systemic risks.

○ *MIM and BIMS Teams*—Part of the IT organization that manages technology specific and are typically resolved at the application or hardware level with support from the appropriate SMEs.

• *Crisis Communication Team.* The Crisis Communication Team is comprised of officer-level members from Marketing and Communication, Human Resources, General Counsel's Office, and Regulatory Relations, as well as members of their staffs, as applicable.

The Clearing Agencies believe that these standing risk management practices are key to managing the operational risk borne from concentration risk outlined in Section II.A.1, above, by helping to promote proactive risk management culture, enhancing operational resilience, and enabling the Clearing Agencies to better navigate uncertainties and maintain business continuity.

4. Industry Standards for Cloud Management

i. *Cloud Management: Federal Financial Institutions Examination Council Cloud Computing Guidance (''FFIEC'')*

On April 30, 2020, FFIEC [67] issued a joint statement to address the use of Cloud computing services and security risk management principles in the financial services sector (''FFIEC Guidance'').[68] While the FFIEC Guidance does not contain regulatory obligations, it highlights risk management practices that financial institutions should adopt for the safe and sound use of Cloud computing services in five broad areas (''FFIEC Risk Management Categories''): Governance, Cloud Security Management, Change Management, Resilience and Recovery, and Audit and Control Assessment. As discussed below, the Clearing Agencies would implement practices consistent with the FFIEC Risk Management Categories for Core C&S Systems operated in Cloud to help address cloud management risk, as highlighted in Section II.A.2, above, by providing frameworks, guidelines, and best practices, that enhance transparency, reliability, and security.

(a) Governance

The Clearing Agencies and the CSP rely on a shared responsibility model that differentiates between security ''of'' the Cloud and security ''in'' the Cloud.[69] This model is not specific to the agreement between the Clearing Agencies and the CSP; rather, it is a more universally followed model for public cloud services. Under the model, the CSP maintains sole responsibility and control over the security and resiliency ''of'' the Cloud, and their customers are responsible for the security and resiliency ''in'' the Cloud (*i.e.,* security and resiliency of hosted applications and data). This means that the Clearing Agencies must manage their own application architectures, data backups, change management controls, network configurations within applications, and response to application failures. In addition, the Clearing Agencies must manage their own data usage and data-at-rest encryption configuration, IAM access policies and roles, operating system upkeep, security group configurations, and network traffic encryption in transit configurations. The Clearing Agencies also manage how they place workloads onto the CSP's platform.

Meanwhile, the CSP must manage backend hardware services for Compute, Storage, Networking, database, and global architectures such as regions, availability zones, data centers, power, and HVAC, as well as backend security services that protect core infrastructures. The CSP manages the underlying infrastructure and upkeep, so that the Clearing Agencies (and other customers) can place workloads on the CSP platform with proper security and separation without having to manage these traditional data center tasks. The Clearing Agencies review the CSP's policies and procedures for these functions during the quarterly reviews and during annual risk assessments.

When looking more closely at hardware management, the Clearing Agencies believe there are benefits in how the CSP manages hardware for Cloud compared to how the Clearing Agencies manage hardware for their own data centers. For example, with on-premises data centers, the Clearing Agencies must oversee a multifaceted supply chain, involving many vendors to obtain and administer physical Compute, Storage, and Network capacity. Delivery times may fluctuate, and scarcities can affect project outcomes, as seen during the Covid–19 pandemic. In contrast, with the proposed Cloud Infrastructure, the CSP controls the hardware supply chain and even partakes in key areas of the manufacturing process to circumvent typical problems such as chip shortages. Moreover, the Clearing Agencies get to review the CSP's equipment forecast for each upcoming quarter, affording the Clearing Agencies the opportunity to address potential supply chain difficulties, if any, without jeopardizing their access to adequate capacity, by leveraging capabilities such as reserved capacity. Altogether, the Clearing Agencies believe the CSP's management of Cloud hardware will be a benefit to them.

The CSP would perform its own risk and vulnerability assessments of the CSP infrastructure on which the Clearing Agencies would run their Core C&S Systems. In published documentation and in meetings conducted with the CSP, the CSP asserts that it maintains an industry-leading automated test system, with strong executive oversight, and conducts full-scope assessments of its hardware, infrastructure, internal threats, and application software. The CSP asserts that it has an aggressive program for conducting internal adversarial assessments (''Red Team'') designed not only to evaluate system security but also the processes used to monitor and defend its infrastructure. The CSP also uses external, third-party assessments as a cross-check against its own results and to ensure that testing is conducted in an independent fashion. Pursuant to the CSP's documentation, results of these processes are reviewed weekly by the CSP's Chief Information Security Officer and the Chief Executive Officer with senior CSP leaders to discuss security and action plans.[70]

The Clearing Agencies have the responsibility to perform risk assessments and technical security testing, including control validation, penetration testing, and adversarial

[67] FFIEC is a formal interagency body empowered to prescribe uniform principles, standards, and report forms for the federal examination of financial institutions by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Consumer Financial Protection Bureau, and to make recommendations to promote uniformity in the supervision of financial institutions.

[68] *Available at https://www.ffiec.gov/press/pr043020.htm.*

[69] ''Shared responsibility'' conveys the responsibility of the Clearing Agencies and the CSP vis-à-vis each other from a business operations perspective. It does not mean that the CSP has taken on or that the Clearing Agencies have relinquished any of their Reg. SCI compliance requirements.

[70] The CSP does not provide assessment results to its customers, as doing so would constitute a breach of generally accepted security best practices. Instead, the CSP provides its customers with industry-standard reports—such as SOC2 Type II—prepared by an independent third-party auditor to provide relevant contextual information to its customers. The CSP also conducts periodic audit meetings specifically designed to discuss security concerns with its customers discussed later during the ''CSP Audit Symposium.'' Additionally, the Clearing Agencies have certain audit rights (pursuant to Section 3 *Customer Rights of Access and Audit* of the Reg. SCI Addendum) to review information about the nature and scope of the CSP's vulnerability management program.

testing of their applications running on the Cloud Infrastructure. This includes testing of the application interface layer of some CSP provided services such as storage and key management.

As mentioned, the Clearing Agencies' testing includes assessing the configuration of the CSP provided services. The Clearing Agencies' Technology Risk Management staff would work with the Clearing Agencies' Information Technology staff to ensure that the CSP tools are configured to appropriately manage and mitigate potential sources of risk and will assess the effectiveness of those configurations.[71] The Technology Risk Management staff has developed an application, Cloud Governance Insights (''CGI''), to continuously monitor all Cloud Infrastructure for alignment to security baselines and configurations best practices.[72] The CGI dashboard allows Information Technology and Technology Risk Management staff to understand the environment risk posture and reporting of key risk indicators (''KRIs''). The Clearing Agencies' Red Team would operate freely ''in the Cloud,'' attempting to subvert or circumvent controls.[73] The testing would include probing of the CSP provided services to look for weaknesses in the Clearing Agencies' deployment of those tools.

Technology Risk Management staff would routinely report test results to the Technology Risk Management Steering Committee and the Management Risk Committee, appropriate functional Operations and Information Technology management, senior management, and the Board of Directors of the Clearing Agencies.[74] [75] Automated vulnerability scanning reports, source code analysis, and results of specific assessments would be risk-rated and assigned a priority for remediation in accordance with Clearing Agency Information Security Program requirements.[76] [77]

Management and oversight of the Cloud implementation follows the Clearing Agencies' standard governing principles for large information technology projects.[78] To maintain accountability over the CSP's performance, regular reporting to the Boards of the Clearing Agencies by senior management is essential and required, pursuant to the DTCC Third Party Risk Procedures.[79] Such reporting helps ensure that senior management takes appropriate actions to address significant performance deterioration, changing risks, or material issues identified through ongoing monitoring, thereby helping to ensure proactive risk management and continuous improvement.[80] The Clearing Agencies' Board of Directors has established a Technology and Cyber Committee to assist the Board of Directors in overseeing information technology and cybersecurity strategy and capabilities.

Information Technology and the Enterprise Program Management Office (''EPMO'') are responsible for the identification, management, monitoring, and reporting on the risks associated with the modernization and migration of applications to Cloud. To that end, reports on the status and progress of these efforts are reported to applicable Clearing Agency committees based on escalation criteria in the EPMO Procedure.[81] These reports include overall risk and issue summaries and analysis of key risk indicators for the migration of applications to the public cloud.

Finally, the Clearing Agencies' Internal Audit Department (''IAD''), as the independent third line of defense, is responsible for assessing and challenging the firm's control environment and risk management and control frameworks, which include those related to the Cloud, including, but not limited to, security controls and configurations, and report the results of those assessments to management and the Audit Committee of the Board.[82]

Ultimately, there is no primary/secondary relationship, as the Clearing Agencies and the CSP each have their own set of responsibilities which, when combined, address the entire risk space.

(b) Cloud Security Management

The Clearing Agencies have established a robust Cloud security program to (i) manage the security of the Core C&S Systems that would be running on the Cloud Infrastructure hosted by the CSP, and (ii) assess and monitor the CSP management of security of the Cloud Infrastructure that it operates. The security program is built upon Clearing Agency Information Security Policies and Control Standards that establish requirements that apply to any technology system as well as any tool that provides technology services.[83] [84] [85] [86] Below describes

[71] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the OTR TRM Core Process Procedure—Security Configuration Violation Rules, which is used to manage enterprise information security risk by ensuring a consistent configuration violation scoring process that provides timely identification of configuration violations and their severity ratings. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[72] CGI is the Clearing Agencies' internally developed solution to perform Cloud Security Posture Management and assess Cloud Infrastructure compliance against TRM Control Standards and Security Baselines in near real-time.

[73] *Supra* note 47.

[74] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the DTCC Information Security—Information Security Management Policy and Control Standards, which defines the roles, responsibilities, and accountabilities for DTCC's security practices and organization structure suited to protect DTCC's critical systems and business assets. Information Security Management evaluates DTCC's information security program's overall effectiveness, and establishes, maintains, communicates, and periodically reassesses information security policies and a comprehensive information security program that are approved by management. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[75] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the DTCC Information Security—Risk Management Policy and Control Standards, which provides (i) requirements for establishing, implementing, maintaining, and continually improving the information risk management program, (ii) a governance structure utilized for the escalation of information risks to an appropriate management level, and (iii) organizational roles and responsibilities for the delivery of comprehensive information security and technology risk management program. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[76] *Supra* note 46.

[77] *Supra* note 47.

[78] *Supra* note 32.

[79] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the DTCC Third Party Risk Procedures, which establish the standards and practices to be used by certain business line departments and/or functional units to manage the potential risks associated with engaging with an external service provider. The Clearing Agencies have provided these documents in confidential Exhibit 3 to this advance notice filing.

[80] *Supra* note 62.

[81] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the Enterprise Program Management Office Procedure, which outlines the minimum standards and practices the Clearing Agencies use to manage, measure, and monitor the performance of key processes aligned to the Enterprise Program Management Office Policy. The Clearing Agencies have provided these documents in confidential Exhibit 3 to this advance notice filing.

[82] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the Internal Audit Department Policies and Procedures, which contains the policies and guidance that direct the activities of the Clearing Agencies' IAD. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[83] *Supra* notes 46–47, 73–74.

[84] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the DTCC Information Security—Asset Security Policy and Control Standards, which governs management of security for the information assets of the Clearing Agencies. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[85] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the DTCC Information Security—Monitoring and Incident Management Policy and Control Standards, which governs

elements of the Clearing Agencies' Cloud security management in the areas of (i) IAM controls (*i.e.,* determining who is accessing the systems, granting access to the applications, and then controlling what information they can access); (ii) security governance and controls for sensitive data; (iii) security configuration, provisioning, logging, and monitoring; and (iv) security testing.

(1) Network and IAM Controls

The Clearing Agencies recognize that robust network security configuration and IAM would provide reasonable assurance that users—including Clearing Agency employees, market participants, and service accounts for systems [87]—are granted least-privileged access [88] to the network, applications, and data in the Cloud. The Clearing Agencies would use third-party tools to automate appropriate role-based access to the Core C&S Systems running in the Cloud. By enforcing strict separation of duties and least-privileged access for infrastructure, applications, and data, the Clearing Agencies would protect the confidentiality, availability, and integrity of the data in the Cloud.

The Clearing Agencies have established IAM requirements that build upon the least-privileged model.[89] As part of the IAM program, all users must be assigned an appropriate enterprise identification. Additionally, the Clearing Agencies have established Highly Privileged Access Management capabilities and policies to further restrict highly privileged access to be used only in pre-determined scenarios that must be tied to a change, incident, request, or release records.[90]

Cloud users would be granted access to systems via a standardized and auditable approval process. The user identifications and granted access would be managed through their full lifecycle from a centralized IAM system maintained and administered by the Clearing Agencies. Role-, attribute-, and context-based access controls would be used as defined by internal standards [91] consistent with industry recommended practices to promote the principles of least-privileged access and separation of duties.[92]

The Clearing Agencies would use and manage third-party tools not otherwise provided by nor managed by the CSP for single sign-on and least-privileged access.[93] The network also would include hardware and software to limit and monitor ingress and egress traffic, encrypt data in transmission, and isolate traffic between the Clearing Agencies and the Cloud.[94] Since the Clearing Agencies would continue to provide cryptographic services, including key management, the CSP and other network service providers would not be able to decrypt Clearing Agency data either at rest or while in transit.

(2) Security Governance and Controls for Sensitive Data

The Clearing Agencies' data governance framework that would apply to Cloud implementation is identified within the Clearing Agency Information Security Policies and Control Standards.[95] The Clearing Agency Information Security Policies and Control Standards address data moving between systems within the Cloud as well as data transiting and traversing both trusted and untrusted networks. For example, the Clearing Agencies' Information Security Policies and Control Standards require a system or Software as a Service (*i.e.,* SaaS) to (i) store data and information, including all copies of data and information in the system, in the U.S., throughout its lifecycle; (ii) be able to retrieve and access the data and information throughout its lifecycle; (iii) for data in the system hosted in the Cloud, encrypt such data with key pairs kept and owned by the Clearing Agencies; (iv) comply with U.S. federal and applicable state data regulations regarding data location; and (v) enable secure disposition of non-records in accordance with the Clearing Agencies' Information Governance Policy.[96]

Furthermore, the Clearing Agencies' policies establish the overall data governance framework applied to the management, use, and governance of Clearing Agency information to include digital instantiations, storage media, or whether the information is located, processed, stored, or transmitted on the Clearing Agencies' information systems and networks; public, private, or hybrid cloud infrastructures; third-party data centers and data repositories; or SaaS applications.[97] The Information Classification and Handling Policy [98] classifies the Clearing Agencies' information into categories. System owners of technology that enable classification and/or labeling of information are responsible for ensuring the correct classification level is designated in the system of record and the applicable controls are enforced. All information requiring disposal is required to be disposed of securely in accordance with all applicable procedures. Sensitive data must be handled in a manner consistent with requirements in the Information Classification and Handling Policy.

The Clearing Agencies would implement key security components, namely ubiquitous authentication, and encryption via use of an automated public key infrastructure, coupled with responsive, highly available authentication, authorization tools, and key management strategies to ensure appropriate industry standard security controls are in place for sensitive data both in transit to and at rest in Cloud.[99]

External connectivity to the Clearing Agencies' systems hosted by the CSP would be provided, as it is now, through dedicated private circuits or over encrypted tunnels through the internet. These network links also would have additional security controls, including encryption during transmission and restrictions on network access to and

DTCC's information security monitoring and incident management and specifies requirements for (i) detecting unauthorized information processing activities, (ii) ensuring information security events and weaknesses associated with information systems are communicated in a manner allowing timely corrective action to be taken, and (iii) ensuring a consistent and effective approach is applied to the management of information security incidents. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[86] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the DTCC Information Security—Asset Access Control Policy and Standards, which governs management of security for the information assets of the DTCC and its subsidiaries. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[87] Service accounts are non-interactive accounts that permit application access to support activities such as monitoring, logging, or backup. Service accounts are also used for machine-to-machine communications.

[88] Least-privileged access means users only have the permission needed to perform their work, and no more.

[89] *Supra* note 85.

[90] *Id.*

[91] *Id.*

[92] (1) ISO/IEC 27002:2013—Information technology—Security techniques—Code of practice for information security controls; (2) NIST Cybersecurity Framework (CSF) Version 1.1; (3) NIST Special Publication 800–53 Revision 4—Security and Privacy Controls for Federal Information Systems and Organizations.

[93] For example, the Clearing Agencies currently use Bravura Security Privileged Access Management (a/k/a PAM) for highly privileged access management.

[94] *Supra* notes 47, 84–85.

[95] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the DTCC Data Risk Management Policy, which establishes requirements for the sound management of data risk across the data lifecycle. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[96] *Supra* note 85.

[97] *Supra* note 46.

[98] *Supra* note 83.

[99] *Supra* note 47.

from the Cloud. Additionally, the Clearing Agencies would use dedicated redundant private network connections between the Clearing Agencies data centers and the CSP infrastructure. The Clearing Agencies currently maintains two data centers and will do so in the near term to provide redundant, geographically diverse connectivity for market participants.

All network communications between the Clearing Agencies and the Cloud Infrastructure would rely on industry standard encryption for traffic while in transit. Data at rest would be safeguarded through pervasive encryption. The Clearing Agencies' Encryption Standards [100] describe requirements for implementation of the minimum required strengths, encryption at rest, and cryptographic algorithms approved for use in cryptographic technology deployments across the Clearing Agencies. All Clearing Agency identifying data is encrypted in transit using industry standard methods. The Key Management Service (''KMS'') Strategy [101] dictates that all CSP endpoints support HTTPS for encrypting data in transit. The Clearing Agencies also secure connections to the endpoint service by using virtual private computer endpoints and ensures client applications are properly configured to ensure encapsulation between minimum and maximum Transport Layer Security versions pursuant to the Clearing Agencies' encryption standard.

The Clearing Agencies would have exclusive control over the encryption keys; only Clearing Agency authorized users and approved third parties would be able to access Clearing Agency data. The CSP systems and staff would not have access to the Clearing Agencies' certificates or keys.[102] The Clearing Agencies would be responsible for the application architecture, software, configuration, and use of the CSP services, and for the maintenance of the environment, including ongoing monitoring of the application environment to achieve the appropriate security posture. To do this, the Clearing Agencies would follow (i) existing security design and controls; (ii) Cloud-specific information security controls defined in the Clearing Agencies' Information Security Policies and Control Standards; [103] and (iii) regulatory compliance requirements detailed in sources or information technology practices that are widely available and issued by an authoritative body that is a U.S. governmental entity or agency including NIST–CSF,[104] COBIT,[105] and the FFIEC Guidelines.[106]

The Clearing Agencies would use third-party and custom developed tools for CSP security compliance monitoring, security scanning, and reporting. Alerts and all API-level actions would be gathered using both CSP provided, Clearing Agency developed, and third-party monitoring tools. The CSP provided monitoring tool would be enabled by default at the organization level to monitor all CSP services activity. Centralized logging provides near real-time analysis of events and contains information about all aspects of user and role management, detection of unauthorized, security relevant configuration changes, and inbound and outbound communication.

As discussed just above, the Clearing Agencies would use a KMS Strategy to encrypt data in transit and at rest in the Cloud. KMS is designed so that no one, including CSP employees, can retrieve customer plaintext keys and use them. The Federal Information Processing Standards 140–2 validated Host Security Modules (''HSMs'') in KMS protect the confidentiality and integrity of Clearing Agency customer keys.[107] Customer plaintext keys are not written to disk and are only used in protected, volatile memory of the HSMs for the time needed to perform the customer's requested cryptographic operation. KMS keys are not transmitted outside of Cloud regions in which they were created. Updates to the KMS HSM firmware will be controlled by quorum-based access control [108] that is audited and reviewed by an independent group within the CSP.

(3) Security Configuration, Provisioning, Logging, and Monitoring

Automated delivery of business and security capability via the use of ''Infrastructure as Code'' and continuous integration/continuous deployment pipeline methods would permit security controls to be consistently and transparently deployed on-demand. The Clearing Agencies would provision Cloud Infrastructure using pre-established system configurations that are deployed through Infrastructure as Code, then scanned for compliance to secure baseline configuration standards. The Clearing Agencies also would employ continuous configuration monitoring and periodic vulnerability scanning. The Clearing Agencies would perform regular reviews and testing of Clearing Agency systems running in Cloud while relying upon information provided by the CSP through the CSP's SOC2 and Audit Symposiums. Finally, configuration, security incident, and event monitoring would rely on a blend of CSP native and third-party solutions.

The Clearing Agencies also plan to use tools offered by the CSP, developed by the Clearing Agencies, and third parties to monitor the Core C&S Systems running in Cloud. The Clearing Agencies would track metrics, monitor log files, set alarms, and have the ability to act on changes to Core C&S Systems and the environment in which they operate. The CSP would provide a dashboard to reflect-general health (*e.g.,* up/down status of a region and CSP provided services running in that region) but would not give additional insights into performance of services and applications which run on those services. The Clearing Agencies' centralized logging system would provide for a single frame of reference for log aggregation, access, and workflow management by ingesting the CSP's logs coming from native detective tools and the Clearing Agencies' instrumented controls for logging, monitoring, and vulnerability management. This instrumentation would give the Clearing Agencies a real-time view into the availability of Cloud services as well as the ability to track historical data. By using the enterprise monitoring tools that the Clearing Agencies have in place, the Clearing Agencies would be able to integrate the availability and capacity management of Cloud into the Clearing Agencies' existing processes, hosted in Cloud, to respond to issues in a timely manner.

The Clearing Agencies also would use specialized third-party tools, as discussed just above, to programmatically configure Cloud services and securely deploy infrastructure. This automation of configuration and deployment would help ensure that Cloud services are repeatably and consistently configured securely and validated. Change

[100] *Supra* note 91.

[101] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the DTCC Information Security—Public Key Infrastructure Policy and Control Standards, which governs the public key infrastructures implemented and used within DTCC and its subsidiaries. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[102] Certificate management is the process of creating, monitoring, and handling digital keys (certificates) to encrypt communications.

[103] *Supra* note 91.

[104] NIST Cybersecurity Framework Version 1.1.

[105] *COBIT 2019 Framework: Governance and Management Objectives.*

[106] FFIEC Information Technology Examination Handbook—Information Security (September 2016).

[107] The HSM is analogous to a safe to which only the Clearing Agencies have the combination and the ability to access the keys to locks stored within.

[108] A quorum-based access mechanism requires multiple users to provide credentials over a fixed period in order to obtain access.

detection tools providing event logs into the incident management system also are vital for reacting to and investigating unexpected changes to the environment.

The Clearing Agencies would implement tools for the Core C&S Systems and back-office environments that would be hosted on the Cloud Infrastructure, notably, IAM, monitoring and Security Information and Event Management systems, the workflow system of record for incident handling, KMS, and enterprise Data Loss Prevention.

Finally, the CSP prioritizes assurance programs and certifications, underscoring its ability to comply with financial services regulations and standards and to provide the Clearing Agencies with a secure Cloud Infrastructure.[109]

(4) Security Testing and Verification

Security testing is integrated into business-as-usual processes as outlined in relevant policy and procedures.[110] These documents define how testing is initiated, executed, and tracked.

For new assets and application (or code) releases, Technology Risk Management determines whether and what type of security testing is required through a risk-based analysis.[111] If required, testing would be conducted prior to implementation. The different testing techniques are outlined below:

- *Automated Security Testing.* Using industry standard security testing tools and/or other security engineering techniques specifically configured for each test, the Clearing Agencies would test to identify vulnerabilities and deliver payloads with the intent to break, change, or gain access to unauthorized areas within an application, data, or system.
- *Manual Penetration Testing.* Using information gathered from automated testing and/or other information sources, the Clearing Agencies would manually test to identify vulnerabilities and deliver payloads with the intent to break, change, or gain access to the unauthorized area within an application or system.
- *Blue Team Testing.* The Blue Team identifies security threats and risks in the operating environment and analyzes the network, system, and SaaS environments and their current state of security readiness. Blue Team assessment results guide risk mitigation and remediation, validate the effectiveness of controls, and provide evidence to support authorization or approval decisions. Blue Team testing ensures that the Clearing Agencies' networks, systems, and SaaS solutions are as secure as possible before deploying to a production environment.

The results of the Clearing Agencies' security controls testing are risk-rated and managed to remediation via two separate control standards.[112]

(c) Change Management: Software Development and Release Process

Consistent with FFIEC Guidance, the Clearing Agencies' use of Cloud would have sufficient change management controls in place to effectively transition systems and information assets to Cloud and would help ensure the security and reliability of applications in Cloud.[113] The Clearing Agencies' enterprise software development lifecycle processes [114] would help ensure the same control environment for all Clearing Agency resources. The Clearing Agencies would establish baselines for design inputs and control requirements and enforce workload isolation and segregation through Cloud using existing Cloud native technical controls and added new tools. The Clearing Agencies also would plan to use other specialized platform monitoring tools for logging, scanning of configuration, and systems process scanning. The Clearing Agencies also would have oversight as the code owner and would have final review and approval for related changes and code merges before deployment into production. Finally, the Clearing Agencies would periodically conduct static code scanning and perform vulnerability scanning for external dependencies prior to deployment in production, along with manual penetration testing of the provided application code. In addition, the Clearing Agencies would perform routine scans of Compute resources with the existing enterprise scanning tools. Any identified vulnerabilities would be reviewed for severity, prioritized, and logged for remediation tracking in upcoming development releases.

The Clearing Agencies would create a ''user acceptance plan'' prior to promoting code to Cloud production. This user acceptance plan would include tests of all major functions, processes, and interfacing systems, as well as security tests. Through acceptance tests, the Clearing Agencies' users would be able to simulate complete application functionality of the live environment. The change would move to the next stage of the Clearing Agencies' delivery model only after satisfying the criteria for this phase.[115]

The Clearing Agencies would have internal projects that would address change management of the various applications and services. In particular, the Clearing Agencies would run a suite of supporting services that enable building, running, scaling, and monitoring of the Clearing Agencies' business applications in Cloud, in an automated, resilient, and secure manner.[116] The application platform relies on various CSP and third-party tools for different components, including IaaS, Infrastructure as Code, CI/CD, Container as a Service, Continuous Delivery, and Platform Monitoring.

With respect to software development in Cloud, the Clearing Agencies would establish a closed, non-production Cloud environment that would enable the Clearing Agencies to develop, test, and integrate new capabilities, including those related to security capabilities. This non-production Cloud environment would focus on the foundational security, operations, and infrastructure requirements with the intent to take lessons learned to implement into future production. The Clearing Agencies would maintain a Cloud Reference Architecture that defines necessary capabilities and controls required to securely host Core C&S Systems. The minimum foundational security requirements would be based on the NIST–CSF and CIS benchmarks and include the design and implementation requirements of a secure Cloud account structure within a multi-region Cloud environment. The Clearing Agencies would maintain enterprise security requirements that provide structure for current and future development. As the Cloud environment is further developed and expanded, there would be a comprehensive process to identify any incremental risks and develop and implement controls to manage and mitigate those risks.

(d) Resilience and Recovery

As noted earlier, given the Clearing Agencies' roles as systemically important financial market utilities, it is vital that operations moved to the Cloud have appropriately robust resilience and recovery capabilities. As discussed in

[109] The CSP has certifications for the following frameworks: NIST, Cloud Security Alliance, COBIT, ISO, and FISMA.

[110] *Supra* note 46.

[111] *Supra* note 30.

[112] *Supra* notes 46–47.

[113] *Supra* note 30.

[114] *Id.*

[115] The ''user acceptance plan'' represents only one aspect of the overall change management program at the Clearing Agencies.

[116] *Supra* note 30.

Section II.B.ii.2, above, the Cloud Infrastructure would be architected to include (i) two autonomous and geographically diverse regions; (ii) three availability zones per region, with each availability zone comprised of multiple data centers; (iii) multi-node, high availability clusters across each availability zone; (iv) static stability and static capacity models; and (v) regional isolation, all to help ensure the persistent availability of Compute, Storage, and Network capabilities in Cloud.

Additionally, the CSP's practice in deploying service updates to Cloud would help ensure that the consequences of any incidents would be limited to the fullest extent possible.[117] The CSP achieves this by (i) fully automating the build and deployment process and (ii) deploying services to production in a phased manner.

CSP service updates are first deployed to cells, which minimizes the chance that a disruption from a service update in one cell would disrupt other cells. Following a successful cell-based deployment, service updates are next deployed to a specific availability zone, which limits any potential disruption to that zone. Following a successful availability zone deployment, service updates are then deployed in a staged manner to other availability zones, starting with the same region and later within other regions until the process is complete.

The Clearing Agencies would meet regularly with the CSP, in addition to formal quarterly briefing meetings with the CSP, as described in the Reg. SCI Addendum.[118] The informal discussions and quarterly briefing meetings would permit the Clearing Agencies to gather information in advance of the quarterly systems change report. Most reportable systems changes would continue to occur based on changes to Compute, Storage, Network, or applications controlled by the Clearing Agencies.

(e) Audit Controls and Assessment

The Clearing Agencies would regularly test security controls and configurations, including by monitoring the CSP's technical, administrative, and physical security controls that support the Clearing Agencies' systems in the Cloud Infrastructure.

(1) Internal Risk Assessments

As part of their existing third-party vendor risk activities, the Clearing Agencies' Third-Party Risk department (''TPR'') would assess the operational risks of the CSP as a critical vendor annually.[119] [120] [121] Additionally, as a critical vendor, the CSP is subject to heightened risk management requirements, as defined in the DTCC Third Party Risk CriticalPlus Program Procedures,[122] which include an executive sponsor that must be at the Managing Director level or higher, documented annual meetings, quarterly reporting, and monthly notifications. Issues rated moderate or above, negative news, performance concerns or remediations are directly escalated to the Management Risk Committee monthly.[123]

(2) Internal Audit Department

As mentioned in Section II.B.ii.4.(a), above, the Clearing Agencies' IAD, as the third line of defense, is independent from the Clearing Agencies' business lines, support areas, and controls functions, and promotes resiliency and security through the assessment of risk management and control frameworks to raise awareness of control risks and changes for improving controls and governance processes.

IAD assesses the risks of the Clearing Agencies, at least annually, as part of the development of the risk-based audit plan, which is reviewed and refreshed, as needed, on a quarterly basis.[124] The development of the audit plan includes the consideration of IADs risk assessment results, which informs cycle coverage requirements for Cloud. Additional considerations include, but are not limited to, regulatory requirements and expectations, initiatives, and institutional and industry risk trends, including risks associated with technology and cloud-based processes.

IAD's specific reviews of Cloud Infrastructure have not identified any material deficiencies and the scope of the reviews have included, but are not limited to, consideration of governance and oversight, contagion risk and logical separation, access management, security configuration and monitoring, concentration risk, exit strategy, business continuity and disaster recovery. IAD also has assessed the design of controls for a cloud platform scheduled for use in 2024 and is proposing a Cloud Security audit for 2024.[125]

(3) Key Risk and Key Performance Indicators [126]

The Clearing Agencies have established processes to evaluate the Clearing Agencies' management of CSPs. Cloud vendors are rated through a quarterly TPR survey. If a survey results in a poor rating, then it is reported to the Management Risk Committee (''MRC'').[127] TPR is responsible for the timely reporting and escalation of third-party risks. On a regular basis, TPR will review all active assessments to identify any high risks or potential issues that may require further discussion or escalation to senior management, Corporate Procurement Services (''CPS''), or internal stakeholders. The DTCC Third Party Risk Procedures provide a list of events that must be presented to the MRC.[128]

The Clearing Agencies have developed key performance indicators (''KPIs'') for Cloud and socialized these KPIs internally. The KRIs already exist for Core C&S Systems and are aligned to overall systems availability, capacity,

[117] The Clearing Agencies would continue to retain responsibility for patching, configuration, and monitoring of the operating systems and applications in Cloud.

[118] *See* Reg. SCI Addendum, Section 4 *Briefing Meetings.* The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[119] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the DTCC Third Party Risk Governance & Monitoring Procedures, which describes the minimum requirements for practices and standards to be used by business owners to monitor and manage third party relationships for DTCC and its subsidiaries. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[120] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the DTCC Third Party Risk Policy and the DTCC Third Party Risk Procedures, which establish the standards and practices to be used by certain business line departments and/or functional units to manage the potential risks associated with engaging with an external service provider. The Clearing Agencies have provided these documents in confidential Exhibit 3 to this advance notice filing.

[121] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the Third Party Risk—Technology and Resilience Procedure, which supplements the ''DTCC Third Party Risk Policy'', ''DTCC Third Party Risk Procedures'', and ''DTCC Third Party Risk Governance and Monitoring Procedures'' and covers the following: standard technology risk assessments (*e.g.,* due diligence), fourth party reviews, NYDFS cyber security assessments, and onsite assessments. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[122] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the DTCC Third Party Risk CriticalPlus Program Procedures. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[123] *Supra* note 62.

[124] *Supra* note 81.

[125] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the Clearing Agencies' Cloud Platform Internal Audit Report. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[126] *Supra* note 62.

[127] *Supra* note 119.

[128] *Supra* note 78.

data integrity, and security.[129] The CSP KPIs would feed into existing KRIs and would be used to evaluate the CSP's performance after Cloud implementation. KPIs would be added to monitor the performance and risks of the CSP services for which the Clearing Agencies have contracted. These post-Cloud implementation KRIs and KPIs would allow the Clearing Agencies to assess their ongoing use of the CSP against their operational and security requirements and would help demonstrate the effectiveness of risk controls and the CSP's performance against commitments in the SLAs, and will be reported on a regular basis to the Clearing Agencies' Management Committee, Board of Directors, and Technology and Risk Committees of the Board of Directors.

(4) Auditing the CSP and Access Rights [130]

The CSP hosts an annual Audit Symposium. The Cloud Agreement gives the Clearing Agencies the right to attend the symposium so that the Clearing Agencies may inspect and verify evidence of the design and effectiveness of the CSP's control environment.[131] The CSP also hosts an annual Cloud security conference focused on security, governance, risk and compliance, which the Clearing Agencies would attend. Through preparation for and attendance at these events, the Clearing Agencies could provide feedback and make requests of the CSP for future modifications of its control environment.

The Clearing Agencies' Information Technology staff currently meets with CSP representatives weekly to focus on technical issues related to the Clearing Agencies' proposed Cloud environment. As required under the Cloud Agreement, the Clearing Agencies hold quarterly compliance briefings with the CSP, wherein the Clearing Agencies receive information, including any necessary documentation, from the CSP to help assure the Clearing Agencies that the CSP is meeting its obligations.[132] The information provided includes updates to services and SLAs, CSP performance, and details that help the Clearing Agencies meet their reporting obligations under Section 1003(a)(1) of Reg. SCI. The Clearing Agencies' management, including Security, Information Technology, TPR, and the Internal Audit Department, coordinate to ensure appropriate representation during such briefings. The CSP is required under Cloud Agreement to maintain records showing its compliance with the agreements for a period of five years.[133]

The CSP would be required to maintain an information security program, including controls and certifications, that is as protective as the program evidenced by the CSP's SOC–2 report. The CSP must make available on demand to the Clearing Agencies its SOC–2 report as well as the CSP's other certifications from accreditation bodies and information on its alignment with various frameworks, including NIST–CSF, and ISO.[134]

As part of the annual risk assessment of the CSP, TPR collects risk and control related assurance documents from the CSP and coordinates review with the Clearing Agencies' respective subject matters specialists. TPR, Security, and Business Continuity would determine the adequacy and reasonableness of the documentation received to complete the Third-Party Risk Assessment. Finally, the Cloud Agreement provides that the Clearing Agencies' and their regulators may visit the facilities of the CSP under specified conditions. TPR would help coordinate bi-annual visits of the data centers.[135]

The Clearing Agencies plan to use the CSP's services combined with additional third-party tools to monitor systems deployed by ingesting logs into a security incident and event monitoring tool to provide a ''single pane of glass'' view into the Cloud Infrastructure. When incidents are detected, the Clearing Agencies would follow their existing incident response governance to identify, detect, contain, eradicate, and recover from incidents.

III. Consistency With the Clearing Supervision Act

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 and strengthening the liquidity of systemically important financial market utilities.[136] Section 805(a)(2) of the Clearing Supervision Act [137] also authorizes the Commission to prescribe risk management standards for the payment, clearing and settlement activities of designated clearing entities, like the Clearing Agencies, for which the Commission is the supervisory agency. Section 805(b) of the Clearing Supervision Act [138] states that the objectives and principles for risk management standards prescribed under Section 805(a) shall be to:

- promote robust risk management;
- promote safety and soundness;
- reduce systemic risks; and
- support the stability of the broader financial system.

The Commission adopted Rule 17ad–22 under Section 805(a)(2) of the Clearing Supervision Act and the Exchange Act in furtherance of these objectives and principles.[139] Rule 17ad–22 under the Exchange requires covered clearing agencies, like the Clearing Agencies, to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing basis.[140]

The Clearing Agencies believe that the Cloud Proposal is consistent with Section 805(b)(1) of the Clearing Supervision Act [141] and the requirements of Rules 17ad–22(e)(17)(ii) under the Exchange Act.[142]

[129] The Clearing Agencies have separately submitted a request for confidential treatment to the Commission regarding the IT–Q4 2023 Risk Tolerance. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[130] *Supra* note 62.

[131] *See* Reg. SCI Addendum, Section 3 *Customer Right of Access and Audit*. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[132] *Supra* note 117.

[133] *See* Reg. SCI Addendum, Section 7.3 *CSP Records*. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[134] The FFIEC Guidance provides that the Clearing Agencies may obtain SOC reports, other independent audits, or ISO certification reports to gain assurance that the CSP's controls are operating effectively. *See* FFIEC, Security in a Cloud Computing Environment, at 7. The Clearing Agencies review the CSP's SOC–2 on an annual basis. *See* Reg. SCI Addendum, Section 2 *CSP Information Security Program*. The SOC reports, along with other artifacts showing compliance with these sections, are available to the Clearing Agencies on demand. In addition, during each Briefing Meeting (*See* Reg. SCI Addendum Section 4 *Briefing Meetings*), updates are provided on any material changes to certification standards, policies, procedures, controls or security standards at the CSP. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[135] *See* Reg. SCI Addendum, Sections 3 *Customer Right of Access and Audit* and 9 *Regulatory Supervision*. The Clearing Agencies have provided this document in confidential Exhibit 3 to this advance notice filing.

[136] 12 U.S.C. 5461(b).

[137] 12 U.S.C. 5464(a)(2).

[138] 12 U.S.C. 5464(b).

[139] 17 CFR 240.17ad–22. Exchange Act Release Nos. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7–08–11) (Clearing Agency Standards); 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7–03–14) (Standards for Covered Clearing Agencies).

[140] 17 CFR 240.17ad–22.

[141] 12 U.S.C. 5464(b)(1).

[142] 17 CFR 240.17ad–22(e)(17)(ii).

A. Consistency With Section 805(b)(1) of the Clearing Supervision Act

Promote Robust Risk Management. As described above, the Clearing Agencies believe that the Cloud Proposal promotes robust risk management, specifically operational risk management, by providing scalable and secure infrastructure for hosting Core C&S Systems. The Cloud Proposal would add additional security capabilities, allow for regular updates and maintenance of applications, and reduce the risk of data breaches while also ensuring compliance with industry standards. Additionally, transitioning to Cloud would offer flexibility in scaling resources, which can enable the Clearing Agencies to adapt quickly to changing security needs and allocate resources more efficiently.

Today, the Clearing Agencies' ability to risk manage extreme market events is directly tied to their ability to scale their on-premises resource during such events, which is directly tied to the Clearing Agencies having previously expended enough capital to build enough capacity based on earlier performance testing of their applications to withstand such extreme market events. Although the Clearing Agencies would continue to performance test their applications regardless of where the applications are hosted, by hosting the applications in Cloud, the number of scalable resources is already available, when needed, without the Clearing Agencies having to pre-purchase it or build it. This level of nearly unbounded, on-demand scalability provides a much-welcomed risk-management feature for extreme events, such as a global pandemic as noted above.

Overall, risk management is inherently strengthened by hosting in Cloud through advanced security features, real-time monitoring, on-demand scalability, and compliance standards implemented by the CSP. By leveraging these capabilities, the Clearing Agencies can better proactively identify and address risks, ensuring data integrity and regulatory compliance.

Promote Safety and Soundness. The Clearing Agencies also believe that the Cloud Proposal promotes safety and soundness. As discussed above, transitioning to Cloud provides centralized management and improved scalability. The CSP provides cloud-specific security capabilities, including encryption, access controls, and regular updates, reducing the risk of security breaches. Centralized monitoring allows for better visibility into potential threats, enabling quick response and mitigation. The agility afforded by Cloud would allow the Clearing Agencies to respond to performance challenges more efficiently and effectively. For instance, as noted above, in the face of unexpected surges in demand, Cloud scalability would allow the Clearing Agencies to seamlessly adjust resources, helping to prevent service disruptions and loss of operations. Such agility not only enhances the effectiveness of operations but also mitigates the risks associated with unexpected fluctuations in workload performance. These benefits improve the Clearing Agencies abilities to maintain operational continuity and resilience, which help promote safety and soundness.

Reduce Systemic Risk. The Clearing Agencies also believe that the Cloud Proposal would reduce systemic risk by improving overall resilience and security. As described above, hosting Core C&S Systems in Cloud would provide distributed infrastructure and data redundancy (*i.e.,* multiple availability zones, supported by many data centers, across two regions), making the systems less susceptible to single points of failure. Moreover, disaster recovery would be streamlined, minimizing the effect of potential disruptions, while automatic backup systems, geographic redundancy, and faster data recovery mechanisms would all contribute to a more resilient infrastructure. In the event of a localized issue, the distributed nature of Cloud would help prevent widespread disruptions.

Production resiliency also is greatly improved in Cloud compared to the Clearing Agencies' on-premises capabilities, where a single location hosts an application, on a single copy of primary storage. Instead, Cloud would host an application across three primary availability zones, made of up of many data centers, each of which contain actively running instances and synchronous copies of the data. If the Clearing Agencies' primary, on-premises data center fails, an out of region recovery will be necessary and will likely result in approximately two hours of downtime. By comparison, in Cloud, even if an entire availability zone fails (meaning the failure of multiple data centers), Core C&S Systems would continue to operate within the region, thus avoiding an out of region recovery and any downtime.

The Clearing Agencies would employ meaningful security capabilities and measures provided by the CSP and third-party tools to further enhance the security of the Clearing Agencies' Core C&S Systems. This approach to security would help reduce systemic risks associated with operational outages and significantly reduce the risk associated with data loss or downtime. Additionally, the Cloud environment facilitates regular updates and patch management, ensuring that security measures stay current. This proactive maintenance helps mitigate vulnerabilities that could otherwise contribute to systemic risk. Overall, the adoption of Cloud enhances the stability and security of IT infrastructure, contributing to a reduction in systemic risks.

Altogether, the Clearing Agencies believe that the benefits afford from operating in a Cloud Infrastructure would help the Clearing Agencies reduce systemic risk.

Support the Stability of the Broader Financial System. The Clearing Agencies believe that the Cloud Proposal supports the stability of the broader financial system by enhancing efficiency, resilience, and security of the Clearing Agencies' Core C&S Systems. Cloud services would provide the Clearing Agencies with scalable and flexible infrastructure, allowing for more efficient resource allocation and cost management, which supports operational resiliency and stability. With the ability to rapidly deploy new applications and services, the Clearing Agencies would become more agile in adapting to market trends and participant and customer needs.

In terms of resilience, the Cloud Infrastructure offers distributed data storage and failover solutions, reducing the impact of localized disruptions and improving recovery capabilities. This resilience is crucial for the Clearing Agencies' Core C&S Systems to continue functioning even in the face of unforeseen events. Moreover, the CSP's strengthened security capabilities help protect sensitive data, mitigating the risk of cyberattack or data breaches that could undermine the stability of the financial system. Overall, the transition to Cloud fosters improved operational efficiency, resilience, and robust security practices, contributing to the stability of the broader financial system.

Accordingly, the proposed changes provided in this Cloud Proposal are consistent with (i) promoting robust risk management; (ii) promoting safety and soundness; (iii) reducing systemic risks; and (iv) promoting the stability of the broader financial system, all in support of the objectives and principles of Section 805(b) of the Clearing Supervision Act.[143]

[143] 12 U.S.C. 5464(b).

B. Consistency With Rule 17ad–22(e)(17)(ii) Under the Exchange Act

Rule 17ad–22(e)(17)(ii) requires the Clearing Agencies to establish, implement, maintain, and enforce written policies and procedures reasonably designed to manage the Clearing Agencies' operational risk by ''ensuring that systems have a high degree of security, resiliency, operational reliability, and adequate, scalable capacity.'' [144]

Security. As described above and in policies and procedures confidentially filed, the Clearing Agencies have established a robust Cloud security program to manage the security of the Core C&S Systems that would be running in Cloud and to monitor the CSP's management of security of the Cloud Infrastructure that it operates. Processes are formally defined, automated to the fullest extent, repeatable with minimal variation, accessible, adhered to, and timely. The enterprise security program encompasses all of the Clearing Agencies' assets existing in the Clearing Agencies' offices, data centers, and within the Cloud Infrastructure, and IAM controls ensure least-privileged user access to applications in Cloud. The Clearing Agencies have appropriate controls in place to help ensure the security of confidential information in-transit between the Clearing Agencies' data centers and the Cloud Infrastructure, between systems within the Cloud Infrastructure, and at-rest. All network communications between the Clearing Agencies and Cloud would rely on industry standard encryption for traffic while in transit, and data at rest would be safeguarded through pervasive encryption. Finally, automated delivery of business and security capability via the use of the Infrastructure as Code, Cloud agnostic tools, and continuous integration/continuous deployment pipeline methods help ensure security controls are consistently and transparently deployed.

Resiliency and Operational Reliability. As stated above, resiliency and operational reliability of the Cloud Infrastructure is built into the system with functionality for the Clearing Agencies' Core C&S Systems to run in multiple availability zones within multiple regions. Regions are segregated from one another and are designed to minimize the possibility of a multi-region outage. The Clearing Agencies have designed their Cloud Infrastructure to have primary (hot)/secondary (warm) regions, at all times, ensuring Compute, Storage, and Network resources would be available in a new redundant region in the event of a primary region failure. As a result, the Cloud Infrastructure offers the Clearing Agencies multiple redundancies within which to run Core C&S Systems, while simultaneously restricting the effect of an incident at the CSP to the smallest footprint possible.

Scalability. As described above, since additional computing power can be launched on demand, the scalability in a Cloud computing environment is considerable and instantaneous. The Clearing Agencies could provision or de-provision Compute, Storage, and Network resources to meet demand at any given point in time. In the current on-premises environment, immediate scalability is limited by the capacity of the on-premises hardware. Additional physical servers and network equipment would be needed to scale beyond the limits of the on-premises hardware, potentially affecting the ability to quickly adapt to evolving market conditions, including spikes in trading volume.

For these reasons, the Clearing Agencies believe that the Cloud Proposal would help ensure that the Clearing Agencies' systems have a high degree of security, resiliency, operational reliability, and adequate, scalable capacity, consistent with Rule 17ad–22(e)(17)(ii) under the Exchange Act.[145]

III. Date of Effectiveness of the Advance Notice

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date the proposed change was filed with the Commission or (ii) the date any additional information requested by the Commission is received.[146] The clearing agency shall not implement the proposed change if the Commission has any objection to the proposed change.[147]

The clearing agency shall post notice on its website of proposed changes that are implemented. The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the advance notice is consistent with the Clearing Supervision Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number FICC–2024–803 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–FICC–2024–803. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the advance notice that are filed with the Commission, and all written communications relating to the advance notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FICC and on DTCC's website (*dtcc.com/legal/sec-rule-filings*). Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–FICC–2024–803 and should be submitted on or before September 25, 2024.

V. Date of Timing for Commission Action

Section 806(e)(1)(G) of the Clearing Supervision Act provides that FICC may implement the changes if it has not received an objection to the proposed changes within 60 days of the later of (i)

[144] 17 CFR 240.17ad–22(e)(17)(ii). The Clearing Agencies maintain several policies specifically designed to manage the risks associated with maintaining adequate levels of system functionality, confidentiality, integrity, availability, capacity, and resiliency for systems that support core clearing, risk management, and data management services.

[145] 17 CFR 240.17ad–22(e)(17)(ii).

[146] 12 U.S.C. 5465(e)(1)(G).

[147] 12 U.S.C. 5465(e)(1)(F).

the date that the Commission receives the Advance Notice or (ii) the date that any additional information requested by the Commission is received,[148] unless extended as described below.

Pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act, the Commission may extend the review period of an advance notice for an additional 60 days, if the changes proposed in the advance notice raise novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension.[149]

Here, as the Commission has not requested any additional information, the date that is 60 days after FICC filed the Advance Notice with the Commission is October 13, 2024. However, the Commission believes that the changes proposed in the Advance Notice raise novel and complex issues. The Commission finds the issues novel because FICC proposes a gradual migration of a specified set of Core C&S Systems to a public cloud infrastructure hosted by a single, third-party service provider. The Commission also finds the issues raised by the Advance Notice complex because the selection of the subset of applications proposed for migration involves a detailed governance review process that would require careful scrutiny and consideration of its associated risks. Therefore, the Commission finds it appropriate to extend the review period of the Advance Notice for an additional 60 days under Section 806(e)(1)(H) of the Clearing Supervision Act.[150]

Accordingly, the Commission, pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act,[151] extends the review period for an additional 60 days so that the Commission shall have until December 12, 2024 to issue an objection or non-objection to advance notice SR–FICC–2024–803.

All submissions should refer to File Number SR–FICC–2024–803 and should be submitted on or before September 25, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[152]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–19762 Filed 9–3–24; 8:45 am]

BILLING CODE 8011–01–P

[148] 12 U.S.C. 5465(e)(1)(G).

[149] 12 U.S.C. 5465(e)(1)(H).

[150] *Id.*

[151] *Id.*

[152] 17 CFR 200.30–3(a)(91).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100862; File No. SR–CBOE–2024–036]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend Rule 4.3 to List and Trade Options on Ethereum Exchange-Traded Funds

August 28, 2024.

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 August 19, 2024, Cboe Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''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

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend Rule 4.3. The text of the proposed rule change is provided in Exhibit 5.

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 4.3 regarding the criteria for underlying securities. Specifically, the Exchange proposes to amend Rule 4.3, Interpretation and Policy .06(a)(4) to allow the Exchange to list and trade options on Units [3] that represent interests in the following exchange-traded products: the Fidelity Ethereum Fund (the ''Fidelity Fund''), the 21Shares Core Ethereum ETF (the ''21Shares Fund''), the Invesco Galaxy Ethereum ETF (the ''Invesco Fund''), the Franklin Ethereum ETF (the ''Franklin Fund''), the VanEck Ethereum Trust (the ''VanEck Fund''), the Grayscale Ethereum Trust (the ''Grayscale Fund''), the Grayscale Mini Ethereum Trust (the ''Grayscale Mini Fund''), the Bitwise Ethereum ETF (the ''Bitwise Fund''), and the iShares Ethereum Trust ETF (the ''iShares Fund and, collectively, the ''Ethereum Funds''), designating them as ''Units'' deemed appropriate for options trading on the Exchange. Current Rule 4.3, Interpretation and Policy .06 provides that, subject to certain other criteria set forth in that Rule, securities deemed appropriate for options trading include Units that represent certain types of interests,[4]

[3] Rule 1.1 defines a ''Unit'' (which may also be referred to as an exchange-traded fund (''ETF'')) as a share or other security traded on a national securities exchange and defined as an NMS stock as set forth in Rule 4.3.

[4] *See* Rule 4.3, Interpretation and Policy .06(a), which permits options trading on Units that represent (1) interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that hold portfolios of securities and/or financial instruments including, but not limited to, stock index futures contracts, options on futures, options on securities and indexes, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse purchase agreements (the ''Financial Instruments''), and money market instruments, including, but no limited to, U.S. government securities and repurchase agreements (the ''Money Market Instruments'') comprising or otherwise based on or representing investments in indexes or portfolios of securities and/or Financial Instruments and Money Market Instruments (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities and/or Financial Instruments and Money Market Instruments); (2) interests in a trust or similar entity that holds a specified non-U.S. currency deposited with the trust or similar entity when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency and pays the beneficial owner interest and other distributions on deposited non-U.S. currency, if any, declared and paid by the trust (''Currency Trust Shares''); (3) commodity pool interests principally engaged, directly or indirectly, in

including interests in certain specific trusts that hold financial instruments, money market instruments, or precious metals (which are deemed commodities).

The Ethereum Funds are Ethereum-backed commodity ETFs structured as trusts. Similar to any Unit currently deemed appropriate for options trading under Rule 4.3, Interpretation and Policy .06, the investment objective of each Ethereum Fund trust is for its shares to reflect the performance of Ethereum (less the expenses of the trust's operations), offering investors an opportunity to gain exposure to Ethereum without the complexities of Ethereum delivery. As is the case for Units currently deemed appropriate for options trading, an Ethereum Fund's shares represent units of fractional undivided beneficial interest in the trust, the assets of which consist principally of Ethereum and are designed to track Ethereum or the performance of the price of Ethereum and offer access to the Ethereum market.[5] The Ethereum Funds provide investors with cost-efficient alternatives that allow a level of participation in the Ethereum market through the securities market. The primary substantive difference between Ethereum Funds and Units currently deemed appropriate for options trading are that Units may hold securities, certain financial instruments, and specified precious metals (which are deemed commodities), while Ethereum Funds hold Ethereum (which is also deemed a commodity).

The Exchange believes the Ethereum Funds satisfy the Exchange's initial listing standards for Units on which the Exchange may list options. Specifically, the Ethereum Funds satisfy the initial listing standards set forth in Rule 4.3, Interpretation and Policy .06(b), as is the case for other Units on which the Exchange lists options (including trusts that hold commodities). Rule 4.3, Interpretation and Policy .06 requires that Units must either (1) meet the criteria and standards set forth in Rule 4.3, Interpretation and Policy .01(a),[6] or (2) be available for creation or redemption each business day from or through the issuer in cash or in kind at a price related to net asset value, and the issuer must be obligated to issue Units in a specified aggregate number even if some or all of the investment assets required to be deposited have not been received by the issuer, subject to the condition that the person obligated to deposit the investments has undertaken to deliver the investment assets as soon as possible and such undertaking is secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the issuer, as provided in the respective prospectus. The Ethereum Funds satisfy Rule 4.3, Interpretation and Policy .06(b)(2), as they are all subject to this creation and redemption process.

While not required by the Rules for purposes of options listings, the majority of the Ethereum Funds satisfy the criteria and guidelines set forth in Rule 4.3, Interpretation and Policy .01. Pursuant to Rule 4.3(a), a security (which includes a Unit) on which options may be listed and traded on the Exchange must be duly registered (with the Commission) and be an NMS stock (as defined in Rule 600 of Regulation NMS under the Securities Exchange Act of 1934, as amended (the ''Act'')), and be characterized by a substantial number of outstanding shares that are widely held and actively traded.[7] Each of the Ethereum Funds is an NMS Stock as defined in Rule 600 of Regulation NMS under the Act.[8] The Exchange believes each Ethereum Fund is characterized by a substantial number of outstanding shares that are widely held and actively traded.

As of August 7, 2024, the Ethereum Funds had the following number of shares outstanding:

Ethereum Fund	Shares outstanding
Fidelity Fund	10,850,000
21Shares Fund	760,000
Invesco Fund	468,000
Franklin Fund	1,500,000
VanEck Fund	1,725,000
Grayscale Fund	228,468,500
Grayscale Mini Fund	380,898,500
Bitwise Fund	12,370,000
iShares Fund	37,200,000

Despite the fact that these Ethereum Funds are in only their third week of trading (they began trading on July 23, 2024), five of these funds already have more than 7,000,000 shares outstanding, which is the minimum number of shares of a corporate stock that the Exchange generally requires to list options on that stock pursuant to Rule 4.3, Interpretation and Policy .01(a)(1). However, the Exchange believes shares outstanding (*i.e.,* free float[9]), while commonly used to determine investable capacities of corporate stocks, the figure has little utility with respect to ETFs due to the market structure of ETFs. Proofing of ETF baskets, in addition to the efficiency of creation/redemption mechanisms, decouple concepts of ''floating'' ETF shares against the impacts of ETF liquidity to the liquidity of ETF constituents. While ETF market-makers may often limit the amount of floating ETF shares, primary market mechanisms enable virtually limitless capacity to create and redeem ETF shares on a daily basis.[10] As evidenced during their brief time in market, the gross value of daily shares created or redeemed for each Ethereum Fund approximates its assets under management (''AUM'') as of July 24, 2024, which was as follows:

holding and/or managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or non-U.S. currency (''Commodity Pool Units''); (4) interests in the SPDR Gold Trust, the iShares COMEX Gold Trust, the iShares Silver Trust, the Aberdeen Standard Physical Silver Trust, the Aberdeen Standard Physical Gold Trust, the Aberdeen Standard Physical Palladium Trust, the Aberdeen Standard Physical Platinum Trust, the Sprott Physical Gold Trust or the Goldman Sachs Physical Gold ETF; or (5) an interest in a registered investment company (''Investment Company'') organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies, which is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value (''NAV''), and when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined NAV (''Managed Fund Share'').

[5] The trust may include minimal cash.

[6] Rule 4.3, Interpretation and Policy .01 provides for guidelines to be by the Exchange when evaluating potential underlying securities for Exchange option transactions.

[7] The criteria and guidelines for a security to be considered widely held and actively traded are set forth in Rule 4.3, Interpretation and Policy .01, subject to exceptions.

[8] An ''NMS stock'' means any NMS security other than an option, and an ''NMS security'' means any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan (or an effective national market system plan for reporting transaction in listed options). *See* 17 CFR 242.600(b)(64) (definition of ''NMS security'') and (65) (definition of ''NMS stock'').

[9] All outstanding ETF shares are considered free float, as there are no restricted ETF shares or shares held by insiders, as is the case with respect to corporate stocks.

[10] This is the primary reasoning for why the Exchange may list options on ETFs as long as they are subject to the creation and redemption process and generally do not need to satisfy the criteria set forth in Interpretation and Policy .01.

Ethereum fund	AUM
Fidelity Fund	9,481,360
21Shares Fund	148,080,600
Invesco Fund	37,197,280
Franklin Fund	19,301,340
VanEck Fund	9,013,556
Grayscale Fund	8,040,436,000
Grayscale Mini Fund	1,043,203,000
Bitwise Fund	230,788,700
iShares Fund	287,328,200

As a result, the Exchange believes this demonstrates that each Ethereum Fund is characterized by a substantial number of outstanding shares. Given how recently Ethereum Funds began trading, the Exchange does not have access to the number of beneficial holders of Ethereum Funds at this time. However, given the significant trading volumes the Ethereum Funds, the Exchange believes it is reasonable to expect that shares of all of the Ethereum Funds are characterized by a substantial number of outstanding shares that are widely held.

The Exchange also believes each Ethereum Fund is characterized by a substantial number of outstanding shares that are actively traded. As of August 7, 2024, the total trading volume (by shares and notional) for each fund since they began trading on July 23, 2024 and the average daily volume (''ADV'') over the five-day period of August 2 through August 7, 2024 for each Ethereum Fund was as follows:

Ethereum fund	Trading volume (shares)	Trading volume (notional $)	ADV (shares)
Fidelity Fund	32,751,647	1,023,590,893.88	1,279,085.00
21Shares Fund	2,995,673	46,584,597.69	183,032.80
Invesco Fund	2,398,977	75,800,517.49	116,423.80
Franklin Fund	3,726,018	89,987,417.90	114,194.60
VanEck Fund	5,557,411	247,424,935.45	288,519.00
Grayscale Fund	221,839,519	5,934,238,584.03	7,429,260.00
Grayscale Mini Fund	387,753,619	1,117,121,565.01	24,800,550.00
Bitwise Fund	27,454,355	638,820,845.28	806,202.19
iShares Fund	124,839,230	2,896,601,784.35	6,720,303.00

As demonstrated above, despite the fact that Ethereum Funds have been trading for fewer than three weeks, the trading volume for each except one Ethereum Fund is higher (and several significantly higher) than 2,400,000 shares (and that one is only 1,023 shares below that number), which is the minimum 12-month volume the Exchange generally requires for a security in order to list options on that security as set forth in Rule 4.3, Interpretation and Policy .01. Additionally, from July 23 (the first day the Ethereum Funds began trading) through August 7, 2024, the ADV for each Ethereum Fund is in the top 25% of all ETFs that are currently trading. The Exchange believes this data demonstrates each Ethereum Fund is characterized by a substantial number of outstanding shares that are actively traded.

Options on Ethereum Funds will be subject to the Exchange's continued listing standards set forth in Rule 4.4, Interpretation and Policy .06 for Units deemed appropriate for options trading pursuant to Rule 4.3, Interpretation and Policy .06. Specifically, Rule 4.4, Interpretation and Policy .06 provides that Units that were initially approved for options trading pursuant to Rule 4.3, Interpretation and Policy .06 shall be deemed not to meet the requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering that such Units, if the Units cease to be an NMS stock or the Units are halted from trading in their primary market. Additionally, options on Units may be subject to the suspension of opening transactions in any of the following circumstances: (1) in the case of options covering Units approved for trading under Rule 4.3, Interpretation and Policy .06(b)(1), in accordance with the terms of paragraphs (a), (b), and (c) of Rule 4.4, Interpretation and Policy .01; (2) in the case of options covering Units approved for trading under Rule 4.3 Interpretation and Policy .06(b)(2) (as is the case for the Ethereum Funds), following the initial twelve-month period beginning upon the commencement of trading in the Units on a national securities exchange and are defined as an NMS stock, there are fewer than 50 record and/or beneficial holders of such Units for 30 or more consecutive trading days; (3) the value of the index or portfolio of securities, non-U.S. currency, or portfolio of commodities including commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or financial instruments and money market instruments on which the Units are based is no longer calculated or available; or (4) such other event shall occur or condition exist that in the opinion of the Exchange makes further dealing in such options on the Exchange inadvisable.

Options on each Ethereum Fund will be physically settled contracts with American-style exercise.[11] Consistent with current Rule 4.5, which governs the opening of options series on a specific underlying security (including Units), the Exchange will open at least one expiration month for options on each Ethereum Fund [12] at the

[11] *See* Rule 4.2, which provides that the rights and obligations of holders and writers are set forth in the Rules of the Options Clearing Corporation (''OCC''); *and* Equity Options Product Specifications January 3, 2024), available at Equity Options Specifications (cboe.com); *see also* OCC Rules, Chapters VIII (which governs exercise and assignment) and Chapter IX (which governs the discharge of delivery and payment obligations arising out of the exercise of physically settled stock option contracts).

[12] *See* Rule 4.5(b). The monthly expirations are subject to certain listing criteria for underlying securities described within Rule 4.3. Monthly listings expire the third Friday of the month. The

commencement of trading on the Exchange and may also list series of options on a Ethereum Fund for trading on a weekly,[13] monthly,[14] or quarterly [15] basis. The Exchange may also list long-term equity option series (''LEAPS'') that expire from 12 to 180 months from the time they are listed.[16]

Pursuant to Rule 4.5, Interpretation and Policy .07, which governs strike prices of series of options on Units, the interval of strikes prices for series of options Ethereum Funds will be $1 or greater when the strike price is $200 or less and $5 or greater where the strike price is over $200.[17] Additionally, the Exchange may list series of options pursuant to the $1 Strike Price Interval Program,[18] the $0.50 Strike Program,[19] the $2.50 Strike Price Program,[20] and the $5 Strike Program.[21] Pursuant to Rule 5.4, where the price of a series of a Ethereum Fund option is less than $3.00, the minimum increment will be $0.05, and where the price is $3.00 or higher, the minimum increment will be $0.10.[22] Any and all new series of Ethereum Fund options that the Exchange lists will be consistent and comply with the expirations, strike prices, and minimum increments set forth in Rules 4.5 and 5.4, as applicable.

Ethereum Fund options will trade in the same manner as any other Unit options on the Exchange. The Exchange Rules that currently apply to the listing and trading of all Unit options on the Exchange, including, for example, Rules that govern listing criteria, expiration and exercise prices, minimum increments, position and exercise limits, margin requirements, customer accounts and trading halt procedures will apply to the listing and trading of Ethereum Funds on the Exchange in the same manner as they apply to other options on all other Units that are listed and traded on the Exchange, including the precious-metal backed commodity Units already deemed appropriate for options trading on the Exchange pursuant to current Rule 4.3, Interpretation and Policy .06(a)(4).

Position and exercise limits for options on Units, including options on Ethereum Funds, are determined pursuant to Rules 8.30 and 8.42, respectively. Position and exercise limits for Unit options vary according to the number of outstanding shares and the trading volumes of the underlying Unit over the past six months, where the largest in capitalization and the most frequently traded Units have an option position and exercise limit of 250,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market; and smaller capitalization Units have position and exercise limits of 200,000, 75,000, 50,000 or 25,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market.[23] The Exchange further notes that Rule 10.3, which governs margin requirements applicable to the trading of all options on the Exchange, including options on Units, will also apply to the trading of Ethereum Fund options.

The Exchange represents that the same surveillance procedures applicable to all other options on Units currently listed and traded on the Exchange will apply to options on Ethereum Funds, and that it has the necessary systems capacity to support the new option series. The Exchange believes that its existing surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior which might potentially arise from listing and trading Unit options, including precious metal-commodity backed Unit options, as proposed. Also, the Exchange may obtain information from CME Group Inc.'s designated contract markets that are members of the Intermarket Surveillance Group related to any financial instrument that is based, in whole or in part, upon an interest in or performance of Ethereum, as applicable.

The Exchange has also analyzed its capacity and represents that it believes the Exchange and OPRA have the necessary systems capacity to handle the additional traffic associated with the listing of new series that may result from the introduction of options on Ethereum Funds up to the number of expirations currently permissible under the Rules. Because the proposal is limited to Units on a single commodity, the Exchange believes any additional traffic that may be generated from the introduction of Ethereum Fund options will be manageable.

The Exchange believes that offering options on Ethereum Funds will benefit investors by providing them with an additional, relatively lower cost investing tool to gain exposure to the price of Ethereum and hedging vehicle to meet their investment needs in connection with Ethereum -related products and positions. The Exchange expects investors will transact in options on Ethereum Funds in the unregulated over-the-counter (''OTC'') options market (if the Commission approves Ethereum Funds for exchange-trading),[24] but may prefer to trade such options in a listed environment to receive the benefits of trading listing options, including (1) enhanced efficiency in initiating and closing out position; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of all listed options. The Exchange believes that listing Ethereum Fund options may cause investors to bring this liquidity to the Exchange, would increase market transparency and enhance the process of price discovery conducted on the Exchange through increased order flow. The Units that hold financial instruments, money market instruments, or precious metal commodities on which the Exchange may already list and trade options are trusts structured in substantially the same manner as Ethereum Funds and essentially offer the same objectives and benefits to investors, just with respect to different assets. The Exchange notes that it has not identified any issues with the continued listing and trading of any

term ''expiration date'' (unless separately defined elsewhere in the OCC By-Laws), when used in respect of an option contract (subject to certain exceptions), means the third Friday of the expiration month of such option contract, or if such Friday is a day on which the exchange on which such option is listed is not open for business, the preceding day on which such exchange is open for business. *See* OCC By-Laws Article I, Section 1. Pursuant to Rule 4.5(c), additional series of options of the same class may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying stock moves more than five strike prices from the initial exercise price or prices. New series of options on an individual stock may be added until the beginning of the month in which the options contract will expire. Due to unusual market conditions, the Exchange, in its discretion, may add a new series of options on an individual stock until the close of trading on the business day prior to expiration.

[13] *See* Rule 4.5(d).

[14] *See* Rule 4.5(g).

[15] *See* Rule 4.5(e).

[16] *See* Rule 4.5(f).

[17] The Exchange notes that for options listed pursuant to the Short Term Option Series Program, the Monthly Options Series Program, and the Quarterly Options Series Program, Rules 4.5(d), (e), and (g) specifically sets forth intervals between strike prices on Quarterly Options Series, Short Term Option Series, and Monthly Options Series, respectively.

[18] *See* Rule 4.5, Interpretation and Policy .01(a).

[19] *See* Rule 4.5, Interpretation and Policy .01(b).

[20] *See* Rule 4.5, Interpretation and Policy .04.

[21] *See* Rule 4.5, Interpretation and Policy .01(f).

[22] If options on a Ethereum Fund are eligible to participate in the Penny Interval Program, the minimum increment will be $0.01 for series with a price below $3.00 and $0.05 for series with a price at or above $3.00. *See* 5.4(d) (which describes the requirements for the Penny Interval Program).

[23] As Ethereum Funds do not currently trade, options on Ethereum Funds would be subject to the 25,000 option contract limit.

[24] The Exchange understands from customers that investors have historically transacted in options on Units in the OTC options market if such options were not available for trading in a listed environment.

Unit options, including Units that hold commodities (*i.e.,* precious metals) that it currently lists and trades on the Exchange.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[25] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[26] requirements that the rules of an exchange be 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[27] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposal to list and trade options on Ethereum Funds will remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors because offering options on Ethereum Funds will provide investors with an opportunity to realize the benefits of utilizing options on a Ethereum Fund, including cost efficiencies and increased hedging strategies. The Exchange believes that offering Ethereum Fund options will benefit investors by providing them with a relatively lower-cost risk management tool, which will allow them to manage their positions and associated risk in their portfolios more easily in connection with exposure to the price of Ethereum and with Ethereum-related products and positions. Additionally, the Exchange's offering of Ethereum Fund options will provide investors with the ability to transact in such options in a listed market environment as opposed to in the unregulated OTC options market, which would increase market transparency and enhance the process of price discovery conducted on the Exchange through increased order flow to the benefit of all investors. The Exchange also notes that it already lists options on other commodity-based Units,[28] which, as described above, are trusts structured in substantially the same manner as Ethereum Funds and essentially offer the same objectives and benefits to investors, just with respect to a different commodity (*i.e.,* Ethereum rather than precious metals) and for which the Exchange has not identified any issues with the continued listing and trading of commodity-backed Unit options it currently lists for trading.

The Exchange also believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, because it is consistent with current Exchange Rules previously filed with the Commission. Options on Ethereum Funds satisfy the initial listing standards and continued listing standards currently in the Exchange Rules applicable to options on all Units, including Units that hold other commodities already deemed appropriate for options trading on the Exchange. Additionally, as demonstrated above, each Ethereum Fund is characterized by a substantial number of shares that are widely held and actively traded. Ethereum Fund options will trade in the same manner as any other Unit options—the same Exchange Rules that currently govern the listing and trading of all Unit options, including permissible expirations, strike prices and minimum increments, and applicable position and exercise limits and margin requirements, will govern the listing and trading of options on Ethereum Funds in the same manner.

The Exchange believes the proposed position and exercise limits for the Ethereum Fund options are consistent with the Exchange Act, will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, because these position and exercise limits are designed to address potential manipulative schemes and adverse market impacts surrounding the use of options, such as disrupting the market in the security underlying the options. The proposed position and exercise limits are the same limits that apply to other ETF options, including other commodity ETF options. The Exchange believes proposed position and exercise limits balance the liquidity provisioning in the market against the prevention of manipulation, as they currently do for other equity options (including commodity ETF options). The Exchange believes the available supply in the markets of Ethereum is not relevant when establishing position limits for options on the Ethereum Funds, as what is held by an ETF has historically not been a relevant factor considered by the Commission when it has considered rule filings to list options on ETFS, including commodity ETFs. The Commission has previously stated:

> Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. In addition, such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.[29]

As the Commission itself notes, the position limits are ''intended to prevent the establishment of options positions that can be used . . . to manipulate or disrupt the *underlying market*'' (emphasis added). When the Commission previously approved Rules to list options on other commodity ETFs, the Commission did not require consideration of whether the available supply of those commodities should be considered when the Exchange established those position limits.[30] The Exchange notes that position limits in the Exchange's Rules at that time were the same as they are today as set forth in Rule 8.30 (and as proposed to be applicable to options on the Ethereum Funds).

The Exchange represents that it has the necessary systems capacity to support the new Ethereum Fund options. The Exchange believes that its existing surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior which might arise from listing and trading Unit options, including Ethereum Fund options.

[25] 15 U.S.C. 78f(b).

[26] 15 U.S.C. 78f(b)(5).

[27] *Id.*

[28] *See* Rule 4.3, Interpretation and Policy .06(a)(4).

[29] *See* Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR–CBOE–1997–11).

[30] *See, e.g.,* Securities Exchange Act Release No. 57894 (May 30, 2008), 73 FR 32061 (June 5, 2008) (SR–CBOE–2005–11) (approval order in which the Commission stated that the ''listing and trading of Gold Trust Options will be subject to the exchanges' rules pertaining to position and exercise limits and margin'').

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 Exchange 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 as Ethereum Funds would need to satisfy the initial listing standards set forth in the Exchange Rules in the same manner as any other Unit before the Exchange could list options on them. Additionally, Ethereum Fund options will be equally available to all market participants who wish to trade such options. The Exchange Rules currently applicable to the listing and trading of options on Units on the Exchange will apply in the same manner to the listing and trading of all options on Ethereum Funds. Also, and as stated above, the Exchange already lists options on other commodity-based Units.[31]

The Exchange does not believe that the proposal to list and trade options on Ethereum Funds will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the extent that the advent of Ethereum Fund options trading on the Exchange may make the Exchange a more attractive marketplace to market participants at other exchanges, such market participants are free to elect to become market participants on the Exchange. Additionally, other options exchanges are free to amend their listing rules, as applicable, to permit them to list and trade options on Ethereum Funds. The Exchange notes that listing and trading Ethereum Fund options on the Exchange will subject such options to transparent exchange-based rules as well as price discovery and liquidity, as opposed to alternatively trading such options in the OTC market.

The Exchange believes that the proposed rule change may relieve any burden on, or otherwise promote, competition as it is designed to increase competition for order flow on the Exchange in a manner that is beneficial to investors by providing them with a lower-cost option to hedge their investment portfolios. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues that offer similar products. Ultimately, the Exchange believes that offering Ethereum Fund options for trading on the Exchange will promote competition by providing investors with an additional, relatively low-cost means to hedge their portfolios and meet their investment needs in connection with Ethereum prices and Ethereum-related products and positions on a listed options exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received written comments on the proposed rule change.

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 Exchange consents, the Commission will:

A. by order approve or disapprove such 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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CBOE–2024–036 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–2024–036. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CBOE–2024–036 and should be submitted on or before September 25, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–19772 Filed 9–3–24; 8:45 am]

BILLING CODE 8011–01–P

[31] *See* Rule 4.3, Interpretation and Policy .06(a)(4).

[32] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: FAA–2024–1750; Summary Notice No. 2024–37]

Petition for Exemption; Summary of Petition Received; Lynden Air Cargo, LLC

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion nor omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before September 24, 2024.

ADDRESSES: Send comments identified by docket number FAA–2024–1750 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Shannon Uplinger, 202–267–6107, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC.

Dan Ngo,

Manager, Part 11 Petitions Branch, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2024–1750.

Petitioner: Lynden Air Cargo, LLC.

Section(s) of 14 CFR Affected: 14 CFR 25.807(g)(1), 25.857(e), and 25.1447(c)(1).

Description of Relief Sought: Lynden Air Cargo, LLC (LAC) petitions for relief from CAR 4b.362(c) [Amendment 4b–5], CAR 4b.383(e) [Amendment 4b–10], and CAR 4b.651(d)(3)(i) [Amendment 4b–9] to authorize the carriage of loadmasters, flight mechanics, and cargo couriers aboard aircraft with Class E cargo compartments and to authorize the access of those individuals to the Class E cargo compartment during flight. LAC further requests to exercise the privileges of the exemption outside the United States consistent with the requirements of the State in which the operation occurs. These operations will take place primarily in remote or inaccessible areas. 14 CFR 11.61 states that petitioners for exemption may ask the agency for relief from ''current regulations in 14 CFR.'' Also, the FAA stated, while promulgating 14 CFR 11.61, that ''. . . petitions for exemption apply only to Title 14 of the Code of Federal Regulations.'' 65 FR 50850, 50859 (Aug. 21, 2000). Due to this airplane's certification basis, the relief requested here is not from regulations in 14 CFR, but from its predecessor before recodification, CAR 4b. However, such recodification of these regulations was not intended to be substantive, and the predecessor regulations reside in their current, amended form in Title 14. 29 FR 18629 (Dec. 24, 1964). Also, changes to the three provisions at issue here (CAR 4b.362(c), CAR 4b.383(e), and CAR 4b.651(d)(3)(i)) as a result of such recodification (to 14 CFR 25.807(g)(1), 25.857(e), and 25.1447(c)(1) respectively) were likewise minimal. The FAA also finds that the agency did not intend, in promulgating 14 CFR 11.61 or 11.81, to limit itself in the exercise of its statutory authority (including 49 U.S.C. 44701(f)) to grant relief. However, as part of the public comment process for this exemption, the FAA also invites public comment on these findings.

[FR Doc. 2024–19735 Filed 9–3–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2023–0126]

Pipeline Safety: Request for Special Permit; Gulf South Pipeline Company, LLC

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: PHMSA is publishing this notice to solicit public comments on a request for a special permit received from the Gulf South Pipeline Company, LLC (GSPC) seeking relief from compliance with certain requirements in the federal pipeline safety regulations (PSR). At the conclusion of the 30-day comment period, PHMSA will review the comments received from this notice as part of its evaluation to grant or deny the special permit request.

DATES: Submit any comments regarding this special permit request by October 4, 2024.

ADDRESSES: Comments should reference the docket number for this special permit request and may be submitted in the following ways:

- *E-Gov Website: http://www.Regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System: 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:* Docket Management System: 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 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: You should identify the docket number for the special permit request you are commenting on at the beginning of your comments. If you submit your comments by mail, please submit two (2) copies. To receive confirmation that PHMSA has received your comments, please include a self-addressed stamped postcard. Internet users may submit comments at *http://www.Regulations.gov.*

Note: There is a privacy statement published on *http://www.Regulations.gov.* Comments, including any personal information provided, are posted without changes or edits to *http://www.Regulations.gov.*

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this notice contain commercial or financial information that is customarily treated as private,

that you treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as CBI. Pursuant to 49 Code of Federal Regulations (CFR) 190.343, you may ask PHMSA to give confidential treatment to information you give to the agency by taking the following steps: (1) mark each page of the original document submission containing CBI as ''Confidential''; (2) send PHMSA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. Unless you are notified otherwise, PHMSA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this notice. Submissions containing CBI should be sent to Kay McIver, DOT, PHMSA–PHP–80, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Any commentary PHMSA receives that is not specifically designated as CBI will be placed in the public docket for this matter.

FOR FURTHER INFORMATION CONTACT:

General: Ms. Kay McIver by telephone at 202–366–0113, or by email at *kay.mciver@dot.gov.*

Technical: Mr. Joshua Johnson by telephone at 816–308–6074, or by email at *joshua.johnson@dot.gov.*

SUPPLEMENTARY INFORMATION: PHMSA received a special permit request on November 15, 2023, from GSPC, a subsidiary of Boardwalk Pipelines, L.P., seeking a waiver from the requirements of 49 CFR 192.611(a) and (d): Change in class location: Confirmation or revision of maximum allowable operating pressure, and 49 CFR 192.619(a): Maximum allowable operating pressure: Steel or plastic pipelines.

This special permit is being requested in lieu of pipe replacement, pressure reduction, or new pressure tests for a Class 1 to 3 location change on two (2) gas transmission pipeline segments totaling 12,052 feet (approximately 2.28 miles).[1] These pipeline segments, which have changed from a Class 1 to a Class 3 location, are as follows:

SPECIAL PERMIT SEGMENTS

Special permit segment No.	Outside diameter (inches)	Line name	Length (feet)	Start survey station (SS)	End survey station (SS)	County, state	Number dwellings	Year installed	Seam type	MAOP (psig)
1	16	Index 819–10	4,580	585+52	631+32	Grayson, TX	0	2014	HF–ERW	1,350
2	16	Index 819–10	7,472	728+40	803+12	Grayson, TX	31	2014	HF–ERW, SMLS	1,350

The special permit request, proposed special permit with conditions, and draft environmental assessment (DEA) for the GSPC pipeline segments are available for review and public comments in Docket Number PHMSA 2023–0126. PHMSA invites interested persons to review and submit comments in the docket on the special permit request and DEA. Please submit comments on any potential safety, environmental, and other relevant considerations implicated by the special permit request. Comments may include relevant data.

Before issuing a decision on the special permit request, PHMSA will evaluate all comments received on or before the comments closing date. Comments received after the closing date will be evaluated if it is possible to do so without incurring additional expense or delay. PHMSA will consider each relevant comment it receives in making its decision to grant or deny this special permit request.

Issued in Washington, DC, on August 22, 2024, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2024–19816 Filed 9–3–24; 8:45 am]

BILLING CODE 4910–60–P

[1] GSPC's November 15, 2023, application request explained it was seeking a special permit for 16.6 total miles of pipeline where the class location has changed from Class 1 to Class 3. However, the 16.6 miles encompasses proposed special permit inspection areas, versus the approximately 2.28 miles of special permit segments as described in the proposed special permit conditions document in this Docket No. PHMSA–2023–0126.

FEDERAL REGISTER

Vol. 89 Wednesday,
No. 171 September 4, 2024

Part II

Department of the Treasury

Financial Crimes Enforcement Network

31 CFR Parts 1010 and 1032

Financial Crimes Enforcement Network: Anti-Money Laundering/Countering the Financing of Terrorism Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers and Exempt Reporting Advisers; Final Rule

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Parts 1010 and 1032

RIN 1506–AB58

Financial Crimes Enforcement Network: Anti-Money Laundering/ Countering the Financing of Terrorism Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers and Exempt Reporting Advisers

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Final rule.

SUMMARY: FinCEN, a bureau of the U.S. Department of the Treasury (Treasury), is issuing a final rule to include certain investment advisers in the definition of ''financial institution'' under the Bank Secrecy Act (BSA), prescribe minimum standards for anti-money laundering/ countering the financing of terrorism (AML/CFT) programs to be established by certain investment advisers, require certain investment advisers to report suspicious activity to FinCEN pursuant to the BSA, and make several other related changes to FinCEN regulations. These regulations will apply to certain investment advisers who may be at risk for misuse by money launderers, terrorist financers, or other actors who seek access to the U.S. financial system for illicit purposes and who threaten U.S. national security.

DATES: This rule is effective January 1, 2026.

FOR FURTHER INFORMATION CONTACT: The FinCEN Regulatory Support Section at 1–800–767–2825 or email *frc@fincen.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

In this final rule, FinCEN is adding certain investment advisers to the definition of ''financial institution'' to regulations issued pursuant to the BSA, prescribing minimum standards for AML/CFT programs to be established by certain investment advisers, requiring certain investment advisers to report suspicious activity to FinCEN pursuant to the BSA, and making several other related changes to FinCEN's regulations that implement the BSA. This final rule follows FinCEN's notice of proposed rulemaking on AML/CFT program and suspicious activity report (SAR) requirements for investment advisers released on February 15, 2024 (referred to as the IA AML NPRM or proposed rule).[1]

This rule aims to address and prevent money laundering, terrorist financing, and other illicit finance activity through the investment adviser industry. As detailed in an investment adviser illicit finance risk assessment (Risk Assessment) published concurrently with the release of the IA AML NPRM, Treasury has identified several illicit finance threats involving investment advisers.[2] Investment advisers have served as an entry point into the U.S. financial system and economy for illicit proceeds associated with foreign corruption, fraud, and tax evasion, as well as billions of dollars ultimately controlled by sanctioned entities including Russian oligarchs and their associates. Investment advisers—including those exempt from Securities and Exchange Commission (SEC) registration—and their private funds, particularly venture capital funds, are also being used by foreign states, most notably the People's Republic of China (PRC) and Russia, to access certain technology and services with long-term national security implications through investments in early-stage companies. Finally, there are numerous examples of investment advisers defrauding their customers and stealing their funds.

To address these risks, this rule adds ''investment adviser'' to the definition of ''financial institution'' at 31 CFR 1010.100(t) and defines investment advisers to be SEC-registered investment advisers (RIAs) and exempt reporting advisers (ERAs). However, FinCEN is narrowing the definition of ''investment adviser'' from the proposed rule to exclude RIAs that register with the SEC solely because they are (i) mid-sized advisers, (ii) multi-state advisers, or (iii) pension consultants, as well as (iv) RIAs that do not report any assets under management (AUM) on Form ADV. For investment advisers subject to this rule that have their principal office and place of business outside the United States, FinCEN is clarifying that the rule applies only to their activities that (i) take place within the United States, including through the involvement of U.S. personnel of the investment adviser, such as the involvement of an agency, branch, or office within the United States or (ii) provide services to a U.S. person or a foreign-located private fund with an investor that is a U.S. person. Given that the risk of money laundering, terrorist financing, and other illicit finance activity is generally lower for State-registered advisers, FinCEN, as proposed in the IA AML NPRM, is not applying this rule to State-registered advisers at this time. However, FinCEN will continue to monitor activity involving State-registered investment advisers for indicia of money laundering, terrorist financing, or other illicit finance activity, and may take appropriate steps to mitigate any such activity. As in the proposed rule, this final rule also does not cover foreign private advisers or family offices.

With respect to the minimum standards for an investment adviser's AML/CFT program, FinCEN is adopting the minimum requirements largely as proposed in the IA AML NPRM, with several changes. In line with the proposed rule, the final rule maintains the exclusion of mutual funds from the requirements of an investment adviser's AML/CFT program requirements. It includes modified text, however, to permit an investment adviser to categorically exclude any mutual fund from an investment adviser's AML/CFT program requirements without obligating the adviser to verify that such mutual fund has implemented an AML/CFT program. Additionally, FinCEN is expanding the exclusion from the AML/CFT program to also apply to (i) bank- and trust company-sponsored collective investment funds that comply with the requirements of 12 CFR 9.18 or a similar applicable law that incorporates the requirements of 12 CFR 9.18, and (ii) any other investment adviser subject to this rule that is advised by the investment adviser. With respect to the requirement to establish, maintain, and enforce a financial institution's AML/CFT program that is the responsibility of, and must be performed by, persons in the United States who are accessible to, and subject to oversight and supervision by, the Secretary of the Treasury and the appropriate Federal functional regulator (the Duty Provision), as discussed further below, FinCEN has determined to not include this requirement in this final rule.

With respect to this rule's other requirements, FinCEN is adopting the SAR filing provisions largely as proposed. The final rule does not exempt investment advisers from the requirements to file Currency Transaction Reports (CTRs), adhere to

[1] FinCEN, *Anti-Money Laundering/Countering the Financing of Terrorism Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers and Exempt Reporting Advisers,* Notice of Proposed Rulemaking, 89 FR 12108 (Feb. 15, 2024).

[2] *See* Treasury, *US Sectoral Illicit Finance Risk Assessment Investment Advisers* (also titled *2024 Investment Adviser Risk Assessment*) (2024), available at *https://home.treasury.gov/about/offices/terrorism-and-financial-intelligence/terrorist-financing-and-financial-crimes/office-of-strategic-policy-osp.*

the Recordkeeping and Travel Rules, or other general recordkeeping requirements.[3] Following the proposed application of the information sharing provisions of sections 314(a) and 314(b) under the USA PATRIOT Act,[4] the final rule is applying both requirements as proposed, but is clarifying that investment advisers may deem these requirements satisfied for any mutual funds, bank- and trust company-sponsored collective investment fund, or any other investment adviser they advise subject to this rule that is already subject to AML/CFT program requirements. With respect to the proposal to implement special due diligence requirements for correspondent and private banking accounts and special measures under section 311 of the USA PATRIOT Act,[5] investment advisers may deem these requirements satisfied for any mutual fund, bank- and trust company-sponsored collective investment fund, or any other investment adviser they advise subject to this rule that is already subject to AML/CFT program requirements. FinCEN is also extending the proposed date for compliance to January 1, 2026, meaning that no later than this date, investment advisers must have implemented AML/CFT programs, commenced filing SARs when required, and begun complying with the other reporting and recordkeeping requirements in this final rule.

II. Background

A. Statutory Authority

Enacted in 1970, the Currency and Foreign Transactions Reporting Act—which, along with its amendments and the other statutes relating to the subject matter, is generally referred to as the BSA—is designed to combat money laundering, the financing of terrorism and other illicit finance activity, and to safeguard the national security of the United States.[6] This includes ''through the establishment by financial institutions of reasonably designed risk-based programs to combat money laundering and the financing of terrorism,'' as well as ''to facilitate the tracking of money that has been sourced through criminal activity or is intended to promote criminal or terrorist activity.'' [7] The Secretary of the Treasury (Secretary) is authorized to administer the BSA and to require financial institutions to keep records and file reports that ''are highly useful in . . . criminal, tax, or regulatory investigations, risk assessments, or proceedings'' or ''intelligence or counterintelligence activities, including analysis, to protect against terrorism.'' [8] The Secretary may also ''establish appropriate frameworks for information sharing among financial institutions and service providers, their regulatory authorities, associations of financial institutions, the [Treasury], and law enforcement authorities to identify, stop, and apprehend money launderers and those who finance terrorists.'' [9] The Secretary delegated the authority to implement, administer, and enforce the BSA and its implementing regulations to the Director of FinCEN.[10]

Pursuant to this authority, FinCEN may define a business or agency as a ''financial institution'' if such business or agency engages in any activity determined by regulation ''to be an activity which is similar to, related to, or a substitute for any activity'' in which a ''financial institution'' as defined by the BSA is authorized to engage.[11] Additionally, the BSA requires financial institutions to establish programs to combat money laundering and the financing of terrorism that include certain minimum standards. The BSA explicitly authorizes the Secretary—and thereby FinCEN—to ''prescribe minimum standards'' for such AML/CFT programs.[12] Similarly, under the BSA, Treasury—and thereby FinCEN—''may require any financial institution . . . to report any suspicious transaction relevant to a possible violation of law or regulation.'' [13] This provision authorizes FinCEN to require the filing of SARs.[14] FinCEN also has authority under the BSA to authorize the sharing of financial information by financial institutions [15] in specified circumstances, and to require financial institutions to keep records and maintain procedures to ensure compliance with the BSA and its implementing regulations or to guard against money laundering, terrorist financing, or other illicit finance activity.[16]

B. Investment Adviser Industry and Regulation

1. Investment Adviser Industry

The investment adviser industry in the United States consists of a wide range of business models geared towards providing advisory services to many different types of customers.[17] The Investment Advisers Act of 1940 (Advisers Act) and its implementing rules and regulations form the primary Federal framework governing investment advisory activity, along with other Federal securities laws and their implementing rules and regulations, such as the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*) (Company Act), the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) (Securities Act), and the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (Exchange Act). The Advisers Act also defines an investment adviser as a person or firm that, for compensation, is engaged in the business of providing advice to others or issuing reports or analyses regarding securities.[18]

Since the Advisers Act was amended in 1996 and 2010, generally only investment advisers who have at least $100 million in AUM or advise a

---

[3] *See* 31 CFR 1010.310 through 1010.315 (CTR), 31 CFR 1010.410(e) and (f) (Recordkeeping and Travel Rules), and 31 CFR 1010.415 through 110.440.

[4] *See* 31 CFR 1010.520, 1010.540.

[5] As discussed further below, in addition to special measures under section 311 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), investment advisers must also comply with actions taken under section 9714(a) of the Combating Russian Money Laundering Act, codified as a note to 31 U.S.C. 5318A, and section 7213A of the Fentanyl Sanctions Act, codified at 21 U.S.C. 2313a. *See infra* Section III.G.2.

[6] *See* 31 U.S.C. 5311. Certain parts of the Currency and Foreign Transactions Reporting Act, its amendments, and the other statutes relating to the subject matter of that Act, have come to be referred to as the BSA. The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1960, and 31 U.S.C. 310, 5311–5314, 5316–5336, and including notes thereto, with implementing regulations at 31 CFR Chapter X.

[7] 31 U.S.C. 5311(2), (3).

[8] 31 U.S.C. 5311(1).

[9] 31 U.S.C. 5311(5).

[10] Treasury Order 180–01, paragraph 3(a) (Jan. 14, 2020), available at *https://home.treasury.gov/about/general-information/orders-and-directives/treasury-order-180-01; see also* 31 U.S.C. 310(b)(2)(I) (providing that FinCEN Director ''[a]dminister the requirements of subchapter II of chapter 53 of this title, chapter 2 of title I of Public Law 91–508, and section 21 of the Federal Deposit Insurance Act, to the extent delegated such authority by the Secretary.''

[11] 31 U.S.C. 5312(a)(2)(Y).

[12] 31 U.S.C. 5318(h)(1), (2).

[13] 31 U.S.C. 5318(g)(1).

[14] 31 U.S.C. 5318(g)(1).

[15] *See* USA PATRIOT Act, Public Law 107–56, sec. 314(a), (b).

[16] *See* 12 U.S.C. 1953; 31 U.S.C. 5318(a)(2).

[17] This final rule uses the term ''customers'' for those natural and legal persons who enter into an advisory relationship with an investment adviser. This is consistent with the terminology in the BSA and FinCEN's implementing regulations. FinCEN acknowledges that the Advisers Act and its implementing regulations primarily use the term ''clients,'' and so that term is used in specific reference to Advisers Act requirements; otherwise, the term ''customers'' is used.

[18] *See* 15 U.S.C. 80b–2(a)(11) for this definition of ''investment adviser.'' The statute excludes some persons and firms: certain banks, certain professionals, certain broker-dealers, news publishers, persons who advise on or analyze only Treasury-designated exempt securities, statistical ratings agencies, and family offices. *See* 15 U.S.C. 80b–2(a)(11)(A)–(G).

registered investment company [19] may register with the SEC.[20] Advisers solely to private funds are only required to register with the SEC if they have least $150 million in AUM in the United States.[21] Advisers to only venture capital funds are exempt from registration with the SEC regardless of the amount of AUM. Other investment advisers typically register with the State in which the adviser maintains its principal place of business.

SEC-Registered Investment Advisers. Unless eligible to rely on an exemption, investment advisers that manage more than $110 million AUM must register with the SEC, as well as submit a Form ADV and update it at least annually.[22] Besides having AUM above $110 million, additional criteria may require an investment adviser to register with the SEC.[23] Unless a different exception applies, investment advisers with AUM under $100 million are prohibited from registering with the SEC,[24] but must register instead with the relevant State securities regulator. The SEC administers and enforces the Federal securities laws applicable to such RIAs. As of July 31, 2023, there were 15,391 RIAs, reporting approximately $125 trillion in AUM for their clients.[25]

Exempt Reporting Advisers. An ERA is an investment adviser that would be required to register with the SEC but is statutorily exempt from that requirement [26] because: (1) it is an adviser solely to one or more venture capital funds; [27] or (2) it is an adviser solely to one or more private funds and has less than $150 million AUM [28] in the United States.[29] Private funds are privately offered investment vehicles that pool capital from one or more investors to invest in securities and other investments.[30] Private funds do not register with the SEC, and advisers to these funds often categorize the fund by the investment strategy they pursue. These include hedge funds, private equity funds, and venture capital funds, among others. Even though they are not required to register with the SEC, ERAs must still file an abbreviated Form ADV—they are required to answer fewer client-related questions and provide less information about the services they provide—and the SEC maintains authority to examine ERAs. As of July 31, 2023, there were 5,846 ERAs with total gross assets of $5.2 trillion that were exempt from registering with the SEC but had filed an abbreviated Form ADV.[31]

State-Registered Investment Advisers. State-registered investment advisers are generally prohibited from registering with the SEC and instead register with and are supervised by the relevant State authority, unless they meet certain exceptions or their State does not supervise these entities.[32] State-registered investment advisers also file a Form ADV, which they submit to the relevant State regulator. As of December 31, 2022, there were 17,063 State-registered investment advisers reporting approximately $420 billion in AUM.[33]

Foreign-Located Investment Advisers. Foreign-located advisers whose principal offices and places of business are outside the United States, but who solicit or advise ''U.S. persons,'' are subject to the Advisers Act and must register with the SEC unless eligible for an exemption. One of those exemptions is the ''foreign private adviser'' exemption, and an adviser relying on this exemption is not required to make any filings with the SEC.[34] The SEC does not apply the substantive provisions of the Advisers Act to a non-U.S. investment adviser that is registered with the SEC with respect to its non-U.S. clients.[35] Non-U.S.

[19] *See* 15 U.S.C. 80a–3 (defining investment company). If an investment company meets the definition of an investment company under 15 U.S.C. 80a–3(a) and cannot rely on an exception or an exemption from the definition of investment company, generally it must register with the SEC under the Company Act and must register its public offerings under the Securities Act.

[20] Investment advisers with more than $100 million AUM *may* register with the SEC, and investment advisers with more than $110 million in AUM *must* register with the SEC, unless eligible for an exception. *See* 17 CFR 275.203A–1.

[21] *See* 15 U.S.C. 80b–3(m)(1); 17 CFR 275.203(m)–1(a), (b).

[22] *See* 17 CFR 275.203A–1.; 17 CFR 275.204–1; *see also* 15 U.S.C. 80b–3(*l*) (venture capital fund adviser exemption), 15 U.S.C. 80b–3(m) (private fund adviser exemption). Investment advisers register with the SEC by filing Form ADV and are required to file periodic updates. Form ADV collects certain information about the adviser, including (depending on the adviser's registration status) its AUM, ownership, number of clients, number of employees, business practices, custodians of client funds, and affiliations, as well as certain disciplinary or material events of the adviser or its employees. A detailed description of Form ADV's requirements is available at *https://www.sec.gov/oiea/investor-alerts-bulletins/ib_formadv.html.*

[23] Other exceptions to the prohibition on SEC registration include: (1) an adviser that would be required to register with 15 or more States (the multi-State exemption); (2) an adviser advising a registered investment company; (3) an adviser affiliated with an RIA; and (4) a pension consultant. Persons satisfying these criteria and the definition of ''investment adviser'' are required to register as investment advisers with the SEC. *See* Form ADV: Instructions for Part IA, Item 2. Advisers with a principal office and place of business in New York and over $25 million AUM are required to register with the SEC.

[24] 17 CFR 275.203A–1. Note that if an RIA's AUM falls below $90 million as of the end of such RIA's fiscal year then it must withdraw its registration with the SEC, unless otherwise eligible for an exception to the prohibition on SEC registration. *Id.*

[25] The number of RIAs and corresponding AUM, and the number of ERAs, are based on a Treasury review of Form ADV information filed as of July 31, 2023, as described in the IA AML NPRM. This Form ADV data is available at Frequently Requested FOIA Document: *Information About Registered Investment Advisers and Exempt Reporting Advisers, http://www.sec.gov/foia/docs/invafoia.htm.* The $125 trillion in AUM includes approximately $22 trillion in assets managed by mutual funds, which are advised by RIAs and are subject to AML/CFT obligations under the BSA and its implementing regulations. FinCEN reviewed investment adviser Form ADV filings through June 4, 2024, to assess whether to update the industry data used in the IA AML NPRM. FinCEN found approximately 10 fewer RIAs and ERAs as of June 4, 2024 compared to July 31, 2023. Out of approximately 19,900 entities subject to the final rule, this is not a substantial change.

[26] An adviser that is eligible to file reports as an ERA may nonetheless elect to register with the SEC as an RIA so long as it meets the criteria for registration. An investment adviser that relies on one of these exemptions must still evaluate the need for State registration.

[27] *See* 17 CFR 275.203(*l*)–1 (defining ''venture capital fund'').

[28] Form ADV uses the term ''regulatory assets under management'' (RAUM) instead of ''assets under management.'' Form ADV describes how advisers must calculate RAUM and states that in determining the amount of RAUM, an adviser should ''include the securities portfolios for which [it] provide[s] continuous and regular supervisory or management services as of the date of filing'' the form. *See* Form ADV, Instructions for Part 1A, Instruction 5.b.

[29] *See* sections 203(*l*) and 203(m) of the Advisers Act and 17 CFR 275.203(m)–1, respectively. ERAs are exempt from registration with the SEC, but are required to file reports on Form ADV with the SEC and are subject to certain rules under the Advisers Act.

[30] Section 202(a)(29) of the Advisers Act defines the term ''private fund'' as an issuer that would be an investment company, as defined in section 3 of the Company Act (15 U.S.C. 80a–3), but for section 3(c)(1) or 3(c)(7) of that Act. Section 3(c)(1) excludes from the definition of investment company a privately-offered issuer having fewer than a certain number of beneficial owners. Section 3(c)(7) excludes from the definition of investment company a privately-offered issuer the securities of which are owned exclusively by ''qualified purchasers'' (generally, persons and entities owning a specific amount of investments).

[31] The number of ERAs is derived from a Treasury review of Form ADV information filed as of July 31, 2023. *See supra* note 25. ERAs do not report assets under management on Form ADV, but instead report gross assets for each private fund they advise.

[32] *See* 17 CFR 275.203A–2; *see also supra* note 23.

[33] *See* North American Security Administrators Association, *NASAA Investment Adviser Section 2023 Annual Report 3*, available at *https://www.nasaa.org/wp-content/uploads/2023/09/2023-IA-Section-Report-FINAL.pdf.*

[34] The ''foreign private adviser'' exemption is available to an adviser that (i) has no place of business in the United States; (ii) has, in total, fewer than 15 clients in the United States and investors in the United States in private funds advised by the adviser; (iii) has aggregate assets under management attributable to such clients and investors of less than $25 million; and (iv) does not hold itself out generally to the public in the United States as an investment adviser. *See* 15 U.S.C. 80b–2(a)(30), 80b–3(b)(3).

[35] *See* SEC, *Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers With Less Than $150 Million in Assets Under Management, and Foreign Private Advisers,* Final Rule,

investment advisers may also file with the SEC as ERAs if they meet the requirements to report as ERAs.

2. Investment Adviser Regulation

Oversight of the investment adviser industry by Federal and State securities regulators is focused on protecting investors and the overall securities market from fraud and manipulation. Most investment advisers are subject to certain reporting requirements and the extent of those requirements depends on whether the investment adviser is an RIA, registered at the State level, exempt from registration as an ERA, or otherwise not required to register with the SEC or State securities regulator.[36] RIAs are subject to the Advisers Act and various SEC rules and regulations thereunder that govern, among other things, their marketing and disclosures to clients, best execution for client transactions, reporting of AUM, a code of ethics requirement (including reporting of securities holdings), and ownership in public securities, ensuring compliance with SEC rules governing trading, and disclosures of conflicts of interest and disciplinary information. State-registered investment advisers may have similar requirements under State securities laws and regulations.[37] While ERAs are not required to register with the SEC, they must still file an abbreviated Form ADV with the SEC, and the SEC maintains authority to examine ERAs. ERAs are not subject to some of the Advisers Act provisions that apply to RIAs. However, ERAs have fiduciary responsibilities to their clients and must abide by certain other compliance requirements applicable to all investment advisers, including anti-fraud requirements of the Advisers Act.[38] Investment advisers, depending on their registration status, are also generally subject to examination by the SEC or State securities regulators. In some circumstances, Federal securities, tax, or other rules and regulations may impose on investment advisers' information collection or disclosure obligations similar to some AML/CFT measures.

While some of these obligations mitigate illicit finance risks to the investment adviser industry, these obligations are not explicitly designed for that purpose, and the SEC generally does not have existing authority to apply AML/CFT specific requirements to investment advisers. Some investment advisers may nonetheless already apply AML/CFT requirements, for example, if they are also banks (or are bank subsidiaries), are registered as brokers and dealers in securities (broker-dealers), or advise mutual funds, but this is not consistent across the industry.[39] Further, some investment advisers have voluntarily implemented certain AML/CFT measures. But implementation of such measures is generally not subject to comprehensive enforcement or examination. This means that providers of the same financial services may be subject to different AML/CFT obligations (if any), and an investor or customer seeking to obscure the origin of its funds or identity can choose an investment adviser that does not apply AML/CFT measures to its customers and activities.[40]

Overall, there is currently no comprehensive set of obligations directly applicable to most investment advisers that is explicitly designed to address illicit finance risks in this industry.

C. Illicit Finance Risk

As noted above, concurrent with the publication of the IA AML NPRM, Treasury released the Risk Assessment.[41] The Risk Assessment found that, while the degree of risk is not uniform across the sector, RIAs and ERAs pose a material risk of misuse for illicit finance.[42]

First, as already noted, the lack of comprehensive AML/CFT regulations directly and categorically applicable to investment advisers means they are not required to understand their customers' ultimate sources of wealth or identify and report potentially illicit activity to law enforcement. The term ''investment adviser'' is not presently included in the definition of ''financial institution'' under the BSA or its implementing regulations. This means that, although they have obligations to report cash transactions above $10,000 via the FinCEN/Internal Revenue Service Form 8300, investment advisers are typically not subject to most of the AML/CFT program, recordkeeping, or reporting obligations that apply to banks, broker-dealers, and certain other financial institutions. Investment advisers that are not dually registered as a bank or a broker-dealer are not required to maintain an AML/CFT program nor satisfy customer due diligence (CDD) or customer identification program (CIP) obligations.[43] Investment advisers, because they are not defined as a ''financial institution'' under the BSA, are also prevented from participating in the USA PATRIOT Act 314(a) and 314(b) information sharing programs, meaning investment advisers cannot provide useful information on suspected illicit finance activity to law enforcement or to other financial institutions participating in 314(b) information sharing associations. As they are not presently included in the BSA definition of ''financial institution,'' investment advisers are also not afforded the protection from liability (safe harbor) that applies to financial institutions when filing SARs.[44] Even though investment advisers are currently able to file voluntary SARs, without the safe harbor they could face increased legal risk from customers or other counterparties. The current patchwork of AML/CFT program implementation by some RIAs and ERAs may also create arbitrage opportunities for illicit actors by allowing them to find RIAs and ERAs with weaker or non-existent customer diligence procedures when these actors seek to access the U.S. financial system.

Second, where AML/CFT obligations apply to investment adviser activities, the obliged entities (such as custodian banks, broker-dealers, and some fund administrators providing services to investment advisers and the private funds that they advise) do not necessarily have a direct relationship with the customer or, in the private fund context, the underlying investor in

Investment Advisers Act Release No. 3222 (Jun. 22, 2011); 76 FR 39645, 39667 (Jul. 6, 2011).

[36] For instance, an investment adviser may be exempt from both Federal and State registration requirements if it had less than $25 million AUM and fewer than six clients in a State. Such advisers are not required to register, nor are they ERAs.

[37] For example, in California, the California Corporation Code assigns to the Commissioner of the Department of Financial Protection and Innovation authority to issue specific rules and regulations. *See* Cal. Corp. Code, Ch.3, sec. 25230–25238; Cal. Code Regs. tit. 10, sec. 260.230–260.238.

[38] *See* 15 U.S.C. 80b–6. *See also* 17 CFR part 275.206(4)–8 (prohibiting fraudulent practices by an investment adviser to a pooled investment vehicle with respect to any investor or prospective investor in the pooled investment vehicle).

[39] Investment advisers that are banks (or bank subsidiaries) subject to the jurisdiction of the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration (collectively, the Federal Banking Agencies, or FBAs) are accordingly also subject to applicable FBA regulations imposing AML/CFT requirements on banks. *See, e.g.,* 12 CFR 5.34(e)(3) and 5.38(e)(3) (OCC requirements governing operating subsidiaries of national banks and Federal savings associations).

[40] For instance, FinCEN research identified two investment advisers with a focus on Russian customers that advertised investment structures that would allow customers to avoid ''know your customer'' procedures.

[41] *See* Risk Assessment, *supra* note 2.

[42] *Id.* at 32.

[43] *See infra* Section II.E (providing a summary of the proposed rule to apply CIP requirements to RIAs and ERAs).

[44] 31 U.S.C. 5318(g)(3)(A).

the private fund.[45] Further, these entities may be unable to collect relevant investor information from the RIA or ERA to comply with the entities' existing obligations (either because the adviser is unwilling to provide, or has not collected, such information). Additionally, an adviser may use multiple custodians or broker-dealers, so that these entities may not have a complete picture of transactional activity facilitated by the investment adviser for their customers. Investment advisers, while not taking possession of financial assets, often have the most direct relationship with the customers they advise and thus may be best positioned to obtain the necessary documentation and information. In some cases, an investment adviser may be the only person or entity with a complete understanding of the source of a customer's invested assets.

Third, the existing Federal securities laws and regulations are not designed to comprehensively detect illicit proceeds or other illicit activity that is ''integrating'' into the U.S. financial system through an RIA or ERA.[46] These laws and regulations are not designed to explicitly address the risk that an RIA or ERA may be used to move proceeds or funds tied to money laundering, terrorist financing, or other illicit activity. They do not incorporate AML/CFT purposes, do not require an understanding of relevant illicit finance risks and activity, and do not include requirements for processes to report suspicious activity. In turn, existing laws do not provide any Federal regulatory body with comprehensive authority to monitor whether investment advisers are meeting any AML/CFT objectives.

Fourth, RIAs and ERAs routinely rely on third parties, some of whom may be located outside of the United States, for administrative and compliance activities. These entities—particularly offshore entities—are subject to varying levels of AML/CFT regulation. The due diligence and verification practices of these fund administrators are not uniform and may vary based upon the requirements of the local regulatory regime as well as the requirements imposed by the fund's adviser.

Fifth, particularly for private funds, it is routine for investors to invest through layers of legal entities that may be registered or organized outside of the United States, making it challenging—under existing frameworks—to collect information relevant to understanding illicit finance risks.[47]

Regarding investment adviser-related illicit finance risks and threats, Treasury's analysis showed that 15.4 percent of RIAs and ERAs were associated with or referenced in at least one SAR filed between 2013 and 2021.[48] The number of SAR filings associated with or referencing an RIA or ERA increased by approximately 400 percent between 2013 and 2021—a far greater increase than was observed in relation to sectors with a SAR filing obligation.[49] This analysis, along with a review of law enforcement cases and other information available to the U.S. government, identified cases of the investment adviser industry having served as an entry point into the U.S. financial system for illicit proceeds associated with foreign corruption, fraud, and tax evasion. The analysis further showed that certain advisers manage billions of dollars ultimately controlled by sanctioned entities including Russian oligarchs and their associates who help facilitate Russia's illegal and unprovoked war of aggression against Ukraine.[50]

Finally, certain RIAs and ERAs and the private funds they advise are also being used by foreign states, most notably the PRC and Russia, to access certain technology and services with long-term national security implications through investments in early-stage companies.[51]

D. IA AML NPRM

In the IA AML NPRM released on February 15, 2024, FinCEN proposed to designate certain investment advisers as ''financial institutions'' under the BSA and subject them to AML/CFT program requirements and SAR filing obligations, as well as other BSA requirements.[52] Specifically, the IA AML NPRM would have added ''investment adviser'' to the definition of ''financial institution'' at 31 CFR 1010.100(t), and then would have defined investment advisers to mean RIAs registered or required to register with, or ERAs that report to, the SEC. Accordingly, RIAs and ERAs would have then been required to comply with several AML/CFT requirements.

The proposed rule would also have required RIAs and ERAs to keep records relating to the transmittal of funds (Recordkeeping and Travel Rules) and to meet other obligations of financial institutions under the BSA. The proposed rule would also have applied information-sharing provisions between and among FinCEN, law enforcement, government agencies, and certain financial institutions, and would have subjected investment advisers to certain ''special measures'' imposed by FinCEN

[45] FinCEN notes that, in the private fund context, the adviser's customer is typically the private fund itself, and not underlying investors in that private fund. However, in many cases an adviser has a relationship (in some cases contractual) with underlying investors and has access to information about underlying investors. Indeed, the SEC requires RIAs and ERAs to report information regarding underlying investors. For instance, Question 13 on SEC Form ADV asks an investment adviser for the approximate number of the private fund's beneficial owners. *See* SEC Form ADV, Part 1A at 51 (Aug. 2022). In addition, Question 16(m) on SEC Form PF requires SEC-registered private fund advisers to identify, with respect to each private fund it advises, the approximate percentage of the private fund's equity that is beneficially owned by different types of investors, including ''Investors that are *United States persons,*'' ''Investors that are not *United States persons,*'' and, acknowledging that an adviser may not have complete beneficial ownership information in certain circumstances, ''Investors that are not *United States persons* and about which the foregoing beneficial ownership information is not known and cannot reasonably be obtained because the beneficial interest is held through a chain involving one or more third-party intermediaries.'' SEC Form PF, Section 1b, at 7 (Dec. 2023) (emphasis original). In addition, Congress, in the Corporate Transparency Act (enacted into law on January 1, 2021, as part of the Anti-Money Laundering Act of 2020), recognized that advisers to private funds file information related to private fund ownership on Form ADV and accordingly that private fund advisers have such information. *See* 31 U.S.C. 5336(a)(10) and (11)(B)(xi), (xviii).

[46] Generally, money laundering involves three stages, known as placement, layering, and integration. At the ''placement'' stage, proceeds from illegal activity or funds intended to promote illegal activity are first introduced into the financial system. The ''layering'' stage involves the distancing of illegal proceeds from their criminal source through a series of financial transactions to obfuscate and complicate their traceability. ''Integration'' occurs when illegal proceeds previously placed into the financial system are made to appear to have been derived from a legitimate source.

[47] For examples of how these private funds are structured, *see* Risk Assessment, *supra* note 2, at 8–10. In its review of law enforcement cases and BSA reporting conducted for the Risk Assessment, FinCEN found several instances where advisers to private funds had ongoing contact or relationships with underlying investors in those funds, to include discussing investment strategies or fund distributions.

[48] *Id.* at 16. SARs are not themselves conclusive evidence of illicit conduct but can generate important information about potential criminal activity that can prompt or assist a law enforcement investigation or support the identification of threats or vulnerabilities in the U.S. financial system.

[49] *Id*

[50] *Id.*

[51] *Id.* Foreign state-funded investment vehicles may seek to hide their involvement in an effort to gain access to sensitive technology, processes, or knowledge that can enhance their domestic development of microelectronics, artificial intelligence, biotechnology and biomanufacturing, quantum computing, and advanced clean energy, among others. *See* Risk Assessment, *supra* note 2, at 21. Exploitation of this access can advance foreign-state economic and military capabilities at the expense of the United States. *See Safeguarding Our Innovation,* National Counterintelligence and Security Center 1 (Jul. 24, 2024), available at *https://www.dni.gov/files/NCSC/documents/products/FINALSafeguardingOurInnovationBulletin.pdf.*

[52] *See* 89 FR 12108 (Feb. 15, 2024).

pursuant to section 311 of the USA PATRIOT Act.[53]

In the IA AML NPRM, FinCEN did not propose to include a CIP requirement for investment advisers, nor did it propose to require investment advisers to collect beneficial ownership information for legal entity customers. FinCEN has proposed to apply CIP requirements to investment advisers via a joint rulemaking with the SEC (described below, Section II.E) and intends to address the requirement to collect beneficial ownership information for legal entity customers in a subsequent rulemaking.

The proposed rule would have allowed an investment adviser to exclude any mutual fund that it advised from the investment adviser's AML/CFT program and SAR filing requirements, provided that the mutual fund had developed and implemented an AML/CFT program compliant with the relevant regulations governing mutual funds.[54] The proposed rule would also have removed the existing requirement that investment advisers file reports for the receipt of more than $10,000 in cash and negotiable instruments using Form 8300. Investment advisers would have instead been required to file a CTR for a transaction involving a transfer of more than $10,000 in currency by, through, or to the investment adviser, unless subject to an applicable exemption.

Finally, FinCEN proposed to delegate its examination authority to the SEC given the SEC's expertise in the regulation of investment advisers and the existing delegation to the SEC of authority to examine broker-dealers and certain investment companies for AML/CFT compliance.

[53] *See also* section 9714(a) of the Combating Russian Money Laundering Act; 21 U.S.C. 2313a.

[54] As used in this release, ''mutual fund'' has the same definition as in FinCEN's regulations, and refers to an ''investment company'' (as the term is defined in section 3 of the Company Act (15 U.S.C. 80a–3)) that is an ''open-end company'' (as that term is defined in section 5 of the Company Act (15 U.S.C. 80a–5)) that is registered or is required to register with the SEC under section 8 of the Company Act (15 U.S.C. 80a–8). *See* 31 CFR 1010.100(gg). Exchange-traded funds (ETFs) are a type of exchange-traded investment product that must register with the SEC under the Company Act and are generally organized as either an open-end company (''open-end fund'') or unit investment trust. The SEC's ETF Rule (rule 6c–11 under the Company Act), issued in 2019, clarified ETFs are issuing ''redeemable securit[ies]'' and are generally ''regulated as open-end funds within the meaning of section 5(a)(1) of the [Investment Company] Act.'' FinCEN's definition of a mutual fund under 1010.100(gg) applies to an ETF that is registered as an ''open-end company'' (as the term is defined in section 5 of the Company Act).

E. Customer Identification Program NPRM

In the IA AML NPRM, FinCEN noted that it intended to address the application of a CIP requirement for investment advisers through a joint rulemaking with the SEC.[55] On May 21, 2024, FinCEN and the SEC published a joint NPRM to apply CIP requirements to RIAs and ERAs (IA CIP NPRM).[56]

As proposed in the IA CIP NPRM, RIAs and ERAs would be required to establish, document, and maintain written CIPs appropriate for their respective sizes and businesses. The CIPs would include risk-based procedures to identify and verify the identity of their customers [57] to the extent reasonable and practicable within a reasonable time before or after the customer's account is opened. The procedures would have to enable RIAs and ERAs to form a reasonable belief that the adviser knows the true identity of their customers. RIAs and ERAs would be required to obtain certain identifying information with respect to each customer, such as the customer's name, date of birth or date of formation, address, and identification number. The proposed rule would also require procedures for, among other things, maintaining records of the information used to verify the person's identity, notifying customers that the adviser is requesting information to verify their identifies, and consulting lists of known or suspected terrorists or terrorist organizations provided to the RIA or ERA financial institution by any government agency to determine whether a person seeking to open an account appears on any such list.[58] CIP requirements are a long-standing, foundational component of a financial institution's AML/CFT requirements and they are required for banks, broker-dealers, futures commission merchants and introducing brokers in commodities, and mutual funds.

The comment period for the IA CIP NPRM closed on July 22, 2024, and FinCEN and the SEC received 36 comments. Treasury and the SEC are reviewing comments and are working toward finalizing the CIP rule. As FinCEN and the SEC noted in the IA CIP NPRM, adoption of CIP requirements for RIAs and ERAs would depend on—and not occur unless—investment advisers are first designated as ''financial institutions'' for purposes of the BSA.[59]

[55] 89 FR at 12129.

[56] *See* FinCEN and SEC, *Customer Identification Programs for Registered Investment Advisers and Exempt Reporting Advisers,* Notice of Proposed Rulemaking, 89 FR 44571 (May 21, 2024).

[57] The IA CIP NPRM proposed to define a customer as a person who opens a new account with an investment adviser. *Id.* at 44573.

[58] The IA CIP NPRM proposed to define ''account'' for these purposes as ''any contractual or other business relationship between a person and an investment adviser under which the investment adviser provides investment advisory services,'' with limited exclusions. *Id.*

F. General Summary of Comments

FinCEN received 49 comments on the IA AML NPRM. Of the 49 comments, 16 were from individual commenters; 16 were from trade associations representing various financial services entities (including seven that were a form letter provided by one association); six were from think-tanks or non-governmental organizations (NGOs); and five were from RIAs. For the remainder, one comment letter was from a law firm, one comment letter was from a self-regulatory organization, one comment letter was from an association of state securities regulators, one comment letter was from a service provider to investment advisers, one comment letter was from an office within another federal government agency, and one comment letter was from seven U.S. Senators.

Several commenters noted support for the proposed rule and the application of comprehensive AML/CFT requirements to RIAs and ERAs, noting that it would address illicit finance risks or other illicit activity involving investment advisers. Several other commenters, including a self-regulatory organization, an association of state securities regulators, seven U.S. Senators, several financial transparency NGOs and a think-tank, and some financial services trade associations, supported adoption of the proposed rule, but had suggested changes. These changes included expanding the scope of coverage to include State-registered investment advisers, family offices, and foreign private advisers, as well as modifying certain exemptions or requirements in the proposed rule. Other commenters who generally supported the rule requested that FinCEN apply CIP requirements and the obligation to collect beneficial ownership information for legal entity customers as soon as possible. These proposed changes are discussed below.

Another group of commenters, including several financial services trade associations and some RIAs, noted that they generally supported the objectives of the proposed rule, but thought that the rule as drafted was overly broad and/or too prescriptive and would impose significant costs on investment advisers without a corresponding benefit to efforts to

[59] *Id.* at 44572, note 11.

combat illicit finance. They suggested several more significant changes that would exempt certain categories of advisers or advisory activities from the proposed rule and instead focus on what they considered higher-risk activities. They also suggested not applying certain requirements that may be duplicative of obligations applied by other financial institutions, such as broker-dealers and banks, which are involved in advisory activities, as well as modifying requirements of the proposed rule in the context of private funds activity. These commenters' proposed changes are discussed below.

Several commenters opposed the rule, primarily highlighting the potential burden on investment advisers and that the requirements in the proposed rule were duplicative of AML/CFT requirements imposed on broker-dealers and custodians that facilitate transactions for investment advisers and their clients. One commenter noted that AML/CFT measures, along with measures related to sanctions issued by Treasury's Office of Foreign Assets Control (OFAC), were implemented by the fund administrator for their hedge fund. Another commenter indicated that foreign-located fully regulated RIAs and ERAs are already subject to extensive AML/CFT and anti-bribery requirements by their home country regulators.

Regarding the burden, one commenter noted that advisers, especially those that advise private funds, were already facing additional costs to implement recently finalized or proposed SEC requirements. Other commenters also highlighted the potential costs for smaller investment advisers.

Two commenters noted their opposition to applying the proposed rule to venture capital advisers. One of those commenters stated that the requirements of the proposed rule would have a significant and adverse effect on venture capital advisers and the innovative start-ups they advise. The other commenter claimed that the identified risks did not justify applying AML/CFT rules to venture capital advisers, would produce less valuable information because of the limited interactions that venture capital advisers have with limited partner investors, and would not lead to a more effective AML/CFT regime.

One commenter reasoned that, given the focus on the risks posed by private funds, the rule should be narrowed to address those higher-risk activities, and not apply to advisers that manage assets for individual investors. Two commenters requested that FinCEN address concerns raised in the comments with respect to private fund advisers and venture capital advisers, respectively, and issue a revised NPRM.

III. Discussion of Final Rule

A. Illicit Finance Risk

Commenters expressed varying views on the illicit finance risks associated with RIAs and ERAs that were discussed in the IA AML NPRM and Risk Assessment. Several commenters agreed that illicit actors, including corrupt officials, have exploited the U.S. investment adviser sector, particularly the private funds sector, to hide or obscure illicit proceeds, and that the lack of AML/CFT requirements for investment advisers presented illicit finance and national security risks. One commenter described how corrupt officials had exploited the U.S. private investment industry and would continue to do so unless effective and robust AML/CFT controls were applied. Another commenter concurred with the findings of the Risk Assessment and wrote that it was consistent with the commenter's own research, which found significant foreign ownership in private funds that are managed by advisers who report to the SEC. This commenter's research suggests that this level of foreign ownership in private funds presents a challenge to the United States' ability to effectively monitor foreign investment. Other commenters agreed with the national security risks identified and provided additional examples of misuse, including narcotics trafficking and laundering proceeds of corruption or funds from authoritarian regimes.

One commenter observed that while broker-dealers may hold or trade assets controlled by an investment adviser, they may have no independent knowledge of the investment adviser's customers, and that investment advisers are often in the best position to obtain information about their customers that is relevant for AML/CFT purposes. Finally, another commenter, a non-profit coalition, agreed that, given the growth of the private funds industry and investment advisers' role in critical sectors of the economy, investment advisers should be held to the same standard as other financial market participants.

However, several other commenters took issue with the findings regarding the level of illicit finance risk facing investment advisers. Several commenters disagreed that the case examples cited provided adequate support for the rulemaking, noting that the examples involved concealment of ownership, complicit actors whose activity would not be addressed by the requirements of the proposed rule (but that were addressed by laws criminalizing money laundering, or anti-fraud provisions of the Federal securities laws), or compliance failures at financial institutions already subject to AML/CFT requirements. They also claimed that the case examples were too few to justify the cost associated with the proposed rule's requirements. One commenter said that the cases also demonstrated that BSA requirements for banks and broker-dealers were already identifying illicit activity. One commenter questioned the accuracy of the analysis of SARs included in the Risk Assessment and felt that they lacked context or that findings tied to SARs were not proof of illicit activity.

Other commenters noted that existing OFAC sanctions requirements addressed the examples and data on illicit finance tied to Russian oligarchs, and that the blocking of assets owned by sanctioned Russian parties demonstrated those sanctions were effective in mitigating this illicit finance risk. Another commenter stated that most investments made by Russian oligarchs occurred prior to their designation, that there was nothing illegal about their investments in U.S. assets, and that the proposed requirements would thus not have addressed the AML/CFT risks arising from Russia's invasion of Ukraine.

Regarding risks associated with private funds, one commenter claimed that private funds generally present a low risk of money laundering and terrorist financing due to several key factors, including the long-term nature of the investments made in such funds and the existing due diligence by funds into potential investors (including sanctions screening). Another commenter disagreed with the money laundering risk associated with hedge funds, noting that, at the hedge fund where they worked, the transfer agent would ''perform KYC [know your customer procedures] and check OFAC and sanctions lists before admitting a new investor or paying a redemption'' and ''are required to report suspicious activities.''

Regarding venture capital funds, in particular, two commenters stated that none of the examples in the preamble of incidents in which illicit finance was uncovered included venture capital funds or advisers and therefore such examples do not illustrate the need for the adoption of AML/CFT programs by venture capital advisers. These commenters claimed that illiquidity and long-term focus are standard features of venture capital funds that make them poor targets for money launderers. One commenter argued that FinCEN

acknowledges this in the release accompanying the proposed rule, but nevertheless proposes AML requirements for venture capital advisers. One commenter alleged that the proposed rule does not focus on the use of venture capital funds by foreign actors (including foreign governments) to facilitate illicit finance activity, but on attempts to access sensitive or dual-use technology by potentially hostile foreign state interests. The commenter claimed that this threat would not be addressed through the application of AML/CFT requirements to venture capital funds, and are more appropriately addressed through other government authorities, such as the Committee on Foreign Investment in the United States (CFIUS). One commenter indicated that FinCEN does not provide evidence or disclose essential facts that might support a decision to extend the AML/CFT program requirement to venture capital advisers and that such inclusion would amount to an arbitrary and capricious application of the rule.

Regarding the vulnerabilities discussed in the IA AML NPRM, some commenters stated that investment advisers were much less likely to serve as channels to the U.S. financial system that can be taken advantage of by criminal actors, as compared to other financial institutions that are already subject to AML/CFT requirements under the BSA.

Several commenters noted that RIAs and ERAs rely heavily on banks, broker-dealers, custodians, and other financial institutions that are already subject to AML/CFT requirements to custody customer and investor monies, process funds transfers, or effect securities transactions on behalf of advisers. Commenters also noted that banks and broker-dealers regularly request AML/CFT and sanctions-related representations and affirmations from RIAs and ERAs as part of their diligence processes. One commenter also noted that RIAs and ERAs and their affiliates already maintain robust records of the types of transactions that would be captured by the proposed rule, such as adviser or broker-dealer requirements applicable to maintaining transaction records related to financial transactions between advisers' customers and those customers' investors. Another commenter opined that ''a failure to conduct adequate due diligence or to otherwise fail in complying with applicable AML laws could . . . expose a Covered IA to a fund to accusations that it failed to satisfy its fiduciary duties [to the fund] . . . [and] given the risk that an AML error or oversight could create claims of fiduciary breach, Covered IAs are already strongly incentivized to develop and maintain robust AML policies and procedures.''

FinCEN responds below to these comments. Following consideration of comments, for the reasons discussed below, FinCEN continues to assess that there is a material risk that RIAs and ERAs can be abused for illicit finance activity, although the degree of risk is not uniform across the sector. Regarding the case examples, as FinCEN noted in the IA AML NPRM, some of the examples both in the NPRM and in the Risk Assessment involve complicit individuals at a financial institution.[60] FinCEN notes that other commenters provided additional research confirming the risks associated with foreign investors in private funds that were identified in the Risk Assessment, as well as additional examples of misuse.[61] Further, the Financial Industry Regulatory Authority (FINRA), a Self-Regulatory Organization (SRO) responsible for regulating member broker-dealers, conducted a review of referrals that its specialized insider trading, market fraud, and offering review teams made to other regulators and law enforcement between January 1, 2023 and March 14, 2024. This review suggests that at least 14.5 percent of those referrals related to investment advisers or their customers.

These cases are intended to be illustrative, and, as FinCEN noted in the proposed rule, ''an investment adviser may be unwittingly complicit in this type of activity if they are not required to understand the origin of funds or nature of their owner. A customer wishing to launder money could ask an investment adviser to establish a private fund to certain specifications without informing the adviser of the customer's broader scheme.'' [62] In addition, the IA AML NPRM referenced the comprehensive Treasury review contained in the Risk Assessment, which included substantial information beyond the case examples, including a review of BSA reporting, materials derived from civil enforcement actions, analysis provided by U.S. government agencies, and other non-public information that demonstrated investment advisers could be misused to help launder illicit proceeds. What the case examples in the IA AML NPRM and Risk Assessment demonstrate is that a range of illicit actors view investment advisers as potential entry points into the U.S. financial system, and have sought to exploit them.

Further, without an AML/CFT program requirement or an obligation to file SARs, an investment adviser has no obligation to evaluate the risk of money laundering, terrorist financing, or other illicit finance activity associated with its advisory customers and activities. As discussed below, FinCEN understands, as some commenters have explained, that investment advisers often conduct certain due diligence and screen against sanctions lists, that they may provide AML/CFT and sanctions-related representations and affirmations regarding their clients at the request of banks or broker-dealers, and that an adviser's fiduciary duty requires it to act in the best interest of its clients. At the same time, FinCEN notes that investment advisers to private funds are most commonly compensated based on a combination of (i) management fees that are based on total AUM invested in (or committed to be invested in) the private fund and (ii) performance-based compensation based on the private fund's performance. These compensation arrangements incentivize private fund advisers to add new investors and grow their private fund assets.[63] This incentive may lead to some advisers refraining from voluntarily conducting a robust review of illicit finance risk, as such review could lead to the adviser turning away certain AUM, and thus lead to less compensation for the adviser. As described in the IA AML NPRM, this can lead an investment adviser to unwittingly assist in illicit finance activity.[64]

This rule will require investment advisers to adopt a risk-based approach pursuant to which they must ask questions and analyze potential money laundering, terrorist financing, and other illicit finance risks—steps that will make it more likely that an investment adviser will detect illicit finance activity. The reporting and recordkeeping requirements of the BSA, especially SAR filing obligations, are intended, among other things, to assist federal law enforcement in the enforcement of existing money laundering statutes, including by identifying instances of money

[60] *See* 89 FR at 12114–12115.

[61] Several commenters from think tanks and non-governmental organizations provided additional examples of misuse, while one commenter provided a report titled *Private Investments, Public Harm: How the Opacity of the Massive U.S. Private Investment Industry Fuels Corruption and Harms National Security*. The report is available at *https://thefactcoalition.org/wp-content/uploads/2021/12/TI_Private-Investments-Public-Harm-10.pdf*.

[62] *See* 89 FR at 12115.

[63] Other investment advisers, who are often compensated as a percentage of AUM even if they do not also receive performance-based compensation, are similarly incentivized in general to increase their assets under management.

[64] *See* 89 FR at 12115.

laundering activity to help facilitate investigation and prosecution. In addition, AML/CFT requirements can serve as a separate basis for civil or criminal enforcement action.

The Risk Assessment's conclusions were also supported by an analysis of SARs. This analysis included approximately 12,000 SARs filed over seven years where the investment adviser was identified either as a subject of the SAR or in the narrative section of the SAR (with the number of SAR filings in the analysis increasing 400 percent over the review period). FinCEN agrees with the statement made by one commenter that SARs are not by themselves proof of illegal activity, but are intended to assist law enforcement in identifying potential violations of law. FinCEN also notes that the SAR trend and pattern analysis undertaken to support development of the Risk Assessment can be valuable in helping the public and private sectors identify and address illicit finance trends and systemic vulnerabilities. For example, in section 6206 of the Anti-Money Laundering Act of 2020 (AML Act), Congress mandated that FinCEN publish semiannual threat pattern and trend information derived from BSA filings.[65] Such efforts will only be enhanced by requiring investment advisers to file SARs as well, which will provide additional relevant information for FinCEN to analyze.

Regarding illicit finance tied to Russian oligarchs, FinCEN recognizes that, as noted by some commenters, many of these investments were made prior to the designation of these individuals and entities by OFAC. Many investment advisers, along with other financial institutions, took action to freeze assets linked to designated Russian individuals and entities. However, even prior to their designation, many of these individuals and entities were publicly known to be linked to corruption, other criminal activity, or Russian malign influence campaigns; yet they were still able to make investments through the U.S. financial system.[66] By engaging in such activities these individuals and entities may be violating U.S. law and engaging in sanctionable conduct even if they are not yet designated. Additional AML/CFT requirements may have helped identify—or even mitigate the extent of—assets or accounts that were owned, controlled, or otherwise linked to criminal or sanctionable activities *before* the relevant individuals were designated by forcing investment advisers to adopt a risk-based approach to working with these individuals. More broadly, such AML/CFT requirements are likely to help identify additional assets or accounts that are owned, controlled, or otherwise linked to designated persons, in turn supporting effective sanctions enforcement efforts.[67]

FinCEN agrees with the point raised by some commenters that certain characteristics of private funds, such as longer lock-up periods or limited opportunities to make withdrawals, may make these funds less attractive for certain illicit finance activity that seeks to rapidly enter and exit a financial product. However, as noted in the NPRM, these requirements are unlikely to deter certain illicit actors who have a medium- to long-term investment horizon and do not need immediate access to invested capital, such as corrupt foreign officials, financial facilitators for transnational criminal networks, or those acting on behalf of designated persons, especially because of the potential for high returns in these private funds.[68] In addition, some illicit actors may see private fund investments, in combination with the use of a trust or other legal arrangement, as an alternative if they are unable to launder or obscure funds directly through a bank or brokerage account.[69] FinCEN acknowledges that while private fund advisers may perform sanctions or politically exposed person (PEP) screening as part of their investor diligence, such efforts are only one part of effective AML/CFT compliance. In addition, because such advisers are not subject to consistent supervision for AML/CFT compliance measures they may undertake, such measures may not be applied consistently, and any deficiencies in these measures may not be identified or remediated.

For venture capital funds in particular, FinCEN notes that the threat of misuse is not only for purposes of illicit technology transfer through investments in portfolio companies of venture capital funds, but also to facilitate the laundering and growth of illicit proceeds. As noted in the IA AML NPRM and Risk Assessment, a Treasury review of select BSA reporting filed between January 2019 and June 2023 identified more than 20 private fund advisers located in the United States where the adviser was identified as having significant ties to Russian oligarch investors or Russian-linked illicit activities. The vast majority of those private fund advisers advised investment funds that held themselves out as pursuing a venture capital strategy. Some of these Russian oligarch-linked investors may have been attracted to investing in venture capital funds because, like other venture capital investors, they had a medium-to-long term investment horizon and were willing to accept higher risk for higher investment returns.[70]

FinCEN also notes that while the BSA and its reporting and recordkeeping requirements were originally developed to combat money laundering, Congress has added to the purpose of the BSA over time an objective to combat terrorism,[71] as well as addressing other threats to U.S. national security.[72] Illicit technology transfer—that is, the transfer of technology in violation of sanctions, export controls, or other applicable laws—is both a threat to national security and may be linked to money laundering and other forms of illicit finance. For instance, in 2022 and 2023 FinCEN issued a series of joint alerts with the Department of Commerce's Bureau of Industry and Security (BIS) to assist financial institutions in detecting transactions linked to Russian attempts

[65] *See* 31 U.S.C. 5318(g)(6). *See also* FinCEN's Financial Trend Analyses, issued pursuant to section 6206 of the AML Act of 2020, available at *https://www.fincen.gov/resources/financial-trend-analyses.*

[66] *See* 89 FR at 12115–12116.

[67] *See* FIN–2023–Alert002, *FinCEN Alert on Potential U.S. Commercial Real Estate Investments by Sanctioned Russian Elites, Oligarchs, and Their Proxies* (Jan. 25, 2023) (noting that investors seeking to evade sanctions may lower their interest in an investment fund to just below the threshold set by a financial institution's CDD standards to avoid detection).

[68] For instance, one subset of SARs analyzed for the Risk Assessment found that RIAs that advised private funds were associated with or referenced in SARs at twice the rate of RIAs that did not advise private funds. The higher rate of filing tied to private funds may result from custodians and other entities with SAR filing obligations lacking insight into the identity and source of wealth of underlying investors in the fund, even where those filers may pursue additional diligence.

[69] *See* Risk Assessment, *supra* note 2, at 16 & 27.

[70] A Treasury review of select BSA reporting identified several U.S. venture capital firms with significant ties to Russian oligarch investors that invested in firms developing emerging technologies with national security applications. These include autonomous vehicle technology and artificial intelligence systems, as well as contractors to the U.S. military, intelligence, and other government agencies. *See* Risk Assessment at 21–22.

[71] *See* 31 U.S.C. 5311(2) (preventing the financing of terrorism). Section 358 of the USA PATRIOT Act added to the purposes of the BSA to require reporting or recordkeeping highly useful in ''intelligence or counterintelligence activities, including analysis, to protect against international terrorism.'' Public Law 107–56, sec. 358(a).

[72] *See* 31 U.S.C. 5311(4) (safeguarding the national security of the United States). Section 6101 of the AML Act amended the purposes of the BSA to include ''assess the money laundering, terrorism finance, tax evasion, and fraud risks to financial institutions, products, or services to . . . safeguard the national security of the United States.'' Public Law 116–283, Div. F, sec. 6101(a).

to acquire military or dual-use technology.[73] These alerts reflect the reality that money laundering and other forms of illicit finance may be part of illicit technology transfer because adversaries must conceal their illegal attempts to obtain technology. FinCEN assesses that applying AML/CFT measures to RIAs and ERAs will assist in combating these and other threats to the U.S. financial system and national security.

FinCEN does not believe that the comments regarding the absence thus far of an adviser to a venture capital fund engaging in illicit finance in the IA AML NPRM requires any change to the final rule. The examples cited in the preamble are meant only to be illustrative of the risks and do not lay out the full evidence available to FinCEN, and these comments rely upon a particularly narrow framing of the evidence presented in the IA AML NPRM. The IA AML NPRM states that ''according to the FBI, the PRC government routinely conceals its ownership or control of investment funds to disguise efforts to steal technology or knowledge and avoid notice to CFIUS.'' [74] As one commenter acknowledges, the IA AML NPRM discusses state-guided or -owned venture capital funds acting on behalf of the PRC and Russia.[75] Furthermore, as noted by other commenters, there are public reports of specific venture capitalists with ties to Russian oligarchs or Russian government-backed institutions.[76] Indeed, a recent bulletin published by the National Counterintelligence and Security Center highlights how foreign threat actors can exploit venture capital and other private investment to undermine U.S. national security.[77] For these reasons, FinCEN's assessment that venture capital funds pose illicit finance risk is supported by the available evidence.

In response to the suggestion that these threats would be better addressed through other government authorities like CFIUS, FinCEN seeks to clarify fundamental differences between the CFIUS process and the AML/CFT obligations set out in this rule. FinCEN notes that CFIUS reviews are focused on certain transactions involving foreign investment in the United States and certain real estate transactions by foreign persons, in order to determine the effect of such transactions on the national security of the United States.[78] Whereas CFIUS reviews lawful investments, this rule is aimed at combating illicit activity, whether in the form of money laundering and other illicit finance, or in the form of technology transfer in violation of applicable law. CFIUS jurisdiction has well-established limits, and many common financial transactions, such as certain loans or passive fund investments, are not subject to CFIUS jurisdiction.[79] By Executive Order, CFIUS mitigation agreements may only address national security risks ''not adequately addressed by other provisions of law,'' such as the BSA.[80] Within its jurisdiction, CFIUS has a broad mandate to assess the effect of a covered transaction on national security; it need not find any violation of law in order to recommend the transaction to the President who has the authority to block or unwind a transaction, as appropriate under CFIUS legal authorities.[81] The connection between CFIUS and the final rule would therefore be limited: SARs identifying potential unlawful activity will assist CFIUS in identifying transactions linked to such activity that may raise national security concerns, and recordkeeping and other requirements may facilitate the collection of additional information on certain participants in CFIUS transactions who may seek to obscure their role through private funds.

In the IA AML NPRM and Risk Assessment, FinCEN considered the existing requirements under the Advisers Act and its implementing regulations, the extent to which AML/CFT requirements were applied to advisory activities, and how other rules and regulations, such as those issued by OFAC to implement sanctions requirements,[82] may mitigate the identified illicit finance risks. While AML/CFT obligations for banks, broker-dealers, and other financial institutions can assist in detecting some illicit activity, these entities may not directly interact with an adviser's underlying customers. Moreover, these entities may not be in the best position to obtain the necessary documentation and information about the customers that is relevant for AML/CFT purposes, such as the source of customers' assets, the customers' backgrounds, and the customers' investment objectives. One commenter observed that in connection with oversight of broker-dealers for compliance with AML/CFT requirements, investment advisers often have the sole or most direct relationship with customers and possess knowledge of the full spectrum of transactions effected through broker-dealers and other custodians that may present money laundering or other illicit finance risks. Another commenter noted that investment advisers in some cases already provide other financial institutions with AML/CFT and sanctions-related representations and affirmations regarding customers they advise (including private funds), which underscores the fact that advisers often have more information on their customers than banks or broker-dealers have. Further, requiring RIAs and ERAs to apply AML/CFT measures may lead to earlier notification of illicit finance activity via SAR filings, and reduce the time law enforcement needs to receive relevant information and take action against illicit actors.

While existing requirements under the Advisers Act and its implementing regulations, including recordkeeping, compliance, and reporting requirements, can assist in implementation of AML/CFT measures, they do not require the collection of the same information as do the AML/CFT requirements. The illicit finance risks

[73] *See* FIN–2022–Alert003, *FinCEN and the U.S. Department of Commerce's Bureau of Industry and Security Urge Increased Vigilance for Potential Russian and Belarusian Export Control Evasion Attempts* (Jun. 28, 2022); *see also* FIN–2023–Alert004, *Supplemental Alert: FinCEN and the U.S. Department of Commerce's Bureau of Industry and Security Urge Continued Vigilance for Potential Russian Export Control Evasion Attempts* (May 19, 2023).

[74] 89 FR at 12116.

[75] *Id.*

[76] *See, e.g.,* Joseph Menn et al., *From Russia with money: Silicon Valley distances itself from oligarchs,* Washington Post (Apr. 1, 2022); Giacomo Tognini, *Russian Oligarch Roman Abramovich Invested In Startups That Received U.S. Government Contracts,* Forbes (June 9, 2023).

[77] *See Safeguarding Our Innovation* at 1, *supra* note 51. This bulletin highlighted common tools that foreign threat actors use to penetrate the U.S. financial system, including complex ownership structures, investments through intermediaries, and limited partner investments. *Id.* at 2. For example, one firm identified in the bulletin that had been added to the Department of Defense's list of ''Chinese military companies'' in January 2024 is an ERA that has made investments in more than 1,600 companies, including several U.S. firms.

[78] *See* Executive Order (E.O.) 11,858, as amended, sec. 6(b), 73 FR 4677, 4678 (Jan. 23, 2008) (''The Committee shall undertake an investigation of a transaction in any case . . . in which . . . the transaction threatens to impair the national security of the United States and that the threat has not been mitigated.'').

[79] 31 CFR 800.302(b), 800.306(a).

[80] 50 U.S.C. 4565(d)(4)(B); E.O. 11858, sec. 7(a) as amended by E.O. 13456.

[81] *See, e.g.,* 50 U.S.C. 4565(b), (d).

[82] While OFAC sanctions requirements are separate from AML/CFT requirements, investment advisers, like other U.S. persons, must comply with OFAC sanctions. AML/CFT requirements and OFAC sanctions also share a common national security goal, apply a risk-based approach, and rely on similar recordkeeping and reporting requirements to ensure compliance. For this reason, many financial institutions view compliance with OFAC sanctions as related to AML/CFT compliance obligations and may include sanctions compliance and AML/CFT compliance in a single enterprise-wide compliance program.

documented in the IA AML NPRM and Risk Assessment remain, despite such existing requirements and the assertions in comments about existing fiduciary duty, and thus FinCEN has determined that the final rule is necessary and appropriate to mitigate those risks. Further, while FinCEN recognizes that an adviser involved in facilitating illicit finance activity could face contractual liability on a variety of bases, these violations generally result in civil liability to private parties. This is not an adequate substitute for the comprehensive government civil and criminal enforcement mechanisms available for violations of AML/CFT laws, and the range of effective, proportionate, and dissuasive penalties that can be applied. These measures are necessary to address the public harm resulting from illicit finance activity that may occur through investment advisers.

B. Definition of ''Financial Institution'' and ''Investment Adviser''

1. Defining Investment Advisers as ''Financial Institutions''

Proposed Rule: FinCEN proposed to add ''investment adviser'' to the definition of ''financial institution'' under the regulations implementing the BSA because FinCEN has determined that investment advisers engage in activities that are ''similar to, related to, or a substitute for'' financial services that other BSA-defined financial institutions are authorized to engage in.

Comments Received: FinCEN received comments that both supported and did not support including investment advisers within the definition of ''financial institution'' under the regulations implementing the BSA and including RIAs and ERAs within the definition of ''investment adviser.'' Three commenters noted that the proposed definition is a proactive step to address gaps in existing AML/CFT framework and called for FinCEN to retain a comprehensive definition in the final rule. One commenter called for FinCEN to also include foreign private advisers, family offices, and advisers to real estate investment funds within this definition.

Nine commenters disagreed with adding ''investment adviser'' to the definition of ''financial institution'' in the regulations issued pursuant to the BSA. Several of these commenters asserted that doing so would apply redundant and unnecessary AML/CFT requirements to investment advisers, as the entities that process cash and securities transactions, such as broker-dealers and banks, are already subject to AML/CFT requirements.

One commenter claimed that as investment advisers are not specifically enumerated in the statutory definition of ''financial institution'' under the BSA, FinCEN may not have the authority to define investment advisers as ''financial institutions'' under the BSA without additional Congressional action. This commenter also disagreed with FinCEN's determination that investment advisers engaged in activities that were ''similar to, related to, or a substitute for'' activities in which any of the enumerated financial institutions are authorized to engage. The commenter stated that BSA-defined financial institutions, such as banks and broker-dealers, are required to apply AML/CFT requirements because of their status as banks and broker-dealers, and not because they engage in particular activities.

This commenter also asked whether FinCEN intended to include within the definition of ''financial institution'' other professions or entities that are authorized to make investment or other financial decisions on behalf of a principal. The commenter argued that the proposed rule could raise questions about whether trustees, attorneys, executors of estates, receivers in bankruptcy proceedings, or others similarly situated are substituting for the activities of BSA-defined financial institutions and are covered by the proposed rule.

Another commenter stated that entities defined as ''financial institutions'' under the BSA have in common the fact that they have custody over customer's funds. The commenter noted that investment advisers, by contrast, do not take custody of a customer's funds, and must act in conjunction with other financial institutions to transact on behalf of their clients. The commenter suggested that if the proposed rule were to be finalized, the definition of ''investment adviser'' must be narrowed to capture only advisers who engage in activities that arguably more closely resemble financial institution activities. Another commenter suggested that FinCEN apply AML/CFT requirements to private funds rather than to the investment advisers to those funds, noting that the fund itself has the contractual relationship with the investor and receives customer due diligence information.

Two other commenters raised questions about the impact of including ''investment adviser'' in the definition of ''financial institution'' in the regulations that implement the BSA. These two commenters indicated that FinCEN must account for the differences in the roles and functions of investment advisers from banks and broker-dealers in existing and future BSA rulemakings, and should consult with investment advisers before applying general AML/CFT requirements for ''financial institutions'' to investment advisers.

Final Rule: For the reasons described in the IA AML NPRM, FinCEN is adding ''investment adviser'' to the definition of ''financial institution'' under the regulations implementing the BSA, as proposed, because FinCEN has determined that investment advisers engage in activities that are ''similar to, related to, or a substitute for'' financial services that other BSA-defined financial institutions are authorized to engage in.

While the BSA has an enumerated list of entities that are ''financial institutions,'' [83] the statute also explicitly provides the Secretary of the Treasury with the authority to add entities to that list upon determining, ''*by regulation,*'' that any business or agency is engaged in ''*an activity similar to, related to, or a substitute for any activity*'' in which any of the enumerated financial institutions are authorized to engage.[84] This language provides Treasury with the statutory authority to define additional entities as financial institutions as business and organizational structures, and risks, in financial services evolve and illicit actors seek to exploit potential gaps in AML/CFT regulation, as FinCEN has observed with respect to investment advisers.

FinCEN continues to see ample evidence that investment advisers engage in activities ''similar to, related to, or a substitute for'' activities in which other financial institutions are authorized to engage. As noted in the IA AML NPRM, investment advisers work closely with financial institutions when they direct broker-dealers to purchase or sell client securities, and therefore engage in activities that are closely related to the activities of covered financial institutions. An RIA must use a qualified custodian—such as a bank or broker-dealer—to take custody of client assets, even when advising private funds.[85] In addition, investment

[83] 31 U.S.C. 5312(a)(2), (c)(1).

[84] 31 U.S.C. 5312(a)(2)(Y) (emphasis added). FinCEN may also designate businesses ''whose cash transactions have a high degree of usefulness in criminal, tax, or regulatory matters'' as financial institutions. 31 U.S.C. 5312(a)(2)(Z).

[85] *See* 17 CFR 275.206(4)–2; *see also* 12 CFR 225.125(a) (FRB determining that investment adviser activities ''to be so closely related to banking or managing or controlling banks as to be a proper incident thereto'').

advisers are frequently owned by or under common ownership with banks, broker-dealers, and other financial institutions. Broker-dealers may conduct certain similar advisory activities for their customers [86] and investment advisers must compete with other financial institutions that provide investment opportunities, such as banks and broker-dealers, to attract investor funds.

There is ample evidence that RIAs and ERAs who advise private funds engage in activities ''similar to, related to, or a substitute for'' activities in which other financial institutions are authorized to engage. The services provided by RIAs and ERAs advising private funds are closely related to the services provided by broker-dealers who buy and sell securities on their behalf. Private fund advisers may be under common ownership with banks, broker-dealers, or other financial institutions. Broker-dealers, like RIAs or ERAs advising private funds pursuant to the Advisers Act, may ''advis[e] others . . . as to the value of securities or as to the advisability of investing in, purchasing, or selling securities.'' [87] And an RIA or ERA advising private funds must also compete with other financial institutions that offer investment opportunities for investor assets.

FinCEN's statutory authority to designate investment advisers as financial institutions is confirmed by clear evidence of Congressional intent. The legislative history during the drafting of the USA PATRIOT Act supports that Congress viewed RIAs as sufficiently similar to certain other financial institutions that Treasury could require them to file SARs.[88] Congress reaffirmed this view more recently when, in connection with appropriations legislation passed in December 2022, Congress highlighted the illicit finance concerns associated with ''investment advisers such as hedge fund managers'' and encouraged FinCEN ''to update and finalize its 2015 investment adviser rule as soon as possible.'' [89]

FinCEN also notes that having custody or directly holding customer funds is not a prerequisite for being included within the definition of ''financial institution'' in the regulations issued pursuant to the BSA. For example, the BSA defines an ''investment company'' and an ''operator of a credit card system,'' as a ''financial institution,'' and neither of these institutions routinely custody or directly hold customer funds.[90] In addition, an ''investment banker'' and ''persons involved in real estate closings and settlements'' are also defined in the BSA as financial institutions, but may not directly receive, send, or transmit any customer funds. While broker-dealers and banks provide custodial services to their customers, they are also authorized to engage in a range of other financial services—such as extending credit—that do not involve taking custody of client funds, but are nonetheless subject to AML/CFT requirements. In sum, the statutory language authorizes Treasury to define as a financial institution any business that engages in activity similar to any activity in which the enumerated financial institutions are authorized to engage, not just specific activities involving the transfer or custody of customer funds.

In response to the comment asking whether FinCEN intends to regulate other entities or professions that act as agents for a principal and whether this would create ambiguity for those entities and professions, FinCEN notes that the rule would only apply to RIAs and ERAs, categories of entities that are clearly defined under the Advisers Act. If FinCEN were to regulate such other entities or professions in the same manner as in the final rule, this would occur through a new rulemaking on which any affected person could comment. An attorney, trustee, executor, or other person in a principal-agent relationship therefore has no reason to find the scope of the final rule ambiguous as applied to them; they merely need to know if they have registered (or are required to register) or have filed with the SEC as an RIA or ERA.

Regarding whether to apply AML/CFT obligations to private funds rather than the advisers to those funds, FinCEN notes that in many cases the adviser to a private fund will have a relationship (in some cases contractual) with underlying investors and has access to information about underlying investors. Indeed, the SEC requires RIAs and ERAs to report information regarding underlying investors on Form ADV and Form PF.[91] Further, private funds also typically lack employees, and are reliant upon their service providers, such as their advisers, to satisfy the private fund's legal and compliance obligations. Accordingly, the adviser, rather than the fund, is best positioned to apply the full range of AML/CFT measures beyond customer due diligence. FinCEN also acknowledges the point made by commenters that there are AML/CFT requirements that may be applied to all BSA-defined financial institutions, which if amended, would also change the obligations of investment advisers.[92] If FinCEN were to amend these AML/CFT requirements, it anticipates considering the specific attributes of investment advisers when deciding whether and how to apply such requirements to investment advisers.

2. Registered Investment Advisers

Proposed Rule: FinCEN proposed to include SEC-registered investment advisers (RIAs) in its definition of investment adviser with regard to the proposed changes to the definition of financial institution under 31 CFR 1010.100.

Comments Received: Six commenters commented on the proposed definition of ''investment adviser'' and the impact it would have on smaller RIAs. One commenter stated that smaller advisers generally pose less illicit finance risk and should be excluded for the same reasons that FinCEN had proposed to exclude State-registered advisers, namely their lower AUM, fewer customers, and that their customers tend to be localized. Another commenter asserted that the reliance on AUM as the sole determinant for regulatory thresholds overlooks the practical considerations of the size and capacity of RIAs, particularly smaller firms, and that AUM may not accurately reflect the complexity or scale of a firm, especially when AUM is primarily derived from a small number of clients. They suggested that regulatory thresholds be evaluated based on a combination of factors, including the number of employees and average AUM per client.

[86] *See* 15 U.S.C. 80b–2(a)(11)(C).

[87] 15 U.S.C. 80b–2(a)(11). *See also* SEC, *Commission Interpretation Regarding the Solely Incidental Prong of the Broker-Dealer Exclusion From the Definition of Investment Adviser,* Interpretation, 84 FR 33681 (Jul. 12, 2019).

[88] House Report 107–250(I), *Financial Anti-Terrorism Act of 2001,* 2001 WL 1249988 at *66 (Oct. 17, 2001); *see also* Public Law 107–31, Title III, sec. 321 (Oct. 26, 2001) (section of USA PATRIOT Act adding futures commission merchants, commodity trading advisors, and commodity pool operators to the definition of ''financial institutions'' for purposes of 31 U.S.C. 5312(a)).

[89] *See* Consolidated Appropriations Act, 2023, Public Law 117–328, 136 Stat. 4459, Joint Explanatory Statement (Division E), p.1156, available at *https://www.congress.gov/117/cprt/HPRT50347/CPRT-117HPRT50347.pdf.*

[90] 31 U.S.C. 5312(a)(2)(L), (M).

[91] *See supra* note 45.

[92] For instance, FinCEN did not include ''investment adviser'' in the proposed rule to amend the AML/CFT program requirements for other types of BSA-defined financial institutions. *See* FinCEN, *Anti-Money Laundering and Countering the Financing of Terrorism Programs,* Notice of Proposed Rulemaking, 89 FR 55428 (Jul. 3, 2023).

Two commenters suggested advisers with fewer than 20 employees should be exempt from the requirements of the proposed rule, while one commenter suggested that firms with fewer than 100 employees should be exempt from the requirements of the proposed rule. These commenters claimed that smaller advisers would need to divert resources from client-servicing functions and other compliance requirements to invest in building out an AML/CFT program, and would need to outsource the independent testing requirement to a third party, which would create additional burden.

One commenter requested that investment advisers who do not manage client assets be excluded from the proposed rule. That commenter contended that applying AML/CFT requirements to these investment advisers would produce no valuable information for law enforcement or regulators, as these advisers are not involved in the management of client assets or funds transfer activity. Another commenter suggested that RIAs whose client's investments are held by an account custodian should be exempt from the proposed regulation.

Final Rule: FinCEN is modifying the definition of ''investment adviser'' from the proposed rule to exempt certain types of RIAs in response to comments.[93] Accordingly, these types of RIAs will not be subject to the final rule. FinCEN recognizes the concerns raised by commenters regarding the impact of the proposed rule on smaller RIAs, based on AUM or other applicable criteria. As noted in the IA AML NPRM, FinCEN is mindful of the effect of new regulations on small businesses, given their critical role in the U.S. economy and the special consideration that Congress and successive administrations have mandated that Federal agencies should give to small business concerns. FinCEN would like to reiterate that the AML/CFT requirements in this rule are designed to be risk-based and that their cost will vary with the size of the business, along with the risk level of its advisory activities and customers. This means that smaller advisers would be expected to adopt AML/CFT programs that are consistent with their (often) simpler, more centralized organizational structures and so would be more likely to have lower implementation-related costs, absent other high-risk attributes for illicit finance risks.

In reviewing the comments that addressed this issue, FinCEN sought to identify an approach that would balance concerns about the burden on smaller RIAs as well as ensure that such an approach is easily understood by advisers subject to the final rule, systematically addresses illicit finance risk in the investment adviser sector, and is administrable in practice by FinCEN and the SEC (and other relevant regulators). Regarding the proposal to exempt advisers with fewer than either 20 or 100 employees, FinCEN notes that the number of employees that an adviser has is not necessarily aligned with the types of advisory customers, activities, or other factors relevant to the illicit finance risk of an adviser. Some advisers may manage significant assets from a small number of customers, while other advisers may manage small accounts held by a large number of customers, requiring additional employees to service those accounts. To create a threshold for application of AML/CFT requirements based on employee numbers alone would be inconsistent with Treasury's understanding of risk in the sector. For example, an adviser managing significant assets, but with few employees, is of greater risk of being used by malign actors to launder large sums of money than an adviser with more employees but a small amount of assets under management. Further, imposing such a threshold could lead to perverse outcomes where RIAs are incentivized to hirer fewer non-revenue staff, such as those responsible for AML/CFT compliance. A threshold could also raise questions with respect to other BSA-defined financial institutions, which typically do not have such thresholds. FinCEN therefore declines to apply the proposed exemption for RIAs with fewer than either 20 or 100 employees.

However, FinCEN has sought to appropriately tailor the scope of entities covered by the final rule to balance commenters' concerns about the potential burden on smaller advisers with the investment adviser sector-wide identified illicit finance risks. FinCEN also sought to, while considering the diversity of business models in the advisory business, fashion the rule in a way that can be clearly applied and examined by the SEC, and that is transparent to RIAs and ERAs subject to the rule. Therefore, FinCEN is exempting from the definition of ''investment adviser'' RIAs that register with the SEC because they are (i) Mid-Sized Advisers, (ii) Multi-State Advisers, and (iii) Pension Consultants, as well as (iv) RIAs that do not report any AUM on Form ADV. The final rule's exemptions apply, however, only to investment advisers that are registered with the SEC on only one or more of the above listed bases, and have no other basis for registration.[94] For example, an investment adviser that registers (or could register) with the SEC both because: (a) it has AUM of more than $110 million (and so registers as a ''large advisory firm'' on Form ADV) and (b) it would otherwise be required to register with more than 15 states, will not be eligible for the exemption.

As described below and in the Risk Assessment, FinCEN assessed State-registered advisers as generally lower-risk for money laundering, terrorist financing, or other illicit finance activity. Therefore, FinCEN has chosen not to apply the proposed rule to State-registered advisers at this time. At the same time, FinCEN notes that there are certain types of RIAs that resemble State-registered advisers because they would otherwise be prohibited from registering with the SEC but are required to or choose to do so because they satisfy the conditions of certain exemptions from the prohibition on SEC registration.

First, there are certain RIAs who have AUM between $25 million and $100 million but who either: (i) are not required to be registered as an adviser with the state securities authority in the state where they maintain their principal office and place of business; or (ii) are not subject to examination as an adviser by the state in which they maintain their principal offices and places of business (Mid-Sized Advisers).[95] These Mid-Sized Advisers are required to register with the SEC.[96] According to a review of information filed on Form ADV, there are 468 Mid-Sized Advisers who, on average, have $54.6 million in AUM, 6 employees, and 129 customers, 97 percent of which are natural persons.[97]

Second, advisers who would otherwise be required to register in more

[93] These changes reflect, in part, comments received in response to the IA AML NPRM.

[94] *See* 31 CFR 1010.100(nnn)(ii)(1) (exempting an investment adviser that is registered ''only'' because it meets the conditions of being is either a mid-sized adviser, a pension consultant, or a multi-state adviser). For the avoidance of doubt, an investment adviser that is registered because it meets the conditions of more than one of these exemptions, but that is not otherwise required to register, is also exempt from the definition of ''investment adviser.''

[95] *See* 15 U.S.C. 80b–3a(a)(2). On Form ADV, these Mid-Sized Advisers check the box in Item 2.A noting they are a ''mid-sized advisory firm.'' *See* Form ADV, Instructions for Part 1A, available at *https://www.sec.gov/about/forms/formadv-instructions.pdf*.

[96] *See* 15 U.S.C. 80b–3a(a)(2); Form ADV, Instructions for Part 1A, available at *https://www.sec.gov/about/forms/formadv-instructions.pdf*.

[97] This information is derived from a Treasury review of Form ADV information filed as of July 31, 2023. *See supra* note 25.

than 15 states, but have less than $100 million in AUM, can choose instead to register with the SEC (Multi-State Advisers).[98] According to a review of the information filed on Form ADV, in 2023 there were 90 Multi-State Advisers who, on average, have $27.6 million in AUM, 28 employees, and 1,300 customers.[99] While the majority of Multi-State Advisers' customers are legal entities, approximately 90 percent of these customers are United States persons. These firms have a larger number of employees and customers than the average State-registered adviser, but relatively small AUM.[100] FinCEN has decided to exempt these two categories of advisers because their advisory activities and customers are generally lower-risk,[101] more closely resembling State-registered advisers than RIAs who satisfy the general requirements for registration, to address some of the concerns regarding possible burden on smaller advisers that were raised by commenters.

Along with these two categories of RIAs, FinCEN also identified two categories of RIAs that do not directly manage client assets and, as discussed below, pose little or no risk of being used as an entry point into the U.S. financial system for illicit proceeds. First, there are some RIAs who do not manage client assets as part of their advisory activities, and report zero AUM on Form ADV.[102] According to information derived from Form ADV, as of July 2023 there were 655 RIAs who report zero AUM on Form ADV.[103] These RIAs have, on average, 73 employees and 640 customers, and 90 percent of their customers were United States persons.[104] Services provided by these advisers may include non-discretionary financial planning (such as fee-only advice) and publication of securities-related newsletters, ''model portfolios,'' or research reports.

FinCEN agrees with commenters that such advisers are generally unlikely to have sufficient information about a customer's source of funds, background, and investment objectives to detect suspicious financial activity, and, in some instances, may lack even the names of individual customers. While these advisers may have more employees and customers than the average State-registered adviser, as described above, these advisers' activities are unlikely to be used for illicit finance activity, these advisers may not be able to provide useful information to law enforcement or other government authorities, and, to the extent their customers effect financial transactions in the United States on the basis of the services received from the investment adviser (*e.g.,* trading based on reading research reports), they likely do so as direct customers of a BSA-regulated financial institution, such as through a brokerage account.

FinCEN also identified 186 RIAs who register with the SEC because they are ''pension consultants'' as that term is defined under the Advisers Act regulations.[105] According to a review of information filed on Form ADV, these RIAs have, on average, 334 employees, and over 20,000 customers.[106] Advisers registered as pension consultants advise at least $200 million in assets held by certain employee benefit plans subject to, or described in, the Employee Retirement Income Security Act of 1974 (ERISA).[107] As FinCEN understands, many of these advisers do not exercise investment discretion over assets they advise, but generally assist other investment advisers or ERISA plan fiduciaries in designing investment lineups for employee benefit plans.[108] In addition, as noted by commenters, employee benefit plans are generally subject to strict contribution and withdrawal limits, are usually available to only employees of a participating company, and are subject to other requirements under ERISA (or similar state laws) and/or the Internal Revenue Code (IRC).[109]

While these are not, on average, ''smaller'' advisers, they exclusively engage in certain activities that are less likely to be used for, or to generate useful information for law enforcement about, illicit finance activity. For instance, their advisory activities on behalf of these employee benefit plans are subject to additional disclosures and restrictions on compensation arrangements under ERISA and other relevant statutes that limit their incentive to facilitate the movement of illicit proceeds. While the misuse of employee benefit plans has been linked to certain types of financial crime, such as fraud or account takeover activity,[110] these plans, whether defined benefit plans or defined contribution plans, are less likely to be misused to obscure illicit proceeds generated from a separate criminal scheme. While defined benefit plans may invest plan assets in private funds, there is not the same uncertainty as to beneficial ownership and source of wealth as with other private fund investors.[111] For defined benefit plans, the funds are typically derived from the employer contributions to the defined benefit plan. In addition, these advisers are less

[98] *See* 17 CFR 275.203A–2(d).

[99] This information is derived from a Treasury review of Form ADV information filed as of July 31, 2023. *See supra* note 25.

[100] This exemption was designed to allocate regulatory responsibility to the SEC for larger investment advisers, whose activities are likely to affect national markets, and to relieve these advisers of the burdens associated with multiple state regulations. *See* SEC, *Exemption for Investment Advisers Operating in Multiple States; Revisions to Rules Implementing Amendments to the Investment Advisers Act of 1940; Investment Advisers with Principal Offices and Places of Business in Colorado or Iowa,* Final Rule, 63 FR 39708, 39709 (Jul. 24, 1998).

[101] This determination is based on the tailored BSA analysis on this subset of RIAs described *infra.*

[102] *See supra* note 28 (for additional information on how AUM is calculated). The Form ADV instructions provide general criteria for determining whether an investment adviser provides continuous and regular supervisory or management services. For example, the instructions to Item 5.F state that an investment adviser provides such services if it has ''discretionary authority over and provide[s] ongoing supervisory or management services,'' and the Form ADV Glossary of Terms defines ''discretionary authority'' for these purposes. The Form ADV instructions are available at *https://www.sec.gov/about/forms/formadv-instructions.pdf.*

[103] This information is derived from a Treasury review of Form ADV information filed as of July 31, 2023. *See supra* note 25.

[104] *Id.*

[105] An investment adviser is a ''pension consultant'' for purposes of rule 203A–2(a)(2) if it provides investment advice to (i) any employee benefit plan described in section 3(3) of ERISA, (ii) any governmental plan described in section 3(32) of ERISA, or (iii) any church plan described in section 3(33) of ERISA (29 U.S.C. 1002(33)). 17 CFR 275.203A–2(a)(2).

[106] This information is derived from a Treasury review of Form ADV information filed as of July 31, 2023. *See supra* note 25.

[107] 17 CFR 275.203A–2(a)(1).

[108] *See Rules Implementing Amendments to the Investment Advisers Act of 1940,* Final Rule, 76 FR 42950, 42959 (Jul. 19, 2011) (''[P]ension consultants typically do not have ''assets under management,'' but we have required these advisers to register with [the SEC] because their activities have a direct effect on the management of large amounts of pension plan assets.''); *Rules Implementing Amendments to the Investment Advisers Act of 1940,* Final Rule, 62 FR 28112, 28117 n. 60 (May 22, 1997) (''[A] pension consultant has substantially less control over client assets than an adviser that has assets under management.''). *See also* SEC, *Staff Report Concerning Examinations of Select Pension Consultants,* 1 (May 16, 2005), available at *https://www.sec.gov/news/studies/pensionexamstudy.pdf.*

[109] *See, e.g.,* 29 CFR 2520 (rules and regulations for reporting and disclosure for ERISA plans).

[110] *See, e.g.,* FBI, *IC3 2023 Elder Fraud Report,* at 14, 19, available at *https://www.ic3.gov/Media/PDF/AnnualReport/2023_IC3ElderFraudReport.pdf.*

[111] For the avoidance of doubt, the absence of uncertainty as to beneficial ownership and source of wealth is the case only when the investment in a private fund comes from a defined benefit plan. When an investment adviser directs investment into a private fund, the risk of any other investments directed into the private fund must be evaluated separately. An investment adviser who is not a pension consultant and advises a private fund that receives investments from a defined benefit plan may not exclude such private fund from its obligations under this rule, although, as explained below, such an adviser may account for the source of such investment in determining which policies, procedures, and controls to apply to the fund on a risk basis.

likely to have unique information or knowledge about plan activities or assets to identify and report suspicious activity. As such, FinCEN assesses that these advisers will likely not generate relevant information to assist government authorities in combating illicit finance and subjecting these advisers to the rule's coverage would not meaningfully advance the rule's objectives.

FinCEN, in coordination with federal law enforcement, reviewed BSA reporting associated with these four groups of RIAs (*i.e.,* Mid-Sized Advisers, Multi-State Advisers, pension consultants, and advisers who report zero AUM on Form ADV). This analysis found that 5.5 percent of these RIAs were associated with, or referenced in, at least one SAR (*i.e.,* they were identified either as a subject or in the narrative section of the SAR) between 2013 and 2023. That is substantially less than the 15.4 percent of all RIAs and ERAs that were associated with or referenced in at least one SAR between 2013 and 2021. When considering this information with other information on illicit finance threats available to FinCEN, and the structural factors discussed above that may make these subgroups of RIAs less vulnerable to misuse for illicit finance, FinCEN has determined that exempting these groups of RIAs from the final rule would be consistent with the objective of this rule.

Therefore, for all of the reasons noted above, FinCEN has determined to exempt from the definition of ''investment adviser'' investment advisers that register with the SEC solely on the basis that they are Mid-Sized Advisers, Multi-State Advisers, pension consultants, and advisers who report zero AUM on Form ADV. FinCEN notes that, should the registration status of an RIA change such that the RIA would no longer be exempt from the definition of ''investment adviser,'' the adviser will become subject to the AML/CFT requirements in this rule as of its next annual updating amendment to Form ADV.[112] The scope of such advisers exempted from the final rule's definition of ''investment adviser'' is reflected in the regulatory text added at 1010.100(nnn)(ii).

3. Exempt Reporting Advisers

Proposed Rule: FinCEN proposed to include Exempt Reporting Advisers (ERAs) in its definition of ''investment adviser'' with regard to the proposed changes to the definition of financial institution under 31 CFR 1010.100.

Comments Received: Four commenters supported FinCEN's proposal to include ERAs in the definition of ''investment adviser,'' noting the significant illicit finance risks present in this subset of the investment adviser sector and the ''loophole'' that would be created by subjecting RIAs but not ERAs to the proposed regulations. Some of these commenters noted that the Risk Assessment found that the risks were higher amongst ERAs than RIAs. One commenter stated that ERAs should be subject to the requirements in the proposed rule because they were already subject to rules and prohibitions under the Federal securities laws designed to root out misconduct in financial markets, and that the rationale for applying these requirements supports applying AML/CFT requirements to ERAs.

However, other commenters were generally opposed to the rule's scoping-in of ERAs, with one commenter asserting the outsized regulatory impact of the proposed regulation on ERAs was not merited given the low number of examples provided regarding illicit finance risk amongst ERAs. Another commenter stated that FinCEN lacked statutory authority to include ERAs in the scope of the proposed regulation. One commenter claimed that FinCEN had failed to put forward an adequate reason for the expansion of AML/CFT requirements to ERAs beyond citation to the Risk Assessment and further claimed that the Risk Assessment does not identify ERAs as particularly vulnerable to illicit finance risks. One commenter suggested that ERAs below a certain threshold of U.S. AUM be exempt from the proposed rule, and that this AUM threshold should be measured similar to the private fund adviser exemption in the Advisers Act and its implementing regulations. The commenter claimed that this would be consistent with the goal of the SEC to avoid imposing U.S. regulatory and operational requirements on a foreign-located adviser's foreign-located advisory business.

Final Rule: FinCEN is implementing this part of the definition of ''investment adviser'' without change from the proposed rule. Accordingly, each ERA will be subject to the final rule. For the reasons stated above, in Section III.B.1, FinCEN has determined that it has legal authority to determine that ERAs are ''financial institutions'' for BSA purposes. Including ERAs in scope of the regulation, as proposed, is supported by the findings of the Risk Assessment as well as the responses from several commenters supporting inclusion of ERAs demonstrating the illicit finance and national security risks posed by ERAs. As noted by a commenter, while ERAs are not subject to certain requirements under Federal securities laws, they are subject to many of the requirements designed to prevent misconduct in financial markets, for instance. In addition, FinCEN agrees with the point made by several commenters that exempting ERAs could create a loophole through which illicit actors would be able to access a range of private funds without being directly subject to AML/CFT requirements. The Risk Assessment found that, within the investment adviser sector, ERAs bear the highest risks as they solely advise either private funds or venture capital funds, both of which were found in the Risk Assessment to be involved in illicit finance and other criminal investigations carried out by U.S. law enforcement.[113] In addition, private funds are more likely than other types of customers to be based in jurisdictions with weaker and less effective AML/CFT controls, making it more difficult for the ERA to assess the risk posed by the relationship or prevent abuse.[114]

Through the course of its advisory activities, an ERA may collect information about either the private fund it advises (the customer of the ERA) or the underlying investors in that private fund that may alert the ERA to illicit activity. FinCEN has also assessed

[112] Under the Instructions to Form ADV, Item 2 of Part 1A, which addresses an investment adviser's basis for registration with the SEC, must be updated annually.

[113] *See supra* note 47 and accompanying text (discussing the analysis of BSA reporting linked to private fund advisers). *See also* Risk Assessment, *supra* note 2, at 20–22, 26–28 (noting that private funds, including those advised by ERAs, have served as an entry point into the U.S. financial system for sanctioned Russian oligarchs and their associates, and as back door for hostile nation-state actors to acquire assets of interest in the United States, such as equity stakes in companies developing critical or emerging technologies).

[114] Only 52 percent of the total net asset value of private funds managed by U.S. investment advisers is held by funds domiciled in the United States. Of the remaining 48 percent held in offshore funds, most is held by funds domiciled in the Cayman Islands (33 percent) and the remainder is held by funds in Luxembourg (5 percent), Ireland (4 percent), Bermuda (1 percent), British Virgin Islands (1 percent), United Kingdom (1 percent), and other jurisdictions (4 percent). *See* SEC, Private Fund Statistics, Third Calendar Quarter 2023, Page 13, Table 11, *https://www.sec.gov/files/investment/2023q3-private-funds-statistics-20240331.pdf.* These figures come from publicly available data provided by the SEC aggregating periodic filings made on Form PF. While this data represents only the subset of RIAs required to file Form PF (RIAs that manage at least $150 million in private fund AUM), this accounts for a substantial amount of overall private fund assets and FinCEN assesses the geographic distribution of fund domiciles is generally consistent for ERAs. *See also* 89 FR at 12114 (discussion on the effectiveness of foreign AML/CFT supervision for private funds domiciled in certain jurisdictions).

that ERAs, along with RIAs advising private funds, are exposed to higher money laundering, terrorist financing, or other illicit finance risks compared to advisers who do not advise private funds.[115] Adding ERAs to the definition of ''investment adviser'' is therefore consistent with the categorization of other entities as a financial institution and with FinCEN's authority to make changes to the list of financial institutions under FinCEN's regulations implementing the BSA in order to combat illicit activity.

FinCEN also declines to limit the applicability of the proposed rule to only certain ERAs with assets exceeding a specified threshold, such as $100 million AUM, as was proposed by one commenter. FinCEN considered setting such a threshold and understands that many RIAs below this threshold will not be subject to the rule, given the rule's definition of ''investment adviser.'' However, as noted above, FinCEN has concerns that such a threshold would mean that ERAs advising funds with fewer assets but carrying material illicit finance risks would remain out of scope of AML/CFT controls. The Risk Assessment and some of the underlying examples analyzed for the Risk Assessment show that private funds with relatively small AUM may still bear substantial illicit finance risk.[116] Such a threshold would also be challenging to administer; for example, ERAs do not currently report AUM on Form ADV.[117] In addition, a threshold based on AUM or similar metric would mean that an ERA hovering just above or below the threshold would come in and out of coverage based on market returns, making it more challenging for the SEC and FinCEN to accurately assess systemic money laundering, terrorist financing, or other illicit finance risk among ERAs.

FinCEN also declines to categorically exclude ERAs reporting zero private fund assets on Form ADV. FinCEN notes that ERAs do not report regulatory AUM on Form ADV, and that the information they do report—gross assets of each private fund they advise—does not necessarily distinguish between ERAs that manage client assets from those that do not. ERAs that report zero gross assets for private funds they advise may still have discretion for customer assets and thus present the risk of being misused for illicit finance activities.[118] FinCEN therefore declines to exclude ERAs reporting zero gross assets for private funds they advise from the requirements of the final rule.

Regarding the applicability of the requirements of the final rule to the activities of foreign-located ERAs, those are discussed in the next section. FinCEN notes the concerns raised by some commenters about the specific burden that may apply to ERAs but reiterates that the AML/CFT requirements in this rule are designed to be risk-based and their cost will vary with the size of the business, along with the risk level of its advisory activities and customers. FinCEN will work with the SEC staff so that any examinations of ERAs for compliance with requirements of the final rule take into account the risk-based nature of AML/CFT programs.

4. Foreign-Located Investment Advisers

Proposed Rule: In the proposed rule, FinCEN noted that the proposed definition of ''investment adviser'' would include certain foreign-located investment advisers that are physically located abroad (*i.e.,* whose principal office and place of business is outside the United States) but nonetheless are: (i) registered or required to register with the SEC (for RIAs), or (ii) file reports with the SEC on Form ADV (for ERAs). FinCEN therefore proposed that the rule's requirements would ''apply on the same basis'' to such foreign-located advisers as to domestic advisers.[119] FinCEN requested comment on any challenges for foreign-located advisers in taking this approach, including any potential conflicts with domestic or foreign law.

Comments Received: FinCEN received eight comments regarding the application of the proposed rule to foreign-located investment advisers. One commenter stated that the proposed scope of application of the proposed rule conflicts with Congress' intent during its original passage of the BSA in 1970. Other commenters raised concerns about the application of the proposed rule deviating from past positions of FinCEN regarding BSA regulation and the SEC regarding Advisers Act regulation. One commenter suggested an AUM threshold for foreign-located ERAs that would draw from the SEC's AUM thresholds for RIAs and its approach to measuring AUM for foreign-located private fund RIAs, specifically suggesting that foreign-located ERAs with less than $100 million of U.S. AUM be exempt from the proposed rule.

Several commenters raised concerns that foreign-located investment advisers will face significant challenges in adhering to the proposed BSA requirements. First, commenters indicated that obligations under the BSA may not be consistent with local privacy rules and other requirements, potentially creating ''conflict-of-laws and compliance challenges.'' Another commenter suggested that applying this rule to foreign-located advisers would ''deprive U.S. clients and investors from [sic] the expertise of foreign-located investment advisers'' due to additional compliance burdens and ''make it less likely that non-U.S. investment advisers hire U.S.-based employees or engage in other economic activity in the United States.'' One commenter noted that the substantive provisions of the Advisers Act do not apply to ''a non-U.S. adviser's relationship with its non-U.S. clients and non-U.S. funds (including funds with U.S. investors)'' and recommended that for non-U.S. advisers, this rule not apply ''with respect to their non-U.S. clients, including non-U.S. private funds, even if such non-U.S. private funds have U.S. investors.''

Commenters called for FinCEN to provide clarification on the reach of the proposed rule to foreign-located advisers. One commenter called on FinCEN to clarify that application of the proposed rule would be confined to investment advisers ''organized and operating in the U.S., or to foreign-based or foreign-organized [investment advisers] only to the extent they are operating in the U.S.'' One commenter called for foreign-located ERAs from Financial Action Task Force (FATF)-compliant jurisdictions to be excluded from the rule and another raised concerns about the proposal's application to foreign-located subadvisers. Several commenters called for FinCEN to fully exempt foreign-located advisers from the proposed rule.

Final Rule: FinCEN is applying the requirements of the proposed rule to foreign-located investment advisers, and is clarifying the scope of their advisory activities that are subject to the

[115] *See supra* Section III.A; Risk Assessment, *supra* note 2, at 20–22, 32.

[116] *See* Risk Assessment, *supra* note 2, at 18, 20, and 31 (noting the highest illicit finance risk in the sector is for ERAs). Several of the 20 private fund advisers identified as having significant ties to Russian oligarch investors or Russian-linked illicit activities managed private funds with less than $100 million in AUM.

[117] ERAs do not report AUM on Form ADV, but instead report gross assets for each private fund they advise. However, they only report gross assets for a private fund if that fund is not reported by an RIA or ERA in its own Form ADV; therefore, some ERAs report zero gross assets because all of the funds they advise are also reported by an RIA or ERA. *See* Form ADV, Instructions for Part 1A.

[118] *See* 17 CFR 275.203(m)–1(d)(1) (excluding from the calculation of regulatory AUM, for purposes of the private fund adviser exemption, assets associated with certain types of private funds). *See also* Risk Assessment, *supra* note 2, at 18, 20.

[119] 89 FR at 12130.

requirements in the final rule. Accordingly, the final rule will define ''investment adviser'' to include foreign-located investment advisers that are registered or required to register with the SEC (RIAs, subject to the exemptions set forth in 1010.100(nnn)(ii) for certain types of RIAs) or that file reports with the SEC on Form ADV (ERAs). Including foreign-located investment advisers in this final rule is consistent with the BSA's express authorization for the Secretary to, by regulation, determine new types of financial institutions [120] as well as the BSA's intelligence, national security, and counter-intelligence purposes, which are inherently international in nature.[121] Moreover, this interpretation of authority granted by the BSA is aligned with FinCEN's existing approach applying BSA obligations to certain types of foreign-located BSA-defined financial institutions that have a nexus to the United States. FinCEN has considered the illicit finance risks arising from foreign-located investment advisers and the funds they advise, as well as the alternatives for mitigating these risks consistent with the purposes of the BSA enumerated at 31 U.S.C. 5311. For these reasons, FinCEN has determined that the requirement of a U.S. nexus provides a lawful basis for this rule to apply to foreign-located investment advisers.

Section 1032.110 of the final rule defines a ''foreign-located investment adviser'' as an ''investment adviser whose principal office and place of business is outside the United States.'' Section 1032.111 of the final rule sets forth the scope of a foreign-located investment adviser's obligations, stating that the requirements of part 1032 apply to a foreign-located investment adviser only with respect to its advisory activities that (i) take place within the United States, including through involvement of U.S. personnel of the investment adviser, such as the involvement of an agency, branch, or office within the United States, or (ii) provide advisory services to a U.S. person or a foreign-located private fund with an investor that is a U.S. person.[122] With respect to services provided to a foreign-located private fund with an investor that is a U.S. person, as described below, the rule incorporates SEC definitions and standards for identifying investors that are U.S. persons in foreign-located private funds.

To determine whether an investment adviser is a foreign-located investment adviser (as defined at section 1032.110), the adviser must look to its ''principal office and place of business,'' which FinCEN considers to be the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser.[123] RIAs and ERAs are required to identify their principal office and place of business on Form ADV, making it clear which investment advisers consider themselves to be ''foreign-located investment advisers'' for the purposes of this final rule.

Moreover, all foreign-located advisers subject to the final rule have a U.S. nexus with certain advisory activities such that they are required to or have chosen to register with or file reports with the SEC, and therefore are subject to SEC regulation. The Advisers Act requires registration of investment advisers that have a minimum amount of assets under management [124] and who ''make use of the mails or any means or instrumentality of interstate commerce in connection with his or its business as an investment adviser,'' unless subject to an exemption, such as ERAs,[125] and the scope of the registration requirement has been further refined in SEC regulations and guidance as discussed above. Moreover, de minimis ties to the United States do not automatically make a foreign-located investment adviser subject to the final rule, particularly because foreign private advisers as defined pursuant to the Advisers Act are not subject to the requirements of the final rule. An adviser may be a foreign private adviser if it: (i) has no place of business in the United States; (ii) has, in total, fewer than 15 clients in the United States and investors in the United States in private funds advised by the adviser; (iii) has aggregate assets under management attributable to these clients and investors of less than $25 million; and (iv) does not hold itself out generally to the public in the United States as an investment adviser.[126] Foreign-located RIAs and ERAs covered by the final rule therefore not only have sufficient nexus to the United States to trigger SEC registration or filing requirements, but also a U.S. nexus too great to qualify as a foreign private adviser (or have voluntarily chosen to be regulated as RIAs or ERAs).[127]

As noted above, a foreign-located investment adviser's advisory activities must also have a U.S. nexus to be subject to the requirements of the final rule. Under section 1032.111, foreign-located investment adviser's advisory activities are subject to the requirements of the rule if the advisory activities: (i) take place within the United States, including through involvement of U.S. personnel of the investment adviser, such as the involvement of an agency, branch, or office within the United States, or (ii) provide advisory services to a U.S. person or a foreign-located private fund with an investor that is a U.S. person (subject to specified definitions of ''foreign-located private fund,'' ''investor,'' and ''U.S. person'').

For the purposes of section 1032.111, U.S. personnel means, regardless of citizenship, any director, officer, employee, or agent of the investment adviser conducting advisory activities from a U.S. agency, branch, or office of the investment adviser. U.S. personnel would be involved in advisory activities if, for example, an employee of the investment adviser manages assets of a client from a U.S. office or other U.S. workplace of the investment adviser, or if the employee works remotely from the United States on a regular basis. Conversely, a U.S. citizen employee of the investment adviser managing assets of a client from a non-U.S. office of the foreign-located investment adviser would generally not constitute U.S. personnel involved in advisory activities for this purpose.[128] The term ''agency, branch, or office'' of the investment adviser is not exclusive, and the rule would apply to any location in the United States from which U.S. personnel of the foreign-located investment adviser perform advisory activity. For the avoidance of doubt, personnel that perform activity that is

[120] 31 U.S.C. 5312(a)(2)(Y).

[121] *See* 31 U.S.C. 5311.

[122] In contrast, an adviser with its principal office and place of business in the United States must comply with the final rule with respect to all of its advisory activities.

[123] This definition is consistent with that used by the SEC in regulations applicable to investment advisers. *See* 17 CFR 275–222.1(b).

[124] Certain other investment advisers that make use of the mails or any means or instrumentality of interstate commerce in connection with their business as an investment adviser may also be permitted or required to register with the SEC. See footnote 23, *supra.*

[125] 15 U.S.C. 80b–3(a), (l), (m).

[126] *See* 15 U.S.C. 80b–2(a)(30), 80b–3(b)(3).

[127] Certain RIAs or ERAs may opt to register or report to the SEC despite the fact that they could rely on the foreign private adviser definition; such investment advisers have chosen to subject themselves to the U.S. regulatory requirements and supervision applicable to such advisers, and so will be subject to this final rule.

[128] However, a U.S. employee (of a foreign-located investment adviser) whose advisory activities are undertaken from a non-U.S. office for the purpose of evading the final rule or as part of a course of conduct the employee undertook while based in the United States, would constitute U.S. personnel involved in advisory activities and be covered by the final rule.

clerical or administrative in nature are not involved in advisory activity for purposes of the final rule.[129]

For a foreign-located investment adviser, the final rule also applies to the provision of advisory services to a U.S. person or a foreign-located private fund with an investor that is a U.S. person. This includes, but is not limited to, providing investment advice to a U.S. person, regardless of the location from which such investment advice is provided. A foreign-located investment adviser would be providing advisory services to a U.S. person if, for example, the investment adviser manages assets from an office outside of the United States on behalf of an individual U.S. person.

For purposes of determining a foreign-located investment adviser's activities subject to this rule, the final rule defines ''U.S. person'' as a person meeting the definition in 17 CFR 230.902(k), which is part of Regulation S under the Securities Act. The SEC relied on this definition for purposes of the foreign private adviser exemption because it provides specific rules when applied to various types of legal structures.[130] FinCEN adopts the Regulation S definition for this reason, consistency with other SEC regulations cross-referenced in section 1032.111, and administrability because this definition is already familiar to investment advisers. This definition also includes an element designed to mitigate potential evasion concerns.[131]

With respect to a foreign-located investment adviser's advisory activities to a foreign-located private fund, the final rule requires a foreign-located investment adviser to determine whether any foreign-located private fund that it advises has at least one investor who is a U.S. person.[132] This determination must be made with respect to every investor in that foreign-located private fund in accordance with SEC requirements familiar to private fund advisers. If a foreign-located private fund has at least one U.S. person investor, the foreign-located investment adviser must apply the final rule with respect to that foreign-located private fund. This standard is designed to be both administrable—it incorporates SEC standards for identifying investors that are U.S. persons in private funds—and tailored to address risks to the U.S. financial system through foreign-located private funds, which FinCEN has identified as presenting significant illicit finance risk.

The final rule defines ''foreign-located private fund'' by reference to section 202(a)(29) of the Advisers Act, which defines ''private fund'' to mean ''an issuer that would be an investment company, as defined in section 3 of the [Company Act] (15 U.S.C. 80a–3), but for section 3(c)(1) or 3(c)(7) of that Act.'' The ''foreign-located'' aspect of the definition refers to a fund that is a legal entity or arrangement that is incorporated or organized outside the United States and therefore is not a U.S. person for purposes of the final rule. This definition therefore covers the types of foreign-located private funds advised by ERAs and that FinCEN has identified as giving rise to illicit finance risks. It is also commonly used by investment advisers in complying with the federal securities laws, including, for example, in completing multiple portions of Form ADV.[133]

The final rule defines ''investor'' by reference to Advisers Act Rule 202(a)(30)–1(c)(2), under which a foreign private adviser can determine whether private funds it advises have more than 14 ''investors in the United States.'' That rule, in turn, refers to sections 3(c)(1) and 3(c)(7) of the Company Act, which generally exclude certain issuers from the definition of investment company based on the number of beneficial owners or qualifications of their security holders, respectively.[134] Consistent with statements by the SEC and its staff and the SEC's underlying authorities,[135] depending upon the facts and circumstances, persons other than the nominal holder of a security issued by a private fund may be counted as the beneficial owner under section 3(c)(1), or be required to be a qualified purchaser under section 3(c)(7).[136] For purposes of section 3(c)(1), if a company owns 10 percent or more of the outstanding voting securities of the issuer (the prospective private fund), and is, or but for section 3(c)(1) or 3(c)(7) of the Company Act, would be an investment company, the issuer must ''look through'' that investing company to the holders of the company's securities.[137] In the context of this rule, a foreign-located investment adviser is required to perform the same look through with respect to any private fund it advises that relies on section 3(c)(1) of the Company Act with two modifications: (1) the foreign-located investment adviser must count beneficial owners of a private fund's commercial paper as investors (consistent with Advisers Act Rule 202(a)(30)–1(c)(2)); and (2) a person who is considered a beneficial owner for purposes of section 3(c)(1) will be considered an ''investor'' in the private fund despite holding its interests indirectly. If this look through results in a U.S. person being considered an investor in the private fund, the foreign-located private adviser must apply the requirements of the final rule to that fund.

Similarly, for purposes of both section 3(c)(1) and section 3(c)(7), a foreign-located investment adviser will be required to ''look through'' any entity

[129] This discussion of ''clerical or administrative'' activity is intended to apply to foreign-located investment advisers only and is not intended to apply for any other purpose. This is because it aligns with the reporting of ''clerical workers'' on Item 5.A of Form ADV with which investment advisers are already familiar and enhances consistency with SEC regulation in a portion of the final rule that references several SEC regulations.

[130] *See* 76 FR 39645, 39697–39678 (Jul. 6, 2011).

[131] 17 CFR 230.902(k)(1)(viii) (encompassing any corporation or partnership formed by a U.S. person principally for the purpose of investing in unregistered securities unless owned or incorporated by accredited investors who are not natural persons, estates or trusts).

[132] A U.S.-located private fund advised by a foreign-located investment adviser is itself a U.S. person under this definition, and so a foreign-located investment adviser will also be required to apply the final rule with respect to any U.S.-located private fund it advises, irrespective of the presence or absence of any U.S. person investors in such U.S.-located private fund.

[133] *See* Form ADV Glossary, defining Private Fund to mean ''An issuer that would be an investment company as defined in section 3 of the Investment Company Act of 1940 but for section 3(c)(1) or 3(c)(7) of that Act.''

[134] Section 3(c)(1), 15 U.S.C. 80a–3(c)(1), excludes from the definition of investment company a privately-offered issuer having fewer than a certain number of beneficial owners. Section 3(c)(7), 15 U.S.C. 80a–3(c)(7) excludes from the definition of investment company a privately-offered issuer the securities of which are owned exclusively by ''qualified purchasers'' (generally, persons and entities owning investments whose value exceeds a specified threshold).

[135] *See, e.g.,* 76 FR 39645, 39676 (Jul. 6, 2011); *Privately Offered Investment Companies,* Final Rule, 62 FR 17512, 17519, 17524 (Apr. 9, 1997) (''The Commission understands that there are other forms of holding investments that may raise interpretative issues concerning whether a Prospective Qualified Purchaser 'owns' an investment. For instance, when an entity that holds investments is the 'alter ego' of a Prospective Qualified Purchaser (as in the case of an entity that is wholly owned by a Prospective Qualified Purchaser who makes all the decisions with respect to such investments), it would be appropriate to attribute the investments held by such entity to the Prospective Qualified Purchaser.''); *see also* Cornish & Carey Commercial, Inc., SEC Staff No-Action Letter (June 21, 1996) (staff discussed the application of section 3(c)(1)(A) to an issuer relying on section 3(c)(1)), available at *https://www.sec.gov/divisions/investment/noaction/1996/cornishcarey022696.pdf.*

[136] Section 3(c)(1)(A) of the Company Act requires a private fund relying on section 3(c)(1) to ''look through'' any company that owns 10 percent or more of the company's voting securities. ''Voting security'' is defined in section 2(a)(42) of the Company Act, 15 U.S.C. 80a2(a)(42). In contrast, this 10 percent look-through is not required for purposes of section 3(c)(7).

[137] *See* 15 U.S.C. 80a–3(c)(1)(A).

that is formed for the purpose of investing in a foreign-located private fund it advises.[138] For purposes of the final rule, if a foreign-located investment adviser determines that an investing entity has been formed for purposes of investment in the private fund, such an adviser must look through the entity to determine whether it has U.S. person investors. Consistent with statements by the staff of the SEC and the SEC's underlying authorities,[139] a foreign-located investment adviser's determination that an entity is formed for the specific purpose of investing in a foreign-located private fund will depend upon an analysis of all of the surrounding facts and circumstances (including any knowledge that the foreign-located adviser has regarding the identity of its customers). Thus, to the extent that a foreign-located investment adviser determines that there is an underlying U.S. person investor (by conducting a look-through or because of other information available to the foreign-located investment adviser), the foreign-located investment adviser must apply the final rule with respect to the foreign-located private fund in which the U.S. person is indirectly invested.

These tests are incorporated into the final rule in order to address the illicit finance risks posed by foreign-located investment advisers. The greatest risks arise, as discussed above, from private funds advised by foreign-located investment advisers. The requirement of a U.S. nexus in the form of at least one investor that is a U.S. person is consistent with FinCEN's desire to focus on risks to the U.S. financial system. The presence of a U.S. person investor increases the likelihood that illicit finance risk associated with a private fund affects the U.S. financial system and the likelihood that U.S. persons might be involved in the underlying illicit finance activity. Although the presence of one investor that is a U.S. person requires the investment adviser to apply the requirements of the final rule to the entirety of a private fund, FinCEN notes that the fund as a whole is the customer of the foreign-located investment adviser. By their nature, private funds involve the commingling of investor assets in a pooled vehicle. As previously detailed in the Risk Assessment, the pooled nature of such funds may be used to obscure ownership of investments (which may present the possibility of higher returns on capital) by illicit actors who seek stable returns and do not need immediate access to capital.[140]

While FinCEN considered other thresholds for establishing an appropriate U.S. nexus, including whether or not to apply the rule's obligations with respect to non-U.S. private funds with U.S. investors, FinCEN balanced addressing the relevant illicit finance risks to the U.S. financial system (such as arising from investments by illicit actors in non-U.S. private funds that are commingled with funds from U.S. investors and enter the U.S. financial system),[141] the purposes of the BSA, and administrability. FinCEN also considered, as noted by a commenter, the SEC's approach in applying substantive provisions of the Advisers Act and the purposes underlying that approach. FinCEN further considered other SEC rules and practices, such as the foreign private adviser exemption and Advisers Act Rule 202(a)(30)–1(c)(2). The SEC standards incorporated in section 1032.111 are used to focus on illicit finance risks associated with private funds specifically and are familiar to foreign-located investment advisers from SEC regulations.[142] By setting a clear minimum standard of at least one U.S. private fund investor defined by reference to Advisers Act Rule 202(a)(30)–1(c)(2), this places clear limits on the ability of investment advisers or illicit actors seeking to obscure their ownership or control of certain assets through a private fund to avoid application of the final rule by admitting U.S. persons as indirect investors through intermediate entities. Advisers must ''look through'' nominee and similar arrangements to the underlying holders of private fund-issued securities to determine whether the private fund has an investor that is a U.S. person.

Moreover, a foreign-located investment adviser retains the option of availing itself of foreign private adviser status if it has limited U.S. ties and does not wish to apply the requirements of the final rule to private funds with lower levels of U.S. investment. Given this option, FinCEN anticipates it is unlikely that a significant number of foreign-located investment advisers will be required to apply the requirements of the rule on the basis of having a small number of investors that are U.S. persons or small amount of U.S. investment. When a foreign-located investment adviser's activities involving a private fund fall within the scope of the final rule, the foreign-located investment adviser will be expected to subject its advisory activities with respect to the fund to internal policies, procedures, and controls reasonably designed to prevent the investment adviser from being used for money laundering, terrorist financing, or other illicit finance activities and to achieve compliance with the applicable provisions of the BSA and implementing regulations. Advisers are often involved in implementing such internal policies, procedures, and controls for their funds for both AML/CFT requirements (if the fund implements such requirements voluntarily or to comply with the AML/CFT laws of a foreign jurisdiction) as well as requirements under securities or other corporate laws. Therefore, foreign-located investment advisers should be able to apply the requirements of this final rule, including applicable internal policies, procedures, and controls, to advisory activities with respect to these private funds, and doing so will help prevent these funds from becoming gateways into the U.S. financial system for illicit finance activity.

[138] *See, e.g.,* 17 CFR 270.2a51–3(a) (discussing an entity formed for the purpose of acquiring securities of an issuer relying on section 3(c)(7)); Cornish & Carey Commercial, Inc., SEC Staff No-Action Letter (June 21, 1996) (staff discussing an entity formed for the purpose of acquiring securities of an issuer relying on section 3(c)(1)), available at *https://www.sec.gov/divisions/investment/noaction/1996/cornishcarey022696.pdf.* For purposes of section 3(c)(1), SEC staff guidance states that if a company or fund invests more than 40 percent of its assets in a 3(c)(1) fund, it is potentially formed for the purpose of investing in a 3(c)(1) fund. For purposes of section 3(c)(7), 17 CFR 270.2a51–3(a) requires an investment adviser to determine whether the beneficial owners of the entity formed for purposes of investment in the fund are also qualified purchasers.

[139] *See, e.g.,* American Bar Association Section of Business Law, SEC Staff No-Action Letter (Apr. 22, 1999) at 19–20 (describing circumstances under which an entity would be deemed to be formed for the specific purpose of acquiring securities in a private fund that relies on section 3(c)(7)), available at *https://www.sec.gov/divisions/investment/noaction/1999/aba042299.pdf.*

[140] *See* Risk Assessment, *supra* note 2, at 16.

[141] *Id.* at 16–20.

[142] The standards for determining beneficial ownership of investments in private funds, including by U.S. persons, should be familiar to investment advisers from SEC reporting requirements and determining the status of such funds under the Company Act. *See* Instructions to Form PF, Section 2b Item 16 (requiring reporting of a fund's equity that is beneficially owned by various categories of investors, including individuals who are U.S. persons); Question 16 of Section 7.B.(1) of Schedule D to Form ADV (requiring the reporting of the percentage of a private fund's beneficial owners that are non-U.S. persons); 15 U.S.C. 80b–2(a)(30) and 17 CFR 275.202(a)(30)–1 (foreign private adviser exemption). *See also* 76 FR 39645, 39678 (Jul. 6, 2011) (''A non-U.S. adviser would need to count the same U.S. investors [as in connection with Investment Company Act exclusions] (except for holders of short-term paper with respect to a fund relying on section 3(c)(1)) in order to rely on the foreign private adviser exemption. In this respect, therefore, the look-through requirement of the foreign private adviser exemption will generally not impose any new burden on advisers to non-U.S. funds.'').

Certain of a foreign-located investment adviser's advisory activities are not subject to the final rule. This is similar to the SEC's regulation of investment advisers pursuant to the Advisers Act: non-U.S. advisers are not required to apply the substantive provisions of the Advisers Act when advising non-U.S. clients.[143] While taking into account the distinct purposes of the BSA, FinCEN believes that the final rule's requirements should not apply to a foreign-located adviser when it: (i) provides services exclusively to a foreign-located person,[144] and (ii) the personnel providing such advisory services are all outside of the United States as discussed above.

To ensure that activities within the scope of the rule are properly included, a foreign-located investment adviser should (i) determine to the extent reasonable and practicable whether its customers and the investors in its private funds are within the scope of this rule based upon the regulatory text as clarified in this preamble and any relevant future guidance that FinCEN might issue, and (ii) ensure that it does not provide advisory services to its private fund customers in a manner that results in the adviser being unable to identify a potential U.S. customer or investor.

The final rule states that upon request, a foreign-located investment adviser must make available to FinCEN or the SEC (in its capacity as delegated examiner for this rule) records and reports required under this rule and any other records that it has retained regarding the scope of its activities covered by this rule. As discussed below, the records that an investment adviser—including a foreign-located investment adviser—is required to maintain to comply with the requirements of the final rule include those required when developing and implementing an AML/CFT program as required under section 1032.210, including but not limited to a written AML/CFT program that includes internal policies, procedures, and controls, as well as those required by subpart D of the final rule, which are generally records of certain transactions and transfers of funds.

As for any investment adviser subject to this final rule, for a foreign-located investment adviser, properly scoping the advisory activities covered by its AML/CFT program is an important part of ensuring that its AML/CFT program is reasonably designed to prevent the investment adviser from being used for money laundering, terrorist financing, or illicit finance activities, and of achieving and monitoring compliance. As part of establishing a risk-based and reasonably designed AML/CFT program, and to comply with other requirements in this final rule, a foreign-located investment adviser should generate records to reflect how it properly scoped the advisory activities covered by the final rule. A foreign-located adviser must provide such records to FinCEN and the SEC upon request.

The final rule's treatment of foreign-located investment advisers broadly is consistent with how FinCEN has treated other foreign-located financial institutions, such as foreign-located money service businesses (MSBs) and broker-dealers. Specifically, the definition of MSBs under FinCEN's regulations includes persons engaged in specified activities ''wherever located, doing business . . . wholly or in substantial part'' within the United States.[145] ''This includes but is not limited to the maintenance of any agent, agency, branch, or office within the United States.'' [146] FinCEN's 2011 MSB final rule explained that whether a person engages in MSB activities is based on ''all of the facts and circumstances,'' including whether U.S. persons are obtaining services from the foreign-located MSBs.[147] FinCEN applies the same principles taking into account all of the facts and circumstances of a foreign-located investment adviser's activities, tailored as described above to the investment adviser sector, in this rule.

Foreign-located broker-dealers that are registered or required to be registered with the SEC are similarly subject to BSA requirements. FinCEN regulations define a ''broker-dealer'' as a ''person registered or required to be registered with the SEC under the Exchange Act, except persons who register pursuant to 15 U.S.C. 78o(b)(11).'' [148] Foreign located broker-dealers may be required to register with the SEC,[149] and if they are required to register, such broker-dealers are required to comply with applicable BSA requirements for broker-dealers, including the maintenance of an AML/CFT program and compliance with BSA recordkeeping requirements.[150] While broker-dealers registered with the SEC that are located outside the United States are not required to file SARs,[151] this is a policy choice that FinCEN made for broker-dealers based on the relevant considerations for that sector and does not reflect an interpretation of FinCEN's authority to require such reporting.[152]

Although MSBs and broker-dealers located abroad have been subject to FinCEN's regulations under the BSA, some commenters suggested that the final rule's application to foreign-located investment advisers would contravene longstanding territorial limits on the application of the BSA. The BSA authorizes the Secretary of the Treasury (since re-delegated to FinCEN) to define financial institutions and does not place territorial limitations on that authority. The BSA does not define the term ''financial institution'' in general and simply lists the types of businesses that may be financial institutions at 31 U.S.C. 5312(a)(2) without specifying where they may be located.[153] FinCEN has interpreted this authority to enable regulation of foreign-located institutions that operate within the United States or provide services to persons in the United States. Moreover, as discussed above, the BSA authorizes the Secretary to determine, by regulation, new types of financial institutions [154] and the final rule is an exercise of that authority. The BSA confers authority to apply significant obligations of the final rule—notably the AML/CFT program and SAR requirements—to all ''financial institutions'' as defined by FinCEN.[155] FinCEN therefore interprets the statutory authority to determine investment advisers as a financial

[143] *See, e.g.,* 76 FR 39645, 39681 (Jul. 6, 2011); SEC No-Action Letter, *Uniao de Bancos Brasileiros S.A. (Unibanco),* 1992 WL 183054 at *3 (Jul. 28, 1992), available at *https://www.sec.gov/divisions/investment/noaction/1992/uniaodebancos072892.pdf.* The SEC's approach considers the location of the client. The final rule does not modify the SEC's position on the application of the Advisers Act to non-U.S. investment advisers.

[144] Other than a private fund with a U.S. person investor, as described above.

[145] 31 CFR 1010.100(ff).

[146] *Id.*

[147] FinCEN, Bank Secrecy Act Regulations; Definitions and Other Regulations Relating to Money Services Businesses, Final Rule, 76 FR 43585, 43588 (Jul. 21, 2011).

[148] *See* 31 CFR 1023.100(b). The BSA regulations also use the related term ''broker or dealer in securities,'' which is defined based on the same provisions of the Securities and Exchange Act. 31 CFR 1010.100(h).

[149] *See* SEC, *Registration Requirements for Foreign Broker Dealers,* Final Rule, 54 FR 30013, 30016 (Jul. 18, 1989); Guy P. Lander, Registration requirement and jurisdiction, 3 U.S. Sec. Law for Financial Trans. § 13:2 (2d ed.).

[150] 31 CFR 1023.210, 1023.400, 1023.410.

[151] *See* 31 CFR 1023.320(a)(1).

[152] *Amendment to the Bank Secrecy Act Regulations—Requirement that Brokers or Dealers in Securities Report Suspicious Transactions,* Final Rule, 67 FR 44048, 44052 (Jul. 1, 2002).

[153] 31 U.S.C. 5312(a)(2).

[154] *See* 31 U.S.C. 5312(a)(2)(Y).

[155] *See, e.g.,* 31 U.S.C. 5318(g)(1) (SARs); 31 U.S.C. 5318(h)(1) (AML/CFT program).

institution to impose such obligations on certain foreign-located investment advisers in the final rule.

Certain requirements of the final rule, however—in particular the recordkeeping obligations of subpart D and the special measures of subpart F—apply to ''domestic financial institution'' as defined in the BSA (also sometimes referred to as a ''domestic financial agency'').[156] The BSA describes the term ''a domestic financial institution'' as applying to ''an action in the United States of a financial agency or institution.'' [157] Congress thus defined a domestic financial institution based on where an institution *acts* rather than where it is organized or headquartered. FinCEN interprets, as it has in the past, ''an action in the United States'' to include actions with a nexus to the United States.

While the final rule's AML/CFT program and SAR requirements rest on FinCEN's broader authority to define ''financial institutions,'' through its focus on a U.S. nexus, the final rule's approach with respect to foreign-located financial institutions is consistent with the reach of ''domestic financial institution'' as defined in the BSA. Requirements for foreign-located investment advisers apply when a foreign-located investment adviser engages in advisory activities with a U.S. nexus, whether by having staff in the United States or advising U.S. persons or advising foreign-located private funds with an investor who is a U.S. person. FinCEN took a similar approach with regard to foreign-located MSBs in requiring them to comply with its regulations for activities with a U.S. nexus even if some portion of the activity occurs in a foreign jurisdiction (such as transmitting funds to the United States from abroad). Thus, in accord with existing practice, FinCEN is regulating foreign-located investment advisers with a U.S. nexus based upon Congress' authorization of the Secretary to determine financial institutions by regulation and to regulate foreign-located institutions acting within the United States.[158]

Nonetheless, one commenter argued that Congress intended to limit the application of the BSA to financial institutions located in the United States when it passed the Currency and Foreign Transactions Reporting Act in 1970 (the ''1970 Act''), which later became part of the BSA. At the outset, the text of the 1970 Act is not limited in this manner nor is FinCEN aware that Congress otherwise intended it to be. Section 203 of the 1970 Act, which defines the term ''financial institution,'' states that ''the term 'domestic', used with reference to institutions or agencies, limits the applicability of the provision wherein it appears to the performance by such institutions or agencies of functions within the United States.'' [159] Similar to the term ''domestic financial institution'' in the current BSA, this use of the term ''domestic'' grants jurisdiction based upon where a financial institution acts—in the 1970 Act, by performing certain functions—rather than where it is located. Even if Congress intended to limit the reach of the 1970 Act with regard to foreign located financial institutions, the 1970 Act was a distinct statute focused on ensuring that banks and other institutions maintained sufficient records to assist government investigations.[160]

While maintaining certain records to assist in government investigations remains one of the purposes of the BSA, Congress has repeatedly amended the BSA to expand its scope, including the Money Laundering Control Act of 1986; [161] the Annunzio-Wylie Anti-Money Laundering Act of 1992; [162] the USA PATRIOT Act of 2001,[163] and the AML Act.[164] For example, Title III of the USA PATRIOT Act of 2001—styled the International Money Laundering Abatement and Anti-Terrorist Financing Act—amended the BSA to address the threat of international terrorism,[165] including the BSA's AML program and SAR filing requirements.[166] The AML Act amended the purposes of the BSA to include addressing a number of international phenomena, including the facilitation of ''intelligence and counterintelligence activities . . . to protect against terrorism'' and assessments to ''safeguard the national security of the United States.'' [167] These amendments to the BSA since 1970, among others, demonstrate that the BSA is intended to protect the United States against international threats to the financial system and national security, among other purposes, which may involve regulating some conduct occurring only in part within the United States.

Commenters further argue that FinCEN has changed its position on the scope of the BSA. In so doing, they point to a Treasury report from 1987,[168] the SAR requirements applicable to broker-dealers, and the 2003 investment adviser NPRM. These sources are inapposite to the final rule. The 1987 report was issued in response to a statutory requirement to inform Congress regarding BSA regulation of the foreign branches of U.S. banks at the time.[169] The concept of a foreign ''branch'' of a U.S. bank has a specific legal meaning tied to how banks are supervised and regulated that is not applicable in the context of investment advisers, which are a different type of financial institution.[170] Moreover, the 1987 report was written before the Annunzio-Wylie Anti-Money Laundering Act of 1992,the USA PATRIOT Act of 2001, and the AML Act expanded the scope and purposes of the BSA as mentioned above. Similarly, another type of financial institution—broker-dealers—are not required to file SARs when located abroad. This is a policy choice that FinCEN made for broker-dealers based on the relevant considerations for that sector and does not reflect an interpretation of FinCEN's authority to require such reporting.[171] Moreover, foreign-located investment advisers currently represent a significant proportion of the market and therefore account for significant illicit finance risks as discussed above.

FinCEN has also determined not to apply the language of its 2003 proposed rule for investment advisers and fully exempt all foreign-located RIAs and ERAs from the requirements of the proposed rule.[172] The approach taken in the final rule is consistent with FinCEN's 2015 proposed rule for investment advisers [173] and results from

[156] *See, e.g.,* 31 U.S.C. 5318(a)(2) (recordkeeping); 31 U.S.C. 5318A(a)(1) (special measures).

[157] 31 U.S.C. 5312(b)(1).

[158] *See* 31 U.S.C. 5312(a)(2)(Y); 31 U.S.C. 5312(b)(1).

[159] Public Law 91–508, Title II, sec. 203(e), (f).

[160] *Id.* at § 202.

[161] Public Law 99–570, Title I, Subtitle H.

[162] Public Law 102–550, Title XV.

[163] Public Law 107–56, Title III.

[164] Public Law 116–283, Div. F.

[165] Public Law 107–56, Title III, sec. 358(a), (b).

[166] *See, e.g., id.* at sec. 351–52.

[167] *See id.* at 6101(a) (codified at 31 U.S.C. 5311).

[168] Secretary of the Treasury, *Money Laundering and the Bank Secrecy Act: The Question of Foreign Branches of Domestic Financial Institutions* (Jul. 29, 1987).

[169] *See id.* at 30–33.

[170] The term ''branch'' is used in the final rule for its plain meaning rather than this specific concept in banking law.

[171] 67 FR 44048, 44052 (Jul. 1, 2002).

[172] *See* FinCEN, *Anti-Money Laundering Programs for Investment Advisers,* Notice of Proposed Rulemaking, 68 FR 23646, 23652 (May 5, 2003). The 2003 proposed rule would have defined an investment adviser to be only persons ''whose principal office and place of business is located in the United States.''

[173] FinCEN, *Anti-Money Laundering Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers,* Notice of Proposed Rulemaking, 80 FR 52680, 52684 (Sept. 1, 2015). The 2015 proposed rule would have defined an investment adviser to be any person ''who is

the significant growth of foreign investment into the United States from offshore financial centers and identified misuse of the investment adviser sector by transnational illicit finance threats (as identified in the Risk Assessment) in the two decades since the 2003 proposed rule was issued.

One commenter stated that foreign-located advisers could face conflict of laws and compliance concerns due to local laws where they are based, particularly data protection laws that limit the transfer of personal data. The commenter does not cite any example of a law that would create such a conflict, and FinCEN has not encountered such a conflict in the course of regulating other financial institutions located outside the United States. FinCEN expects investment advisers, like other BSA-defined financial institutions, to comply with their obligations under the BSA, and further believes foreign jurisdictions are unlikely to interpret their laws to conflict with or otherwise impede the final rule because the rule is consistent with FATF standards and the global interest in reducing illicit finance.[174] Nonetheless, while FinCEN expects financial institutions to comply with obligations under the BSA as a matter of course, financial institutions seeking guidance on this rule may submit requests for guidance to FinCEN if they encounter unexpected difficulties in doing so.[175]

Although one commenter said that regulating foreign-located advisers would ''deprive'' investors that are U.S. persons of their skills through higher costs and incentivize foreign-located advisers to avoid U.S. ties, FinCEN does not believe that this is the case. The United States is the world's largest and most competitive financial market and the requirements of this rule with respect to foreign-located investment advisers are substantially similar to the BSA requirements applicable to other non-U.S.-based financial institutions, which have not unduly impeded access by investors that are U.S. persons to financial institutions located abroad or inhibited foreign financial institutions from developing ties to the United States. And even if there are some effects along these lines, this would be outweighed by the increased protection of the U.S. financial system and U.S. national security due to the scope of the final rule.

These benefits also outweigh the remaining concerns raised by commenters about covering foreign-located advisers. Commenters argued that foreign-located advisers located in FATF-compliant jurisdictions, or certain similar AML/CFT regimes such as in the United Kingdom and the European Union, should be exempt from the requirements of the final rule. While a jurisdiction's compliance with FATF standards is helpful to the international effort against illicit finance, it is not a replacement for U.S. regulation where the institutions have significant links to the U.S. financial system. For instance, without a SAR filing obligation, under certain circumstances U.S. law enforcement would have to rely on information from foreign authorities to detect U.S.-based illicit activity involving foreign-located investment advisers. Another commenter raised concerns about foreign-located subadvisers' ability to comply with the requirements of the final rule. FinCEN addresses the application of the final rule to subadvisers (both U.S. and foreign-located) below. If such a foreign-located investment adviser cannot exclude subadvisory activity from its AML/CFT program, it may work with the primary adviser and others to address these issues.

FinCEN believes that concerns raised by commenters are not sufficient to justify reducing the scope of the final rule to exclude foreign-located investment advisers or to re-issue the rule to seek further comment on this issue. As described above with respect to RIAs and ERAs generally, FinCEN has considered potential AUM thresholds, including a $100 million U.S. AUM threshold for foreign-located ERAs, and appreciates commenters' concerns about the potential burden on relatively smaller entities to comply with the rule. Indeed, FinCEN has excluded from the final rule certain smaller and mid-sized RIAs. FinCEN similarly has considered comments encouraging FinCEN to focus on U.S. AUM and U.S. activities and operations, which informed FinCEN's determination to limit the scope of foreign-located advisers' advisory activities subject to the rule and to exclude foreign private advisers. However, as described above with respect to ERAs generally and as reflected in the Risk Assessment, FinCEN has determined that smaller ERAs present generally higher illicit finance risks than RIAs that do not advise private funds, especially those RIAs with lower or zero AUM excluded from the scope of this rule. Moreover, for ERAs, lower gross asset value of private funds advised in many cases does not correspond to lower illicit finance risk. FinCEN is concerned that an AUM threshold for smaller ERAs, including smaller foreign-located ERAs, would also be challenging to administer, for similar reasons described above.[176]

5. State-Registered Investment Advisers

Proposed Rule: FinCEN did not include State-registered investment advisers in the scope of the proposed rule but requested comment on the illicit finance risk for State-registered investment advisers and whether they should be included in the scope of the final rule.

Comments Received: Some commenters questioned FinCEN's exclusion of State-registered investment advisers from the expanded application of the rule. Three commenters requested that State-registered investment advisers be added to the definition of ''investment adviser'' in the proposed rule. The commenters claimed that excluding State-registered investment advisers from the requirements of the proposed rule may permit bad actors to exploit inadequate technology or perceived weaknesses in the oversight or regulation of State-registered investment advisers to circumvent AML/CFT controls at financial institutions. One commenter noted that certain state financial institutions have already emerged as hotspots for those who wish to hide their assets and minimize their tax burdens, especially through trusts. One commenter also recommended that, despite increased costs, State-registered investment advisers be subject to the proposed rule and be required to register with the SEC, and asserted that increasing costs may be ''partly offset by taxes on money that may have been laundered.'' Two commenters also suggested that FinCEN assess illicit finance activity involving investment advisers linked to Tribal activity.

Two commenters agreed with FinCEN's approach to not apply the proposed rule to State-registered investment advisers, but advised that FinCEN continue to monitor State-registered investment advisers for illicit finance risks. One commenter stated

registered or required to register with the SEC under section 203 of the Investment Advisers Act of 1940'' and, accordingly, would have applied to foreign-located investment advisers.

[174] *See, e.g.,* FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, the FATF Recommendations (Updated November 2023),* at 10, available at *www.fatf-gafi.org/en/publications/Fatfrecommendations/Fatf-recommendations.html,* (FATF Recommendation 2, stating that national AML/CFT policies and procedures should ''ensure the compatibility of AML/CFT/CPF requirements with Data Protection and Privacy rules and other similar provisions'').

[175] For questions regarding the BSA and FinCEN's implementing regulations, investment advisers may contact FinCEN's Regulatory Support Section at 1–800–767–2825 or email *frc@fincen.gov.*

[176] *See supra* Section III.B.3.

that money laundering risk posed by State-registered advisers should be lower than for RIAs and ERAs as State-registered advisers have lower AUM than RIAs. This commenter also stated that State-registered advisers are often comprised of a single person and thus know their customers personally.

Final Rule: In the final rule, FinCEN is not including State-registered investment advisers in the definition of ''investment adviser.'' FinCEN notes that while State-registered investment advisers may be misused to facilitate illicit finance activity, FinCEN continues to assess they are at lower risk for such activity than RIAs or ERAs. As noted by one commenter, State-registered advisers are smaller, in terms of customers, and tend to be localized. In addition, Treasury's Risk Assessment found few examples of State-registered investment advisers being used to move illicit proceeds or facilitate other illicit finance activity. Furthermore, including State-registered investment advisers within the scope of the definition of ''investment adviser'' would create significant challenges in monitoring compliance with AML/CFT requirements, as the SEC currently has no authority to examine them for compliance with the Advisers Act or the rules thereunder.

Given State-registered advisers' lower risk and the potentially disproportionate cost of imposing AML/CFT requirements on such advisers, FinCEN assesses that the final rule is less likely to achieve the same degree of benefits as for RIAs and ERAs. However, FinCEN will continue to monitor activity involving State-registered investment advisers for indicia of money laundering, terrorist financing, or other illicit finance activities and may consider regulatory measures if appropriate.

6. Foreign Private Advisers and Family Offices

Proposed Rule: FinCEN's proposed regulation did not apply to foreign private advisers or family offices because such entities are not RIAs or ERAs pursuant to the Advisers Act and its implementing regulations. FinCEN sought comment on whether any excluded entities, in particular family offices, should be included in the scope of the proposed rule.

Comments Received: Five commenters opposed the exclusion of foreign private advisers and family offices from the scope of the proposed regulation, arguing that the definitions under the Advisers Act that exclude foreign private advisers and family offices from SEC regulation bear little relevance to FinCEN's mandate to reduce illicit finance risks and the purposes of the proposed regulation. These commenters expressed concern that excluding foreign private advisers and family offices would simply lead some entities, including those engaged in illicit activity, to ''re-classify'' as family offices or foreign private advisers, thereby reducing the regulation's utility.

Other commenters noted the growth of the family office sector, noting one study of global family offices that found the average AUM for family offices was $900 million, and that these family offices had approximately half of their investments in North America. Another commenter cited cases demonstrating illicit finance risks involving family offices. Regarding foreign private advisers, one commenter noted that in 2022, foreign private advisers reported that roughly 40 percent of clients and 28 percent of assets were reportedly sourced outside the United States. On this basis, these commenters proposed that FinCEN amend the proposed regulation to include such entities, despite the scope of the Advisers Act and the SEC's current examination authority.

Final Rule: FinCEN recognizes that foreign private advisers and family offices may face illicit finance risks that could be mitigated through their inclusion in the rule. However, the risks are not identical to those posed by other investment advisers. For example, family offices, as defined pursuant to regulations issued under the Advisers Act, cannot have advisory clients outside of family members and certain additional ''family clients.'' [177] This makes it easier to ascertain the source of funds for such customers and less attractive for those seeking to obscure their identity or their source of funds. Foreign private advisers, to qualify for the exclusion from SEC registration, have fewer U.S. clients and fewer ties to the U.S. financial system than RIAs and ERAs.[178] Both types of entities are statutorily exempted from the requirements of the Advisers Act and its implementing regulations.[179] Including them within the scope of the definition of ''investment adviser'' would therefore create challenges in monitoring compliance with AML/CFT requirements, primarily because the SEC currently has no authority to examine them. In regard to family offices specifically, FinCEN notes that other jurisdictions with economies and AML/CFT regimes similar to the United States have also excluded family offices or similar entities from the scope of AML/CFT regulations impacting entities providing investment adviser-like advisory services.[180] This exclusion is also consistent with international AML/CFT standards set by the FATF, which do not require such entities be subject to AML/CFT requirements.

FinCEN will continue to monitor activity involving foreign private advisers and family offices for indicia of the risks of money laundering, terrorist financing, or other illicit finance activities and may take regulatory action if appropriate.

7. Other Comments Related to the Definition of ''Financial Institution'' and ''Investment Adviser''

One individual commenter suggested Treasury change regulations applying to certain state-chartered banks as part of the final rule. The commenter claimed that ''some states may have inadequate oversight regulations (sometimes intentional) that will allow local banks to skirt more strict oversight'' and serve as an entry point for private equity funds seeking to move funds through the international financial system, as these banks may offer investment management services similar to investment advisers. The commenter recommended that state-chartered banks be required to be federally chartered to operate across state lines, and that a state-chartered bank must clear through a Federal Reserve Bank any funds that are received from or sent to a foreign jurisdiction.

Two commenters suggested that FinCEN explicitly include real estate-focused investment funds in the scope of the proposed regulation. These commenters claimed that while real estate funds are generally not covered by the Advisers Act because real estate held in fee simple ownership is not considered a ''security'' by the SEC, pooled real estate investment vehicles

[177] 17 CFR 275.202(a)(11)(G)–1.

[178] *See* 15 U.S.C. 80b–2(a)(30), 80b–3(b)(3); *see also supra* note 34.

[179] *See* 15 U.S.C. 80b–2(a)(11)(G) (excluding family offices as defined by the SEC from the Advisers Act definition of ''investment adviser''); 15 U.S.C. 80b–3(b)(3) (exempting foreign private advisers from registration with the SEC).

[180] For example, in Germany, the Money Laundering Act refers to the Banking Act for definitions of obliged entities, and the Banking Act does not require licensing for single-family offices. *Hinweise zur Erlaubnispflicht gemäß KWG und KAGB von Family Offices,* sec. 4(c), BaFin (updated Jul. 12, 2018), *https://www.bafin.de/SharedDocs/Veroeffentlichungen/DE/Merkblatt/mb_140514_familyoffices.html.* Hong Kong exempts most single-family offices from licensing requirements. *Family Offices FAQ,* Securities and Futures Commission of Hong Kong (last updated Sep. 8. 2020), available at *https://www.sfc.hk/en/faqs/intermediaries/licensing/Family-Offices.*

are structured similarly to other private funds and can pose illicit finance risks, including money laundering, public corruption, and potential national security risks.

Another commenter noting the preamble discussion on AML/CFT requirements applicable to dual registrants and affiliates and wishing to avoid duplication of resources and jurisdictional conflicts between the SEC and other federal functional regulators, suggested modifying the definition of ''investment adviser'' to exclude ''persons that are subject to enterprise-wide BSA regulation at a depository institution or trust company.''

Regarding regulatory changes to state-chartered banks, FinCEN notes that state-chartered banks are subject to comprehensive supervision, including for AML/CFT requirements.[181] This mitigates the need to include state-chartered banks within the final rule, and making the suggested change would involve considerations beyond their potential investment management activities, as well as consultations with other state and Federal regulators. As such, FinCEN declines to pursue that recommendation as part of this rulemaking.

Regarding real estate-focused funds, FinCEN notes that it has focused AML/CFT regulatory efforts at the level of the adviser rather than any specific customer or service. To the extent real estate investment funds are advised by an investment adviser or an investment adviser is otherwise involved in their operation, there will be a BSA-defined financial institution involved in their operation. Separately, FinCEN has also proposed a rule to require the reporting of buyer and seller information for certain residential real estate transactions.[182] Both factors are likely to reduce the risks associated with real estate-focused funds. Therefore, FinCEN declines to explicitly focus this final rule on any real estate-focused investment activity.

FinCEN also declines the suggestion to modify the definition of ''investment adviser'' to exclude ''persons that are subject to enterprise-wide AML/CFT regulation at a depository institution or trust company.'' Doing so would remove a significant group of covered advisers from SEC examination [183] and limit the ability of the SEC, as the federal functional regulator for investment advisers, to identify and mitigate potential systemic illicit finance risks that might arise in the sector. FinCEN noted in the IA AML NPRM and reiterates below, a depository institution or trust company with an investment adviser subsidiary or affiliate is not required to develop a separate AML/CFT program for its adviser subsidiary or affiliate if the depository institution or trust company's existing program addresses the identified money laundering, terrorist financing, and other illicit finance risks for the adviser. FinCEN believes this flexibility appropriately balances the benefits to having cost-effective enterprise-wide AML/CFT programs with ensuring that all relevant Federal functional regulators have the appropriate authority to supervise institutions conducting activities within their supervisory mandate.

C. Recordkeeping and Travel Rules and Currency Transaction Reports

Proposed Rule: FinCEN proposed to apply to investment advisers certain BSA recordkeeping regulations that apply broadly to financial institutions, codified as 31 CFR part 1010, subpart D (sections 1010.400 through 1010.440). Subject to specified exceptions, such application would require investment advisers to comply with the Recordkeeping and Travel Rules, which are codified at 31 CFR 1010.410(e) and 31 CFR 1010.410(f), respectively, and require financial institutions to create and retain records for extensions of credit and cross-border transfers of currency, monetary instruments, checks, investment securities, and credit in amounts exceeding $3,000. The proposed rule would allow investment advisers to deem the requirements of these recordkeeping requirements satisfied with respect to any mutual fund that it advises. FinCEN also proposed that RIAs and ERAs be required to report transactions in currency over $10,000. Currently, all investment advisers report such transactions on Form 8300. Under the proposed rule, a CTR would replace Form 8300 for RIAs and ERAs.

Comments Received: FinCEN received nine comments on the proposed requirement that investment advisers file CTRs and proposal to apply the Recordkeeping and Travel Rules to investment advisers. Two commenters stated their support for both FinCEN's proposal to require investment advisers to file CTRs and comply with the Recordkeeping and Travel Rules requirements. A commenter asserted that while financial institutions such as banks associated with wealth management services already implement these rules, the rules are still necessary to close the potential gaps or loopholes for bad actors. The commenter also asserted that these Recordkeeping and Travel Rule requirements should be considered the bare minimum for investment advisers and that similar requirements are already in place for many RIAs and ERAs not domiciled in the U.S.

Other commenters questioned whether many advisers can logistically comply with the CTR, Recordkeeping, and Travel Rule requirements in the proposed rule. Several commenters stated that advisers who do not manage customer assets typically do not touch currency or other funds outside of the advisory or subscription fees received for their services. One commenter asserted that such advisers have no visibility into their customers' investment activities or their movement of funds and securities, all of which takes place through financial institutions such as banks or broker-dealers that are already subject to the CTR, Recordkeeping, and Travel Rules. In these commenters' view, applying these requirements to investment advisers would be duplicative and provide no new information to law enforcement. One commenter claimed that while a customer may authorize a bank or broker-dealer to accept investment management or transactional instructions from an adviser in some cases, compared with other financial institutions involved in the funds transfer process, the adviser may not be as well-positioned to view how the client's account is funded, where withdrawals from the account are sent, or whether there is unusual wire activity. One commenter called on FinCEN to either exempt advisers from this rule, or delay implementation until a new CIP requirement for investment advisers may be adopted, while another commenter claimed that other financial institutions subject to AML program requirements are exempt from the Recordkeeping and Travel Rules.

Several commenters asked for additional clarification from FinCEN on the scope of the Recordkeeping and Travel Rules as applied to investment advisers. One commenter requested that FinCEN explain how it expects advisers to implement these rules, given that

[181] *See, e.g.,* FDIC, *The Bank Secrecy Act: A Supervisory Update* (Jun. 2017, last updated Apr. 6, 2023), at 23, n. 5–6, available at *https://www.fdic.gov/regulations/examinations/supervisory/insights/sisum17/sisummer2017-article02.html.*

[182] *See* FinCEN, *Anti-Money Laundering Regulations for Residential Real Estate Transfers,* Notice of Proposed Rulemaking, 89 FR 12424 (Feb. 16, 2024).

[183] According to a Treasury analysis of Form ADV data as of December 31, 2022, only four percent of RIAs reported being affiliated with a bank or trust company, but they held over 40 percent of total AUM reported on Form ADV.

these advisers do not accept or hold investor funds, maintain accounts, or engage in transactions with clients or investors. Another commenter asked how these rules would impact private funds. Another requested that FinCEN confirm that it is not asking or requiring advisers to create or share records outside of the ordinary course of business, and that FinCEN is not asking advisers to collect or capture information not otherwise required by the adviser's AML/CFT program.

Final Rule: The final rule does not exempt RIAs and ERAs from the requirement to file CTRs or adhere to the Recordkeeping and Travel Rules. Accordingly, RIAs and ERAs will be required to file CTRs and create and retain records for transmittals of funds.

Under the Recordkeeping and Travel Rules, financial institutions must create and retain records for transmittals of funds and ensure that certain information pertaining to the transmittal of funds ''travels'' with the transmittal to the next financial institution in the payment chain.[184] When a financial institution accepts and processes a payment sent by or to its customer, then the financial institution would be the ''transmittor's financial institution'' or the ''recipient's financial institution,'' respectively. The transmittor's financial institution must obtain and retain the name, address, and other information about the transmittor and the transaction.[185] The Recordkeeping Rule also requires the recipient's financial institution (and in certain instances, the transmittor's financial institution) to obtain or retain identifying information on the recipient.[186] The Recordkeeping and Travel Rules apply to transmittals of funds that equal or exceed $3,000.

The term ''transmittal of funds'' includes funds transfers processed by banks, as well as similar payments where one or more of the financial institutions processing the payment (*e.g.,* the transmittor's financial institution, an intermediary financial institution, or the recipient's financial institution) is not a bank.[187] There are exceptions that are designed to exclude transmittals of funds from the Recordkeeping and Travel Rules' requirements when certain categories of financial institutions are the transmitter and recipient.[188] The final rule will add investment advisers to the list of institutions among which transfers are excepted from the travel rule. This means that investment advisers will be treated in the same manner—and with the same exceptions for transfers to certain other financial institutions—as banks, broker-dealers, futures commission merchants, introducing brokers in commodities, and mutual funds.

The primary requirements for investment advisers under the Recordkeeping and Travel Rules will be when they act as transmittor or recipient in transactions other than these excepted transfers. While many RIAs and ERAs do not engage in the type of transactional activity covered by these requirements, this is not uniform among all RIAs and ERAs. For instance, one commenter identified that there is significant variation among RIAs and ERAs with regard to their visibility into, and involvement in, funding and other cash transactions related to their clients' accounts, noting that advisers to retail clients may be more actively involved in facilitating the account opening and funding process for their clients, including forwarding wire instructions from the client to the custodian, while this may be less common among advisers to institutional clients. FinCEN agrees with the commenters who noted that these similar requirements are already in place for many RIAs and ERAs who are not domiciled in the U.S. due to the requirements of foreign laws.[189] Further, as noted by commenters, investment advisers can meet this reporting requirement with minimal additional costs, while providing law enforcement with useful AML/CFT information.[190]

As requested by several commenters, FinCEN is providing some additional guidance on what information it expects advisers to collect to comply with the Recordkeeping and Travel Rules. First, FinCEN notes that in circumstances where an adviser's customer has a direct account relationship with a qualified custodian that is subject to AML/CFT requirements, including the Recordkeeping and Travel Rules, such as a bank or broker-dealer, and requests that such qualified custodian initiate a funds transfer or transmittal of funds, the adviser would generally not be required to comply with the requirements of the Recordkeeping and Travel Rules. In this circumstance, the qualified custodian would have the obligation to comply with the Recordkeeping and Travel Rules as the entity that received the instruction and transmitted the funds. This would likely apply to many RIAs advising retail customers that custody customer assets with a qualified custodian. However, for RIAs advising private funds, as well as ERAs, their authority and discretion over the fund and customer assets in the fund may make them more likely to have to comply with the Recordkeeping and Travel Rules. In terms of the information that advisers may have, FinCEN notes that under 17 CFR 275.204–2 (the Books and Records Rule), RIAs are required to maintain ''originals of all written communications received and copies of all written communications sent by such investment adviser relating to . . . Any receipt, disbursement or delivery of funds or securities.'' [191] This requirement may assist RIAs in satisfying their obligations to identify relevant information that may be required to be collected under the Recordkeeping and Travel Rules in those circumstances where an RIA is a transmittor's financial institution or recipient's financial institution.

Regarding CTRs, in instances where investment advisers are not involved in one or more related transactions in currency of more than $10,000, an

[184] 31 CFR 1010.410(e), (f); 31 CFR 1020.410(a). Financial institutions are also required to retain records for five years. *See* 31 CFR 1010.430(d).

[185] 31 CFR 1010.410(e)(1)(i), (e)(2).

[186] 31 CFR 1010.410(e)(1)(iii), (e)(3) (information that the recipient's financial institution must obtain or retain).

[187] *See* 31 CFR 1010.100(ddd) (defining ''transmittal of funds''); *see also* 31 CFR 1010.100(aa), (qq), (ggg) (defining ''intermediary financial institution,'' ''recipient's financial institution,'' and ''transmittor's financial institution'' to include both bank and nonbank financial institutions).

[188] *See* 31 CFR 1010.410(e)(6), (f)(4); 31 CFR 1020.410(a)(6). As relevant here, section 1010.410(e)(6)(i) excludes from the requirements of the Recordkeeping Rule ''[t]ransmittals of funds where the transmitter and the recipient'' are certain types of listed financial institutions. Section 1010.410(f)(4) excludes these same transmittals from the Travel Rule. This rule amends section 1010.410(e)(6) to add ''investment adviser'' to its list of financial institutions.

[189] For example, a financial institution located in a foreign country may serve as a ''qualified custodian,'' 17 CFR 275.206(4)–2(d)(6)(iv), and most, if not, all, such foreign institutions would be subject to similar AML/CFT requirements under the laws and regulations of their home country jurisdiction. For instance, FATF Recommendation 11 requires financial institutions to maintain certain transactional and customer due diligence records for at least five years, while FATF Recommendation 16 requires originators and beneficiaries to maintain records of customer information for certain wire transfers. FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, the FATF Recommendations (Updated November 2023),* at 15, 17, available at *www.fatf-gafi.org/en/publications/Fatfrecommendations/Fatf-recommendations.html.* Over 175 jurisdictions around the world have implemented these requirements into domestic law or regulation. *See* FATF, Consolidated Assessment Ratings (Jul. 18, 2024), available at *https://www.fatf-gafi.org/en/publications/Mutualevaluations/Assessment-ratings.html.*

[190] This is because, under 17 CFR 275.204–2, RIAs are already required to collect and maintain such information under the Books and Records Rule.

[191] *See* 17 CFR 275–204–2(a)(7)(ii).

investment adviser will generally not need to file CTRs.[192] However, all investment advisers are currently required to file reports for the receipt of more than $10,000 in currency and certain negotiable instruments using joint FinCEN/Internal Revenue Service Form 8300.[193] This means that many advisers likely have some procedure in place for recording information for transactions above this threshold. FinCEN also agrees with the commenter noting that a wide variety of U.S. financial institutions have been filing CTRs for decades and minimize the reporting burden through widely available automated software. In addition, FinCEN would like to clarify that an adviser is not required to purchase any software to file a CTR; CTR filing is available for free via the FinCEN BSA E-Filing System.

D. Applicability of AML/CFT Program Requirements

As discussed above, the BSA authorizes Treasury—and thereby FinCEN—to prescribe minimum standards for AML/CFT programs.[194] Section 5318(h)(2) of the BSA further provides that in prescribing these minimum standards, Treasury take into account, among other factors, that AML/CFT programs should be reasonably designed to assure and monitor compliance with the requirements of the BSA and regulations issued thereunder, as well as risk-based, including ensuring that more attention and resources of financial institutions should be directed towards higher-risk customers and activities, consistent with the financial institution's risk profile, rather than lower-risk customers and activities.[195]

In light of the BSA's clear direction, FinCEN reiterates that the AML/CFT program requirement is not a one-size-fits-all requirement but is risk-based and must be reasonably designed. The risk-based and reasonably designed approach of the rule is intended to give investment advisers the flexibility to design their programs so that they are commensurate with the specific risks of the advisory services they provide and the customers they advise as described in section 5318(h)(2) of the BSA.[151] For example, large firms may assign responsibilities to the individuals and departments carrying out each aspect of the AML/CFT program, such as AML/CFT employee training, SAR filing, and CDD, while smaller firms would be expected to adopt procedures that are consistent with their (often) simpler, more centralized organizational structures (for instance integrating aspects of AML/CFT compliance with other compliance or monitoring functions). This flexibility is designed to ensure that all investment advisers subject to FinCEN's AML/CFT program requirements, from the smallest to the largest, and the simplest to the most complex, have in place internal policies, procedures, and controls appropriate to their advisory business to prevent the investment adviser from being used to facilitate money laundering, terrorist financing, or other illicit finance activities and to achieve and monitor compliance with the applicable provisions of the BSA and FinCEN's implementing regulations.

Because investment advisers operate through a variety of different business models, one generic AML/CFT program for this industry is not possible; rather, each investment adviser must develop a program based upon its own business structure. This requires that each investment adviser identify its exposure to money laundering, terrorist financing, and other illicit finance activity risks; understand the BSA requirements applicable to it; identify the risk factors relating to these requirements; design the internal policies, procedures and controls that will be required to reasonably assure compliance with these requirements; and periodically assess the effectiveness of the procedures and controls.

An investment adviser (other than a foreign-located investment adviser) will be required to apply an AML/CFT program to all advisory services provided to all customers, other than with respect to mutual funds, collective investment funds, and other investment advisers subject to the rule. Advisory services subject to an AML/CFT program would include, for example, the management of customer assets and the submission of customer transactions for execution. The adviser will not be required to apply its AML/CFT program to non-advisory services. One example of non-advisory services would be in the context of private funds, including venture capital funds: an adviser's personnel may play certain roles with respect to the portfolio companies in which its customer fund invests. Generally, activities undertaken in connection with those roles (*e.g.,* making managerial/operational decisions about the activities of portfolio companies) would not be ''advisory activities.''

Moreover, in response to comments regarding an investment adviser's obligation with regard to portfolio companies, as discussed further below, the objective standard that an investment adviser must file a SAR when it ''knows, suspects, or has reason to suspect'' certain suspicious transactions parallels the language of the rule for mutual funds, with which many investment advisers are familiar.[196] As clarified in guidance for mutual funds, this standard should not require regulated entities to collect additional information beyond that available ''through the account opening process and in the course of processing transactions, consistent with the mutual fund's required anti-money laundering procedures.'' [197] Similarly, an investment adviser therefore should be able to satisfy this requirement with regard to a portfolio company through the information available to it in the course of directing investments in the

[192] For purposes of 31 CFR 1010.311 and 1010.313, the term ''transaction in currency'' means a transaction involving the physical transfer of currency from one person to another. A transaction, which is a transfer of funds by means of bank check, bank draft, wire transfer, or other written order, and does not include the physical transfer of currency, is not a transaction in currency for this purpose. *See* 31 CFR 1010.100(bbb)(2).

[193] 31 CFR 1010.330; 26 CFR 1.6050I–1. ''Currency'' includes cashier's checks, bank drafts, traveler's checks, and money orders in face amounts of $10,000 or less, if the instrument is received in a ''designated reporting transaction.'' 31 CFR 1010.330(c)(1)(ii)(A). A ''designated reporting transaction'' is defined as the retail sale of a consumer durable, collectible, or travel or entertainment activity. 31 CFR 1010.330(c)(2). In addition, an investment adviser would need to treat the instruments as currency if the adviser knows that a customer is using the instruments to avoid the reporting of a transaction on Form 8300. 31 CFR 1010.330(c)(1)(ii)(B).

[194] 31 U.S.C. 5318(h)(1)–(2) (authorizing Treasury, after consultation with the appropriate Federal functional regulator (for investment advisers, the SEC), to prescribe minimum standards for AML/CFT programs, and setting forth factors to be taken into account in doing so). In developing this final rule, FinCEN consulted and coordinated with SEC staff, including with respect to the statutorily specified factors set out in 31 U.S.C. 5318(h)(2)(B).

[195] 31 U.S.C. 5318(h)(2).

[151] The legislative history of the BSA reflects that Congress intended that each financial institution should have some flexibility to tailor its program to fit its business, considering factors such as size, location, activities, and risks or vulnerabilities to money laundering. This flexibility is designed to ensure that all firms, from the largest to the smallest, have in place policies and procedures appropriate to monitor for money laundering. *See* USA PATRIOT Act of 2001: Consideration of H.R. 3162 Before the Senate, 147 Cong. Rec. S11039–11041 (Oct. 25, 2001) (statement of Sen. Sarbanes); Financial Anti-Terrorism Act of 2001: Consideration Under Suspension of Rules of H.R. 3004 Before the House of Representatives, 147 Cong. Rec. H6938–39 (Oct. 17, 2001) (statement of Rep. Kelly) (provisions of the Financial Anti-Terrorism Act of 2001 were incorporated as Title III in the Act).

[196] 31 CFR 1024.320(a)(2).

[197] FinCEN, *Frequently Asked Questions Suspicious Activity Reporting Requirements for Mutual Funds* (Oct 4, 2006), available at *https://www.fincen.gov/resources/statutes-regulations/guidance/frequently-asked-questions-suspicious-activity-reporting.*

securities of a portfolio company, such as the due diligence it conducts before directing an investment, and the measures provided in its AML/CFT program regarding the adviser's advisory activities. The final rule does not require an investment adviser to collect additional information from portfolio companies about their activities. But if the information the investment adviser already possesses or obtains as part of its processes for directing investment in the securities of a portfolio company or through its AML/CFT program means that the adviser ''knows, suspects, or has reason to suspect'' that there is suspicious activity occurring at a portfolio company, it is required to file a SAR.

Under the risk-based approach, an investment adviser should tailor its AML/CFT program according to the specific risks presented by its various services and customers. Factors that may indicate a service or a customer is lower risk include the jurisdiction of registration of legal person customers, and whether the legal person customer is subject to other U.S. AML/CFT regulatory requirements.

As described below and consistent with the risk-based approach, FinCEN will permit investment advisers to exclude mutual funds, collective investment funds, and other investment advisers that they advise that are also subject to the rule from their AML/CFT programs (and other requirements of the final rule) in light of existing AML/CFT program requirements under the BSA. FinCEN declines to further limit the scope of AML/CFT requirements for other wrap-fee programs and separately managed accounts, but notes that the flexibility in the risk-based approach can allow an investment adviser that is a portfolio manager in a wrap-fee program or provides advisory services to a separately managed account to appropriately adjust its application of AML/CFT measures based on the presented risk.

1. Mutual Funds and Collective Investment Funds

Proposed Rule: FinCEN proposed to exclude activities of investment advisers in advising mutual funds from the rule's AML/CFT program requirements. Specifically, FinCEN proposed to exempt advisers from having to include mutual funds customers in their AML/CFT programs, and by extension the reporting and recordkeeping requirements of part 1032, subparts C and D. FinCEN, however, did not propose to allow investment advisers to exclude mutual fund customers from the information sharing, due diligence, and special measures requirements of part 1032, subparts E and F. Moreover, the proposed exclusion applied only to mutual funds that ''developed and implemented an AML/CFT program compliant with the AML/CFT program requirements applicable to mutual funds under another provision of this subpart.''

As explained in the IA AML NPRM, FinCEN proposed the AML/CFT program exclusion to recognize that mutual funds ''typically do not have their own independent operations,'' and ''are entirely operated, and compliance with their legal obligations is undertaken, by their service provider entities, foremost among them their investment advisers.'' [198] FinCEN also stated that ''including a mutual fund within its investment adviser's AML/CFT program would be redundant.'' [199]

FinCEN did not explicitly address the status of collective investment funds, which are sometimes also referred to as collective investment trusts, in the IA AML NPRM.

Comments Received: Three commenters supported the proposed rule's exclusion of mutual funds, including open-end exchange-traded funds (ETFs), from the scope of an investment adviser's AML/CFT program. These comments noted that mutual funds, including open-end ETFs that are open-end management investment companies, are already subject to similar AML/CFT requirements, and concurred with FinCEN's reasoning for the proposed exclusion.

One of these three commenters supported the intent of the proposed exclusion—noting that mutual funds have already been subject to similar AML/CFT program requirements—but took issue with the scoping and structure of this proposed exclusion. This commenter expressed that, as written, this proposal would make the investment adviser responsible for ensuring that the mutual funds it advises are compliant with their AML/CFT program obligations, and suggested that an investment adviser should not have to ensure the extent of a mutual fund's compliance with mutual fund AML/CFT program obligations as a basis for exempting them from the investment adviser's AML/CFT program. As an alternative, the commenter recommended that FinCEN adopt the exemptive language from the 2003 proposal, which provided that ''an investment adviser ''may exclude from its anti-money laundering program any pooled investment vehicle it advises that is subject to an anti-money laundering program requirement under another provision of this subpart.''

One individual commenter recommended bringing mutual funds under these provisions as well, but did not acknowledge the long-standing application of AML/CFT program obligations to mutual funds.

Two commenters also suggested that FinCEN exclude bank-sponsored collective investment trusts from the scope of the proposed rule because collective investment trusts are subject to the AML/CFT reporting obligations of a collective investment trust's bank sponsor and are available only to/through institutional retirement plans, making them inherently low-risk from an AML/CFT perspective.

Final Rule: FinCEN agrees with commenters who support the proposed exclusion of mutual funds from the requirements of an investment adviser's AML/CFT program, given that mutual funds have long had their own AML/CFT program requirements. Accordingly, the final rule maintains an exclusion of mutual funds from the requirements of an investment adviser's AML/CFT program requirements. This exclusion is permissive and not mandatory; an investment adviser could decide to include the mutual funds it advises in complying with any aspect of the final rule. An adviser could also integrate its overall AML/CFT program and any mutual fund specific program if doing so is risk-based and reasonable manner.

FinCEN also recognizes that, as drafted in the IA AML NPRM, the proposed regulation text may have limited the practical utility of the exclusion by making the investment adviser responsible for ensuring that the mutual funds it advises have ''implemented'' their AML/CFT programs in a ''compliant'' manner. The exclusion was not intended to require an investment adviser to separately ensure a mutual fund's AML/CFT program is in compliance with the fund's AML/CFT program rule requirements for mutual funds in order to exempt the fund from the investment adviser's AML/CFT program. FinCEN has therefore decided to modify the text of the regulation to categorically permit an investment adviser to exclude any mutual fund from its AML/CFT program

[198] 89 FR at 12123.

[199] *Id.* at 12123–24 (''In particular, we expect that the investment adviser to a mutual fund will have both (1) access to the exact same information concerning the mutual fund or its investors that is available to the mutual fund, in part in connection with its AML/CFT obligations and (2) a significant role generally in the operations of the mutual fund's regulatory responsibilities, including its AML/CFT program.'').

without the adviser having to verify that such a mutual fund has implemented an AML/CFT program. The modified text is reflected at section 1032.210(a)(2).

Regarding collective investment funds, FinCEN notes that collective investment funds are investment vehicles administered by a bank or trust company that hold commingled assets.[200] Each collective investment fund is established under a plan that details the terms under which the bank or trust company manages and administers the fund's assets. The bank or trust company acts as a fiduciary for the collective investment fund and holds legal title to the fund's assets as trustee. However, in some cases an RIA may be hired to provide advisory services to the collective investment fund. Participants in a collective investment fund are the beneficial owners of the fund's assets.

As noted by commenters, the banks and trust companies that sponsor and serve as trustees of a collective investment fund are already subject to AML/CFT reporting obligations under the BSA, and are the entities best situated to identify and assess risk associated with the participants in a collective investment fund, report suspicious activity, and implement other AML/CFT requirements. Commenters also noted that collective investment funds themselves are available only to institutional retirement plans or to other eligible discretionary fiduciary accounts of the bank, making them inherently low risk from an AML/CFT perspective.

FinCEN agrees that applying the AML/CFT requirements of the proposed rule to collective investment funds would be duplicative of existing requirements applicable to bank and trust company sponsors of collective investment funds. These AML/CFT obligations would be applied by the bank or trust company to the collective investment fund and its underlying participants, and would assess and mitigate any illicit finance risk arising from either the fund or its underlying customers. While collective investment funds, unlike mutual funds, are not separate legal entities, they are fiduciary accounts that serve a very similar purpose and function and are only available to participants who meet specific criteria in OCC regulations and other applicable laws. Therefore, FinCEN is expanding the exclusion from the AML/CFT program requirement to include both mutual funds and collective investment funds sponsored by a bank or trust company subject to the BSA.

FinCEN notes that collective investment funds can be sponsored not only by national banks, federal savings associations, and trust companies chartered by the OCC, but also by state-chartered banks and trust companies that are supervised by the FRB, the FDIC, or state bank regulators. Collective investment funds established by national banks and federal savings associations [201] are subject to requirements for such collective investment funds detailed in OCC regulations at 12 CFR 9.18. While these regulations only apply to collective investment funds established by national banks and federal savings associations, they have served as a model for many state statutes governing collective investment funds, many of which cross-reference 12 CFR 9.18.[202] In addition, collective investment funds of state-chartered banks and trust companies that seek tax-exempt status under IRC section 584 must comply with the OCC requirements in 12 CFR 9.18.[203] Compliance with IRC section 584 is necessary for the fund to qualify for favorable tax treatment—namely, taxation only at the participant level and not at the fund level.[204] Therefore, FinCEN has determined to define collective investment funds for the purposes of this exclusion by reference to OCC regulations at 12 CFR 9.18.

FinCEN has also added in a reference to ''other applicable law that incorporates the requirements of 12 CFR 9.18,'' so that the exclusion includes collective investment funds formed pursuant to state law or regulation, or other applicable law such as ERISA, so long as those other applicable laws incorporate the requirements of 12 CFR 9.18. FinCEN expects, however, that almost all collective investment funds established by a national or state bank or trust company subject to the BSA would meet these requirements. This additional text is reflected at section 1032.210(a)(2).

2. Requests To Exempt Certain Customers and Activities

Proposed Rule: FinCEN proposed to apply the requirements of the proposed rule to the full range of advisory services provided by an investment adviser, including advisory services that do not include the management of customer assets or knowledge of customers' investment decisions, as well as when an investment adviser acts as a ''subadviser'' in certain advisory activities. FinCEN requested comment on whether specific services provided by investment advisers should be included or excluded from coverage of this proposed rule, as well as alternative approaches for addressing compliance with the proposed rule when advisers provide particular services, such as subadvisory services, as well as other similar services. Thirteen commenters provided views on a range of advisory activities and customers. These generally related to three issues: (1) the treatment of subadvisory services under the proposed rule, (2) the treatment of certain customers under the proposed rule, and (3) the treatment of certain advisory services provided by investment advisers that do not involve the management of customer assets.

(a) Comments on Subadvisory Services, Wrap Fee Programs, and Separately Managed Accounts

Comments Received: 11 commenters asserted that an investment adviser acting as subadviser should be able to exclude its subadvisory relationships from its AML/CFT program. As noted by one commenter, ''Sub-Advisory Arrangements can exist in a number of formats, including managed account 'platforms,' wrap fee programs, separately managed accounts (SMAs), unified managed accounts (UMAs), other sub-advised accounts, and collective investment funds where a Primary Adviser sponsors the fund and retains Sub-Advisers to manage all or part of the fund's accounts or investments.'' Some commenters limited their comments to certain subadvisory relationships, such as separately managed accounts or wrap fee programs, while others referenced different types of subadvisory relationships.

These commenters stated that requiring an investment adviser to apply its AML/CFT program to a subadvisory relationship with another investment adviser (the primary adviser) would be duplicative of the requirements applied by the primary adviser. In addition, several commenters indicated that when an investment adviser acts as

[200] *See* OCC, *Comptroller's Handbook* (Collective Investment Funds) (May 2014), available at *https://www.occ.treas.gov/publications-and-resources/publications/comptrollers-handbook/files/collective-investment-funds/pub-ch-collective-investment.pdf.* Collective investment funds administered by national banks are governed by OCC regulations at 12 CFR 9.18.

[201] Federal savings associations are subject to 12 CFR 150, which requires compliance with 12 CFR 9.18 if establishing and administering a collective investment fund under 12 CFR 150.260(b).

[202] *See Comptroller's Handbook* (Collective Investment Funds) at p.3.

[203] *See* 26 U.S.C. 584(a)(2).

[204] *See* 26 U.S.C. 584(b)–(d).

subadviser, it has limited or no access to information about the primary investment adviser's underlying clients and does not have direct contact with those clients or account holders, and so would not be in a position to apply most aspects of its AML/CFT program to the subadvisory relationship and generally would be unable to monitor the relationship for suspicious activity. One commenter noted that in most subadvisory relationships, the primary adviser possesses the authority pursuant to a written agreement to appoint and replace each subadviser, which functions solely as a service provider to the primary adviser. Two commenters both noted the considerable challenges for non-U.S. subadvisers that manage foreign asset classes, as well as for U.S. subadvisers for non-U.S. accounts or fund structures, in implementing the proposed requirements. These commenters generally stated that FinCEN should exclude subadvisory activities from the scope of the proposed rule, and that responsibility for applying AML/CFT requirements should be with the primary adviser.

Commenters also recommended how FinCEN should treat subadvisory relationships if it decides not to exclude them from an investment adviser's AML/CFT program. Three commenters suggested FinCEN permit primary advisers and subadvisers to allocate applicable AML/CFT program and SAR reporting obligations to the primary adviser or sponsor, and that FinCEN should confirm that subadvisers would not be required to obtain any additional information about clients enrolled in managed account programs in order to discharge their AML/CFT program or SAR reporting obligations.

Two commenters recommended that the final rule should cover all of the advisory services provided, whether in a primary or subadvisory role. One commenter argued that in the private funds context, exempting subadvisers, who often make managerial and operational decisions for private funds, could encourage complex contractual arrangements to enable investment advisers to circumvent their AML/CFT obligations, and that subadvisers are treated as investment advisers under the Advisers Act. Both commenters also noted that including advisory activities may be especially important for digital advice platforms, as they are increasingly incorporated into services offered by larger investment advisers and for RIAs domiciled in other countries.

Final Rule: FinCEN recognizes the potential for duplication, which may also occur with other BSA-defined financial institutions that provide similar services to the same customers. FinCEN notes that subadvisory services, wrap-fee programs, and separately managed accounts can vary in structure and the allocation of services among participating financial institutions (depending on how these programs are structured and the role of other BSA-defined financial institutions). In addition, subadvisory services or wrap-fee arrangements are not defined by regulation but are industry terms applied to a range of advisory relationships. Further, there are some investment advisers, such as State-registered investment advisers, that are not covered by this rule, and RIAs and ERAs may enter into subadvisory or similar relationships with such uncovered advisers. These factors make it challenging to apply a categorical exemption or treatment to a type of advisory relationship for the purposes of this rule.

However, consistent with the exclusion for mutual funds and collective investment funds from an investment adviser's AML/CFT program described above, FinCEN assesses that permitting investment advisers to exclude certain advisory customers rather than particular advisory services from their AML/CFT programs strikes the appropriate balance between avoiding unnecessary duplication and limiting illicit finance risk. This duplication of AML/CFT measures by an investment adviser is particularly salient when an investment adviser is advising another investment adviser subject to this rule, and lacks a direct relationship with the underlying customer of the investment adviser, such as in the context of certain subadvisory relationships. In these circumstances, any illicit finance risk or useful information for law enforcement would be addressed by the AML/CFT program and reporting and recordkeeping obligations of the other investment adviser. Therefore, FinCEN is permitting an investment adviser to exclude from its AML/CFT program any investment adviser that is advised by the adviser and that is subject to this rule. This additional text is reflected at section 1032.210(a)(1)(iii).

As applied to subadvisers, this exclusion will permit an investment adviser (acting as subadviser) to exclude from its AML/CFT program another investment adviser (the primary adviser) to which it provides subadvisory services where the subadviser has a direct contractual relationship with the primary adviser and not with the underlying customer of that primary adviser. The investment adviser may also be able to exclude wrap-fee programs, separately managed accounts, or other advisory relationships, so long as the customer is another investment adviser as defined at section 1010.100(nnn) and the adviser does not have a direct contractual relationship with the underlying customer of the other investment adviser. FinCEN recognizes that this exclusion would not permit an investment adviser to exclude from its AML/CFT program advisory customers who are BSA-defined financial institutions other than an investment adviser, such as a broker-dealer or bank, and so would not address all of the duplication described by commenters.[205] For instance, an adviser would not be able to exclude from its AML/CFT program: (1) wrap-fee programs where a BSA-defined financial institution other than an investment adviser, such as a broker-dealer, is the sponsor; (2) any subadvisory relationships where the primary adviser is an investment adviser not covered by this rule, such as a State-registered adviser or exempt as a foreign private adviser; or (3) those customers with which the investment adviser has a direct contractual relationship governing the provision of advisory services, even if that contract calls for the investment adviser to act as a subadviser. In these circumstances, where the contractual relationship is with the underlying customer, an adviser acting as a subadviser would be better positioned to assess the risk of the customer and to request appropriate information from the customer. FinCEN therefore declines to exempt such activities from the final rule.

For subadvisory relationships that are not subject to this exclusion, an investment adviser is required to include those activities in the scope of its AML/CFT program. FinCEN notes that there is inherent flexibility in the risk-based approach required by the BSA, and that such flexibility can allow an investment adviser to appropriately adjust its application of AML/CFT measures based on the presented risk. For instance, subject to the requirements discussed below regarding delegation, an adviser could contractually delegate certain AML/CFT measures to a broker-dealer in a wrap-fee program where it is more appropriate for the broker-dealer to implement those measures. As discussed below, delegation will require the investment adviser to remain fully

[205] In the case of a dual registrant who is a customer of an investment adviser, the investment adviser could only exclude the dual registrant to the extent the dual registrant was acting as an investment adviser, and not as a broker-dealer.

responsible and legally liable for, and need to demonstrate, compliance with AML/CFT requirements. Such delegation would not alleviate the obligation of the adviser to remain accountable for its own compliance with the BSA.

In addition, some AML/CFT requirements in this rule, such as the reporting of suspicious activity, can be effectively implemented by an investment adviser even where the filing institution does not have a direct customer relationship with the subject of the SAR. FinCEN notes that it is common for two or more BSA-defined financial institutions to provide different services and establish different types of relationships with the same customer, and both entities can still effectively implement their own AML/CFT requirements. At the same time, in establishing and implementing an AML/CFT program that is risk-based and reasonably designed to address the specific risks of the advisory services it provides and the customers it advises, an investment adviser can incorporate into its program a consideration of the role played by other financial institutions with respect to those services and customers, and the AML/CFT obligations of those financial institutions.

(b) Certain Advisory Customers

Comments Received: One individual commenter suggested FinCEN exclude investment advisers that sub-advise European SICAVs,[206] which the commenter described as essentially foreign-located mutual funds, noting that these are subject to European Union (EU) AML/CFT regulations. Five commenters requested that either investment advisers providing advisory services to retirement plan participants, such as participants in participant-directed defined contribution retirement plans established under IRC Sections 401(k), 403(b), and 457, be exempt from the proposed rule or that such services be exempt from the requirements of the proposed rule. These commenters noted earlier guidance from Treasury that such plan participant accounts were lower risk for money laundering, and that advisers providing services to plan participants have no ability to monitor participant contributions or withdrawals. Commenters further stated that retirement plans necessarily require the involvement of other regulated entities that are independently subject to AML/CFT requirements, that those requirements would be applied to plan participants and their transactional activity, and that employer-sponsored retirement plans are also subject to other requirements under ERISA.

One commenter suggested that the final rule make clear that participants in employer-sponsored retirement plans are not the ''customer'' and, for CIP and beneficial ownership requirements, make clear that the definition of ''account'' does not include an account opened for the purpose of participating in an employer-sponsored retirement plan, and that the requirements of the proposed rule should only apply at the plan level.

Another commenter requested that exchange-traded closed-end funds be exempt from the final rule as relevant customer and transaction information is held by the transfer agent (and any broker-dealer used to purchase the shares) and not the RIA or ERA.

One commenter suggested FinCEN explicitly recognize certain types of advisory customers who categorically present a lower risk of money laundering and exclude them from the AML/CFT program requirements. These include retirement plans; employee securities corporations; publicly-traded corporations; accounts of government entities, such as municipal or state agencies; governmental pension plans; non-profit organizations; higher education endowment funds; and multi-employer plans. The commenter reasoned that these accounts are held in custody by a financial institution that is already subject to AML/CFT requirements. As an alternative, the commenter suggested that FinCEN clarify that investment advisers' AML/CFT program requirements with respect to these entities would be minimal under a risk-based approach.

Three commenters suggested that FinCEN exempt investment products offered by, or advisory services provided to, another financial institution subject to comprehensive AML/CFT requirements. These commenters argued that the rationale for exempting mutual funds from an investment adviser's AML/CFT program extends to an investment adviser's relationships with other financial institutions subject to an AML/CFT program obligation, which would also be consistent with FinCEN's 2003 proposed rule. One of these commenters proposed that to the extent the investment products are covered in any AML/CFT program requirement, FinCEN should make clear that a sound AML/CFT program can, and is authorized to, rely on the diligence conducted by a regulated intermediary.

Final Rule: Regarding European SICAVs or other pooled investment vehicles administered by foreign financial institutions, FinCEN declines to exempt such entities from the scope of the proposed rule. FinCEN acknowledges that such pooled investment vehicles may be subject to comparable AML/CFT regulation by foreign supervisory authorities, but that those regulations may not specifically address illicit finance risks to the U.S. financial system or provide relevant information directly to U.S. regulators or law enforcement. FinCEN notes that the application of foreign AML/CFT requirements to a pooled investment vehicle administered by a foreign financial institution can be a factor in determining risk associated with a particular type of foreign-located customer.

Regarding retirement plans, FinCEN recognizes the point made by several commenters that such plans are subject to regulation and supervision under ERISA as well as other laws and regulations governing retirement plans, and are generally only available through a BSA-regulated financial institution or an entity regulated under another federal framework. FinCEN declines to categorically exclude such plans from coverage under the proposed rule, however, because doing so would leave a material gap in addressing illicit finance risks. Such plans may not be offered directly through a financial institution with AML/CFT program, SAR, and recordkeeping obligations under the BSA, and applying AML/CFT requirements to investment advisers to such plans, such as SAR filing requirements, may help identify illicit activity involving the theft or misappropriation of plan assets. Moreover, the potential for duplication and any accompanying burden is reduced by the exemption for advisers to such plans who register with the SEC only as ''pension consultants'' as discussed above.

FinCEN declines to exempt the other types of advisory customers raised by commenters—such as employees' securities companies and other BSA-regulated financial institutions—for similar reasons. Advisory relationships with customers that are not themselves BSA-regulated financial institutions may not necessarily involve any institution other than the investment adviser with AML/CFT program and related obligations under the BSA. When there is another such institution—such as when investment advisers provide advisory services to another BSA-regulated financial institution—these institutions' AML/

[206] SICAV (Société d'investissement à Capital Variable) is a type of collective investment fund commonly used in Europe.

CFT programs may not be tailored to the specific risks posed by an advisory relationship and these institutions may lack the expertise of an investment adviser in monitoring the investment advisory relationship. Excluding such advisory customers would therefore leave a material gap in addressing illicit finance risks. However, investment advisers may take into account the nature of advisory relationships with such customers in determining the level of risk they pose, which, when the particular relationship is lower risk, will reduce the burden of including such customers in the investment advisers' AML/CFT programs.

Regarding exchange-listed registered closed-end funds, while they are not categorically excluded from an adviser's AML/CFT program under the final rule, such funds are typically offered to retail investors through a broker-dealer, which performs customer identification and verification as well as CDD, with the investment adviser managing the investment portfolio of the fund. As described further below, FinCEN would expect that, absent actual indicia of high-risk activity tied to such funds in specific circumstances, an adviser could treat these funds as lower risk for purposes of its AML/CFT program.

(c) Certain Advisory Activities

Comments Received: Six commenters provided comments on how the requirements of the proposed rule should apply to advisory services that do not involve the management of customer assets. These commenters supported the proposed exclusion of non-advisory services from the proposed rule, and suggested that advisory activities that do not involve the management of customer assets, such as non-discretionary financial planning and publication of securities-related newsletters, ''model portfolios,'' or research reports, should also be excluded, and that advisers that provide these only services would be exempt from the requirements of the proposed rule.

One commenter noted that these activities are entirely outside of the ''payment chain''—the adviser neither manages, directly or indirectly, the customer's assets nor participates in the transmittal of any customer funds to or from any recipient. The same commenter noted that many of these activities do not involve an advisory customer at all. Another commenter noted that advisers who do not manage customer assets are less likely to have information about customer specific activity that could facilitate SAR or CTR filings. Another commenter noted that an adviser providing model portfolio services to a financial services provider has no legal, advisory, or fiduciary relationship with the financial services provider's own customers or any information regarding the customers themselves, and so that adviser is in no position to fulfill the AML/CFT requirements that are outlined in the IA AML NPRM.

Two other commenters requested further examples and clarification regarding which non-advisory activities would not be covered, including clarifying that investment activities conducted on behalf of a fund would be considered non-advisory. Two commenters requested that non-U.S. activities of U.S. firms should be excluded from the final rule. The commenters noted that inclusion of a U.S. investment adviser's non-U.S. activities in the final rule could lead to conflict of laws and compliance challenges. One of the commenters requested that FinCEN clarify that U.S. firms are not required to apply the requirements of the proposed rule to non-U.S. activities if compliance would cause these firms to violate other laws in the jurisdictions in which they operate.

Final Rule: FinCEN agrees with the view of commenters that advisers that provide only services that do not involve the management of customer assets (and so report no AUM on Form ADV) are unlikely to have any relevant information on illicit finance risk or suspicious activity involving their customers. In addition, there is a lower risk that these advisers will be used as an entry point into the U.S. financial system for illicit proceeds. For the reasons described above, FinCEN has decided to exempt such RIAs from the definition of ''investment adviser'' in the final rule and therefore from the broader AML/CFT requirements of the final rule.

However, when an RIA both manages client assets and provides other advisory services that do not involve the management of client assets, FinCEN declines to exclude the ''non-management'' services from coverage of the rule's requirements. FinCEN notes that when provided along with the management of a customer's assets, these services may lead to an adviser learning relevant information about a customer for purposes of understanding customer risk or identifying suspicious activity. Further, there is the risk that exempting non-management services from the requirements of the final rule for RIAs that also manage client assets could potentially encourage some advisers to attempt to evade the requirements of the rule by re-branding certain activities as non-management activities. For example, customers that would prefer increased anonymity or want to directly avoid being subject to AML/CFT requirements could request such a re-branding for activities on their behalf. FinCEN would expect that in most circumstances, non-management services would be lower risk for money laundering, terrorist financing, or other illicit finance activity, and accordingly, an investment adviser could treat as lower risk its customers that receive only these services.

FinCEN does not believe that further clarification of the concept of non-management services is necessary. The methodology for determining when an RIA has regulatory AUM for purposes of Form ADV is well-developed under SEC regulations and RIAs are familiar with it in that context.[207] An investment adviser can use this methodology to help determine its ''non-management'' services.

FinCEN also does not believe that further clarification of the concept of non-advisory activities is required. Advisers have been required to determine when they provide services that require registration or other regulatory compliance measures since the passage of the Advisers Act in 1940.[208] With respect to private funds, FinCEN does not believe that all investment activities on behalf of a fund are necessarily non-advisory. When such activities involve directing investment, they pose substantially similar risks to other advisory activities. FinCEN therefore declines to clarify that such investment activities on behalf of funds are non-advisory.

3. Dual Registrants and Affiliates

Proposed Rule: FinCEN proposed that an investment adviser also registered as a broker-dealer or a bank (*i.e.,* a dual registrant), or who is an operating subsidiary of a bank, would be included in the scope of the proposed regulation and subject to SEC examination for compliance with the regulation. However, in the IA AML NPRM, FinCEN clarified that it would not

[207] *See* Instructions to Item 5.F of Form ADV (17 CFR 279.1).

[208] Existing judicial precedent interprets whether a person is advising others (or acting as an ''investment adviser'' under the Advisers Act), and the SEC and SEC staff have issued guidance on what services qualify. *See, e.g., Abrahamson* v. *Fleischner,* 568 F.2d 862, 869–72 (2d Cir. 1977), cert. denied, 436 U.S. 913 (1978); *Applicability of the Investment Advisers Act to Financial Planners, Pension Consultants, and other Persons Who Provide Investment Advisory Services as a Component of Other Financial Services,* SEC Statement of Staff Interpretation, Advisers Act Release No. 1092 (Oct. 8, 1987).

require such investment advisers to establish multiple or separate AML/CFT programs so long as a comprehensive AML/CFT program covers all of the investment adviser's applicable legal and regulatory obligations.

Comments Received: Commenters generally supported the language of the proposed rule that an investment adviser that is dually registered as a broker-dealer or is a bank (or is a bank subsidiary) does not need to establish multiple or separate AML/CFT programs so long as a comprehensive AML/CFT program covers all of the entity's relevant business and activities that are subject to BSA requirements. Similarly, commenters also generally agreed that an investment adviser affiliated with, or that is a subsidiary of, another entity required to establish an AML/CFT program in another capacity should not be required to implement multiple or separate programs. However, some expressed concern that FinCEN's proposal to delegate examination authority to the SEC for investment advisers would create duplication given the existing examination obligations on dual registrants.

One commenter, while supporting the proposed rule, requested that the final rule text should specifically afford investment advisers affiliated with a bank or bank holding company flexibility to leverage any aspect of the bank or bank holding company's AML/CFT program. The commenter argued that stating this in the rule text would require relevant supervisory agencies and staff to adhere to this approach. The commenter noted that failure to do so could result in costly inefficiencies and additional operational risk in being unable to achieve a cohesive, enterprise-wide approach to AML/CFT compliance.

One commenter stated that requiring separate programs may increase the compliance and operational burden but could result in less useful information because of overlapping and duplicate reports that could be filed. One commenter recommended that supervision for a dual registrant's AML/CFT program remain with the firm's prudential regulator. Another commenter recommended that the SEC examination staff should leverage AML/CFT examinations conducted by other functional regulators, as well as FINRA and the New York Department of Financial Services. The commenter claimed this approach would align with the expectations of Congress, Treasury, and FinCEN in achieving objectives while efficiently allocating resources and lower the risk of conflicting examination results, expectations and findings.

Final Rule: FinCEN is implementing this requirement without change from the proposed rule. Accordingly, any investment adviser is subject to the requirements of the final rule, even if it is dually registered as a broker-dealer or is a bank (or is a bank subsidiary). As explained in the IA AML NPRM, such an adviser does not need to establish a separate AML/CFT program so long as a comprehensive AML/CFT program covers all of the investment adviser's relevant activities. Such a comprehensive program should be designed to address the different money laundering, terrorist financing, or other illicit finance activity risks posed by the different aspects of the overall business's activities and accordingly satisfy each of the risk-based AML/CFT program requirements to which it is subject in its capacity as both an investment adviser and broker-dealer or bank.

In addition, an investment adviser affiliated with, or a subsidiary of, another entity required to establish an AML/CFT program will not be required to implement multiple or separate programs and instead may elect to extend a single program to all affiliated entities that are subject to the BSA, so long as such AML/CFT program is designed to identify and mitigate the different money laundering, terrorist financing, and other illicit finance activity risks posed by the different aspects of each affiliate's (or subsidiary's) business(es) and satisfies each of the risk-based AML/CFT program and other BSA requirements to which the entities are is subject in all of their BSA-regulated capacities, as for example an investment adviser and a bank or insurance company.[209]

FinCEN does not believe that further clarification of the AML/CFT program requirements for dual registrants, or how supervisors will conduct examination of the final rule, is currently necessary. The final rule provides adequate flexibility for investment advisers to incorporate its requirements into existing AML/CFT programs at an enterprise level and to tailor their programs to their circumstances in a risk-based manner. Financial institutions involved in multiple lines of business have long been subject to regulation by multiple agencies and FinCEN has worked with other agencies in regulatory and supervisory contexts. Based on this experience, FinCEN does not believe special instructions to examiners to coordinate their examinations touching on the final rule is necessary or appropriate. FinCEN anticipates working with SEC staff to communicate with relevant regulatory agencies that currently supervise relevant entities about the requirements of the final rule.

4. Delegation of AML/CFT Requirements

Proposed Rule: FinCEN proposed to permit an investment adviser to delegate contractually the implementation and operation of certain aspects of its AML/CFT program. However, the investment adviser would remain fully responsible and legally liable for the program's compliance with the proposed rule. The investment adviser also would be required to ensure that FinCEN and the SEC are able to obtain information and records relating to the AML/CFT program. The proposed rule noted that, because investment advisers operate through a variety of different business models, each investment adviser may decide which aspects (if any) of its AML/CFT program are appropriate to delegate.

FinCEN requested comment on the practical effect of permitting an investment adviser to delegate some or all of the requirements in the proposed rule, as well as comment on various aspects of how foreign-located fund administrators may implement these requirements.

(a) General Comments on Delegation

Comments Received: Seven commenters expressed views on the delegation of AML/CFT activities to third party service providers, including fund administrators. In general, these commenters suggested that FinCEN recognize that many investment advisers delegate administrative and compliance responsibilities to third parties, and that such delegation for AML/CFT responsibilities should be permissible under the proposed rule.

[209] FinCEN notes that certain insurance companies are required to establish and implement AML programs and report suspicious activity. *See* 31 U.S.C. 5312(a)(2)(M); 31 CFR part 1025. However, the term ''insurance company'' is not included within the general definition of financial institution under FinCEN's regulations. *See* 31 CFR 1010.100(t). Therefore, such insurance companies are not required to file CTRs with FinCEN or comply with certain recordkeeping requirements. Accordingly, FinCEN would not expect an insurance company that is affiliated with or owns an investment adviser to design an enterprise-wide AML/CFT compliance program that would subject the insurance company to AML/CFT requirements not otherwise required by FinCEN's regulations. Conversely, FinCEN would expect a bank, which is subject to the full panoply of FinCEN's regulations implementing the BSA, to design an enterprise-wide AML/CFT compliance program that would subject an affiliated or controlled investment adviser to the AML/CFT requirements required by the final rule.

Some commenters stated that, given a proposed SEC rule to apply minimum requirements to the outsourcing of services (including for compliance), FinCEN should be cautious about additional guidance on delegation prior to the SEC issuing a final rule.

One commenter requested that FinCEN include a safe harbor for investment advisers whose client utilizes a single qualified custodian to hold the client's advised assets, and allow the investment adviser to rely on the qualified custodian that is performing all AML/CFT obligations with respect to any client assets the custodian has in its custody. The commenter added that this would leverage the existing AML/CFT requirements for banks and broker-dealers while avoiding unnecessary duplication.

The same commenter also requested that investment advisers be permitted to rely on a service provider's certification of AML/CFT compliance so long as the investment adviser performs and documents periodic oversight of the service provider's operations at least annually. One commenter requested that FinCEN expressly permit an investment adviser's AML/CFT program to contractually rely on diligence conducted by another covered financial institution or, perhaps, even other non-covered financial institutions or entities that are working on behalf of, and under the control and supervision of, the adviser. Another commenter asserted that the proposed rule rejected the suggestion that investment advisers should be able to rely upon the AML/CFT efforts of intermediaries, and requested FinCEN permit investment advisers to rely on the AML/CFT controls of intermediaries. The commenter added that such reliance is consistent with current best practices. Another commenter requested that FinCEN clarify in the rule text that delegation of AML/CFT requirements is expressly permitted.

One commenter suggested FinCEN clarify that, while advisers are responsible for developing the firm's AML/CFT compliance program, the full scope of the implementation and operation of the AML/CFT program may be delegated to service providers, including to offshore fund administrators. The commenter requested that this could include the responsibility to respond to 314(a) requests and to monitor for, prepare, and file SARs, to the extent that such administrator has the relevant information.

Two commenters stated that FinCEN should not prescribe additional standards or requirements with respect to such permissible delegation, as such additional requirements could conflict with the SEC's proposed rule on Outsourcing by Investment Advisers (Outsourcing Rule), which, would impose minimum due diligence and outsourcing requirements with regard to service providers.[210] These commenters recommended FinCEN wait for the Outsourcing Rule process to finalize before mandating any requirements for delegation of AML functions.

One commenter stated that if FinCEN chooses not to allow delegation of all AML/CFT responsibilities, then FinCEN should clarify which aspects of an AML/CFT program may be delegated to third parties. The commenter also requested that FinCEN provide guidance on measures advisers should take to ensure effective delegation of an AML/CFT program to a third party. The commenter recommended that such measures could include having the adviser conduct due diligence on the third party's AML/CFT policies and determining whether they meet the adviser's standards; a written agreement with the third party containing appropriate representations and covenants, including that the third party will maintain and adhere to effective AML/CFT policies, procedures and controls and update the adviser if there are any deficiencies identified in the third-party's audit; and having the adviser's periodically monitor compliance with such requirements.

As FinCEN noted in the IA AML NPRM, it is common in the advisory business for an investment adviser to delegate a range of compliance, administrative, and other activities to third-party providers. FinCEN also notes that other BSA-defined financial institutions routinely delegate, subject to relevant BSA and non-BSA regulatory requirements governing the delegation of activities to service providers, aspects of their AML/CFT compliance programs to third parties. Therefore, FinCEN will permit an investment adviser to delegate contractually the implementation and operation of some or all aspects of its AML/CFT program to a third-party provider, including a fund administrator. Because investment advisers operate through a variety of different business models, each investment adviser must decide which aspects of its AML program are appropriate to delegate. Based on current practice within the investment adviser sector for both AML/CFT and other regulatory requirements, and how other financial institutions delegate AML/CFT responsibilities, FinCEN believes it is unnecessary to include rule text explicitly permitting such delegation.

However, if an investment adviser delegates the implementation and operation of any aspects of its AML/CFT program, the investment adviser will remain fully responsible and legally liable for, and be required to demonstrate to examiners, the program's compliance with AML/CFT requirements and FinCEN's implementing regulations. The investment adviser also will be required to ensure that FinCEN and the SEC are able to obtain information and records relating to the AML/CFT program. The investment adviser would still be required to identify and document the procedures appropriate to address its vulnerability to money laundering and terrorist financing, and then undertake reasonable steps to assess whether the service provider would carry out such procedures effectively.

For example, it would not be sufficient to simply obtain a certification from a service provider that the service provider ''has a satisfactory anti-money laundering program.'' However, an investment adviser could take into account such a certification as part of the investment adviser's periodic oversight of the service provider's operations with respect to the delegated obligations. The appropriate frequency of that oversight would depend on the adviser's overall risk profile for money laundering, terrorist financing, or other illicit finance activities, and the types of AML/CFT responsibilities delegated to the service provider. Such oversight measures could include, for example, having the adviser conduct due diligence on the third party's AML/CFT policies and determining whether they meet the adviser's standards; a written agreement with the third party containing appropriate representations and covenants, including that the third party will maintain and adhere to risk-based and reasonably designed AML/CFT policies, procedures and controls and update the adviser if there are any deficiencies identified in the third-party's audit (if any); and/or having the adviser periodically monitor compliance with such requirements. FinCEN would like to note that this list of examples is illustrative based on information provided by commenters, and other measures could be used to conduct oversight of a service provider.

[210] *See* SEC, *Outsourcing by Investment Advisers,* Notice of Proposed Rulemaking, Advisers Act Release No. 6176 (Oct. 26, 2022), 87 FR 68816 (Nov. 16, 2022).

Regarding the SEC's proposed Outsourcing Rule,[211] FinCEN notes that the Outsourcing Rule would impose certain minimum requirements on an RIA's oversight of service providers to that RIA. However, given that the rule has not yet been finalized and would also only apply only to RIAs, FinCEN does not believe that delaying this aspect of the final rule is appropriate and FinCEN is providing the guidance above on how advisers may monitor their service providers' implementation of AML/CFT requirements contained in the final rule.

Regarding certain suggestions that FinCEN permit advisers to expressly rely on diligence or AML/CFT measures by other financial institutions, service providers, or other intermediaries, FinCEN declines to do so.[212] When the adviser is outsourcing AML/CFT compliance responsibilities with respect to its own customers and advisory activities, the adviser will be best positioned to assess illicit finance risks and identify and report suspicious activity, and design and oversee an AML/CFT program that can do so. Therefore, when the adviser delegates the implementation and operation of some or all aspects of its AML/CFT program to a service provider, the adviser will remain responsible for overall compliance with these requirements.

(b) Comments on Delegation to Foreign-Located Service Providers

Comments Received: Seven commenters specifically addressed the issue of delegation to foreign-located service providers, including foreign-located fund administrators. All seven indicated that the IA AML NPRM had a negative view of how foreign-located fund administrators may apply AML/CFT requirements, and that view was inconsistent with their experience in working with foreign-located fund administrators. These commenters generally agreed that investment advisers should be able to delegate AML/CFT compliance measures to foreign-located fund administrators, so long as the investment adviser maintained responsibility for oversight of the AML/CFT program. Several commenters also requested that FinCEN expressly clarify that delegation of AML/CFT responsibilities to foreign-located fund administrators is permissible.

One investment adviser noted that they delegate AML compliance responsibilities to foreign-located service providers, and that these service providers are subject to supervision and oversight of a U.S.-based financial crimes compliance team. The adviser requested explicit guidance clarifying that it is permissible to rely on AML/CFT programs developed, implemented, and maintained by offshore fund administrators when such reliance is subject to contractual agreements and a risk-based approach to oversight. Another commenter noted that foreign-located RIAs and ERAs commonly delegate AML/CFT compliance to administrators in their local jurisdictions, and these advisers would face significant operational and implementation challenges if the final rule permits the delegation of only certain elements to offshore administrators.

Another commenter claimed that the SEC does not require a U.S. entity to be appointed to ensure that other rules implementing Federal securities laws are met, and that AML/CFT programs could easily, and should, be treated in the same way. The commenter noted requiring foreign-located advisers to outsource AML/CFT compliance to a U.S.-based entity would create additional risks, especially where robust internal functions designed to comply with the requirements of other FATF-compliant jurisdictions are already in place.

Three commenters noted that many foreign-located fund administrators are familiar with what is needed to execute a successful AML/CFT program, and in jurisdictions such as Ireland, Luxembourg, and the Cayman Islands, have been subject to longstanding AML requirements. Regarding the Cayman Islands in particular, the commenter noted that while the Cayman Islands has been criticized for weaknesses in AML/CFT supervision, it has made substantial strides to address these deficiencies.[213]

Three commenters requested FinCEN clarify how various compliance obligations can be met by the use of offshore administrators, including permitting onshore or offshore administrators, agents and service providers to engage in suspicious activity clearing, early alert reviews and other elements of the SAR process. Another commenter requested that FinCEN clarify if there were jurisdictions where delegation would not be permitted.

FinCEN appreciates the detailed information provided by commenters on how foreign-located service providers, including offshore administrators, can effectively implement the AML/CFT requirements contained in the proposed rule. Commenters generally noted that foreign-located service providers have implemented these requirements on behalf of investment advisers and other financial institutions for years, and that these service providers are routinely subject to U.S.-based supervision and oversight. FinCEN would like to clarify that it is permissible for an RIA or ERA to delegate the implementation and operation of some or all aspects of its AML/CFT program and other AML/CFT measures to foreign-located service providers, including fund administrators.[214] As with any delegation to a service provider (whether located in the United States or outside the United States), the delegation must be subject to contractual agreements and a risk-based approach to oversight described above, the RIA or ERA must remain responsible for overall implementation and ensure that FinCEN and the SEC are able to obtain information and records relating to the AML/CFT program.

E. Minimum AML/CFT Program Requirements

As mentioned above, the BSA provides that Treasury may prescribe minimum standards for AML/CFT programs that include, at a minimum, (1) the development of internal policies, procedures, and controls; (2) the designation of a compliance officer; (3) an ongoing employee training program; and (4) an independent audit function to test the programs.[215] FinCEN accordingly is adopting the requirement that investment advisers establish an AML/CFT program that meets certain minimum requirements as provided in section 5318(h) of the BSA. Section

[211] *Id.*

[212] FinCEN interprets these suggestions to mean that express reliance would remove the investment adviser's liability for compliance with the obligation.

[213] In October 2023, the FATF announced that the Cayman Islands would no longer be subject to increased monitoring by the FATF (a process that is externally referred to as the ''grey list''). *See* FATF, *Jurisdictions Under Increased Monitoring* (Oct. 27, 2023), available at *https://www.fatf-gafi.org/en/publications/High-risk-and-other-monitored-jurisdictions/Increased-monitoring-october-2023.html.*

[214] FinCEN recognizes that in certain circumstances an offshore fund administrator may be in the best position to perform certain aspects of an investment adviser's AML/CFT program requirements, including monitoring for suspicious activity. Accordingly, an investment adviser may delegate contractually to an offshore fund administrator to monitor for suspicious activity, provide the details of such activity to the investment adviser, and file SARs on behalf of the adviser. However, the adviser remains fully responsible and legally liable for compliance with AML/CFT requirements.

[215] 31 U.S.C. 5318(h)(1)–(2).

1032.210(a)(1) of the final rule will require each RIA and ERA to develop and implement a written AML/CFT program that is risk-based and reasonably designed to prevent the investment adviser from being used for money laundering, terrorist financing, or other illicit finance activities. Each RIA and ERA will also be required to make its AML/CFT program available for inspection by FinCEN and the SEC. The minimum requirements for the AML/CFT program are set forth in section 1032.210(b) of the final rule and discussed in greater detail below.

1. General Comments

Comments Received: One commenter wrote that it served as a qualified custodian for customer accounts managed by RIAs and required customers of RIAs to establish brokerage accounts (thus making the RIA customers their direct customers). The commenter wrote that these accounts (and the account holders) are subject to and covered by its AML policies and procedures. The commenter also stated that it was unclear why, in its view, a duplicative process at the RIA would provide additional protection against illicit finance activity. Another commenter agreed with FinCEN that advisers' AML/CFT programs should be risk-based and that the final rule should provide maximum flexibility to advisers to accommodate their varied business models and risk profiles.

One commenter noted that the requirements in the proposed rule do not duplicate existing requirements under the Advisers Act. The commenter wrote that the requirements serve different purposes and the information gathered to carry out each set of objectives is not necessarily comparable. For example, the commenter stated that regulations issued pursuant to Federal securities laws and the Advisers Act define beneficial ownership differently than the BSA and require collection of different data.[216] In addition, the resulting information collected under such regulations is not necessarily accessible to the same regulators or law enforcement personnel.

One commenter wrote that while the AML/CFT program must be risk-based and tailored to the adviser's business, the five minimum requirements (four of which are required by statute) for AML/CFT programs are highly prescriptive, making it difficult, in the commenter's view, for RIAs and ERAs to adopt a tailored, risk-based program.

One commenter agreed that AML/CFT programs should be risk-based and that risk-based programs may rely on appropriate vetting of intermediaries and other funds (and not require a ''look through'' to underlying investors), and requested that the final rule permit existing practices undertaken by advisers with regards to intermediaries acting for underlying investors, for an adviser to a private fund to be compliant with the risk-based AML/CFT program requirements.

One commenter requested that the final rule explicitly clarify that, in instances where an investment adviser has no direct customer relationship, AML risks inherently are lower and investment advisers should have significant latitude to apply the risk-based approach. For example, the commenter suggested that advisers, which provide ''non-advisory'' products and services to other advisers, with no direct relationship to the investors, should have the discretion to exclude such products and services from the definition of ''account'' or ''customer.''

Final Rule: The application of the risk-based approach means that an adviser may focus aspects of its AML/CFT program on activities or customers that it considers higher risk, and may comply with the BSA by applying more limited measures to those customers or activities that it identifies as lower risk. Regarding the five components of an AML/CFT program specified in section 1032.210(b) of the final rule, FinCEN disagrees that these are highly prescriptive, as each can be adjusted to address the specific risks and advisory activities of the adviser. For example, an adviser that services specific types of institutional customers (such as university endowments or municipal accounts) may have more tailored employee training than an adviser that has a broader customer base composed of both retail and institutional customers.

FinCEN also reiterates the discussion in both the IA AML NPRM and Risk Assessment regarding the limited overlap between AML/CFT regulations and the requirements of the Advisers Act. The Advisers Act and its implementing regulations are not designed to explicitly address the risk that an RIA or ERA may be used to move proceeds or funds tied to money laundering, terrorist financing, or other illicit activity; they are instead designed to protect customers against fraud, misappropriation, or other illegal conduct by an investment adviser.[217] The diversity of customer relationships covered by the final rule can be addressed through a risk-based framework rooted in the risks posed by the adviser's business and FinCEN addresses some specific customer relationships and their risk throughout this document.

2. Internal Policies, Procedures, and Controls

Proposed Rule: Proposed section 1032.210(b)(1) would have required an investment adviser to establish and implement internal policies, procedures, and controls reasonably designed to prevent the investment adviser from being used for money laundering, terrorist financing or other illicit finance activities. The proposed rule noted that some types of customers or customer activities would pose greater risks for these money laundering, terrorist financing, or other illicit finance activities than others. Generally, under the proposed rule, an investment adviser would have been required to review, among other things, the types of advisory services that it provides and the nature of the customers that it advises to identify the investment adviser's vulnerabilities to money laundering, terrorist financing, and other illicit finance activities. It would also have needed to review investment products offered, distribution channels, intermediaries that it may operate through, and geographic locations of customers and advisory activities.

The proposed rule also discussed how an investment adviser's AML/CFT program may address the money laundering, terrorist financing, or other illicit finance risks that may be presented by certain specific types of advisory customers, as well as how an adviser's program may address the risks presented by certain specific advisory services provided to those customers.

Comments Received: Two commenters asked for additional clarity regarding the application of the adviser's AML/CFT program to private fund customers. One commenter asked for confirmation that an adviser only needs to assess money laundering risks for underlying investors in a private fund when that adviser is the primary adviser to a private fund and has access to the relevant information about the underlying investors, and not when acting as a subadviser. The commenter stated that an adviser serving as the primary adviser or sponsor to a private fund will likely, but not necessarily, have information about that private fund's underlying investors in the ordinary course. The commenter

[216] *See, e.g.,* 17 CFR 240.13d–3 (governing determination of beneficial ownership pursuant to the Securities Exchange Act of 1934).

[217] *See* 89 FR at 12113; Risk Assessment, *supra* note 2, at 29–30.

claimed that the adviser would not have that information, for example, in an unaffiliated ''fund-of-funds'' structure. In those instances, the commenter suggested that the investee fund in the structure should not be required to ''look through'' and assess the risks presented by the underlying investors in an investing fund, unless the adviser is also the primary adviser to the investing fund and has access to information about underlying investors in the ordinary course.

The second commenter asked for clarity on how an adviser may meet its AML/CFT program requirements for (1) a fund that restricts its investors from redeeming any part of their interests in the fund within two years after that interest was initially purchased; and (2) an investment adviser that advises only such funds. A third commenter suggested FinCEN to provide further clarity on those types of pooled investment vehicles that present lower risks for purposes of an investment adviser's AML/CFT program.

Final Rule: The final rule maintains the proposed requirement that an investment adviser establish and implement internal policies, procedures, and controls reasonably designed to prevent the investment adviser from being used for money laundering, terrorist financing, or other illicit finance activities and to achieve compliance with the applicable provisions of the BSA and implementing regulations. FinCEN is making a technical edit to the regulatory text at 1032.210(b)(1) to add the term ''internal'' to the ''policies, procedures, and controls'' so that the regulatory and statutory text for this requirement is consistent.[218] FinCEN notes this edit is not intended to affect the substance of the requirement.[219]

In establishing such internal policies, procedures, and controls, an investment adviser will be required to review, among other things, the types of advisory services that it provides and the nature of the customers that it advises to identify the investment adviser's vulnerabilities to being used for money laundering, terrorist financing, and other illicit finance activities. It will also need to review investment products offered, investment recommendations, distribution channels, intermediaries that it operates through, and geographic locations of customers and advisory activities. Accordingly, an investment adviser's assessment of the risks presented by the different types of advisory services that it provides to such customers would need to, among other factors, consider the types of accounts offered (*e.g.,* managed accounts), the channel(s) through which such accounts are opened, and the types of customers opening such accounts and related information about such customers, including their geographic location, sources of wealth, and investment objective. The following paragraphs discuss the final rule's treatment of internal policies, procedures, and controls as relating to registered closed-end funds and private funds.

Registered Closed-End Funds. As contemplated in the IA AML NPRM, FinCEN is not categorically exempting registered closed-end companies (''registered closed-end funds'') from the AML/CFT requirements in the final rule.[220] Accordingly, an investment adviser's AML/CFT program will have to take into account any registered closed-end funds advised by the investment adviser. FinCEN notes that, absent other indicators of high-risk activity, an investment adviser may treat exchange-listed, registered closed-end funds as lower risk for purposes of their AML/CFT programs. An exchange-listed registered closed-end fund may be treated as lower risk given that exchange-listed closed-end funds generally (a) do not offer their shares continuously or redeem their shares on demand; (b) issue a fixed number of shares, which typically trade at negotiated prices on a stock exchange or in the over-the-counter market; (c) typically do not have an account relationship with their investors; and (d) have shares that are purchased and sold through broker-dealers or banks, which are already subject to AML/CFT requirements under the BSA (including the performance of CIP and CDD on their customers that purchase shares on exchanges).

Private Funds. As noted in the IA AML NPRM, the money laundering, terrorist financing, or illicit finance activity risks for private funds may vary by the individual fund's investment strategy, targeted investors, jurisdiction, and other characteristics. When determining its risk profile, an investment adviser may wish to consider, with respect to any private fund that it advises, among other things, minimum subscription amounts, restrictions on the type of investors, restrictions on redemptions or withdrawals, and the types of currency transactions conducted with investors. For advisers who exclusively advise funds with restrictions on redemptions or withdrawals, FinCEN does not assess that such funds can be categorically treated as lower risk, as there are other factors regarding the fund and its underlying investors that are relevant to illicit finance risk, which may vary significantly for each adviser or fund.

FinCEN expects an investment adviser that is the primary adviser to a private fund or other unregistered pooled investment vehicle to make a risk-based assessment of the money laundering, terrorist financing, and illicit finance activity risks presented by the investors in such investment vehicles by considering the same types of relevant factors, as appropriate, as the adviser would consider for customers for whom the adviser manages assets directly. As noted above, the risk-based approach of the rule is intended to give investment advisers the flexibility to design their programs to meet the specific risks presented by their customers, including any funds they advise. In assessing the potential risk of a private fund under the rule, investment advisers generally should gather pertinent facts about the structure or ownership of the fund, including the extent to which the adviser is provided with relevant information about the investors in that private fund, who may or may not themselves also be customers of the investment adviser, and the nature of such investor-related information that they investment adviser receives.

Where an investment adviser attempts to and is unable to obtain identifying information about the investors in a private fund as part of its risk-based evaluation of the private fund, the adviser may determine that such private fund poses a higher risk for money laundering, terrorist financing, or other illicit finance activity. When a private fund's potential vulnerability to such money laundering, terrorist financing, or other illicit finance activity is high, the adviser's procedures would need to take reasonable steps to address these higher risks to prevent the investment adviser from being used for money laundering, the financing of terrorist activities, or other illicit activity, and to achieve and monitor compliance with the BSA (including to obtain sufficient information to monitor and report suspicious activity).

[218] *See* 31 U.S.C. 5318(h)(1)(A) (stating that AML/CFT programs should include, at a minimum, ''the development of *internal* policies, procedures, and controls'' (emphasis added)).

[219] For example, an enterprise-wide AML/CFT program's policies, procedures, and controls would still be ''internal'' with respect to the investment adviser.

[220] A closed-end company is a management company other than an open-end company, *see* 15 U.S.C. 80a–5(a)(2), and includes interval funds that rely on rule 23c–3 under the Company Act.

FinCEN recognizes that certain private funds and other unregistered pooled investment vehicles may present lower risks for money laundering or terrorist financing than others. Consequently, FinCEN would not expect an investment adviser to risk-rate the advisory services that it provides to a pooled investment vehicle that presents a lower risk in the same way it might rate the advisory services that it provides to other types of pooled investment vehicles that may present higher risks for attracting money launderers, terrorist financers, or other illicit actors.

3. Independent Testing

Proposed Rule: Proposed section 1032.210(b)(2) would have required that an investment adviser provide for independent testing of the AML/CFT program by the adviser's personnel or a qualified outside party. As explained in the IA AML NPRM, the independent testing, as proposed, could be conducted by employees of the investment adviser, its affiliates, or unaffiliated service providers, so long as those same employees are not involved in the operation and oversight of the AML/CFT program. The frequency of the independent testing would depend upon the money laundering, terrorist financing, and other illicit finance risks of the adviser and the adviser's overall risk management strategy.

Comments Received: One commenter expressed concern that the requirement for an independent audit of the AML/CFT program would significantly burden investment advisers with few employees. The commenter stated that most of these advisers would have to hire an outside contractor to comply with this requirement. The commenter requested that FinCEN permit advisers with 100 or fewer employees to employ an internal testing program that may include employees involved in the AML/CFT program and/or ongoing AML/CFT compliance. The commenter indicated that without this modification, advisers would not be able to incorporate AML/CFT program requirements into their existing Federal securities compliance reviews, as staff who conduct these reviews would not be allowed to participate in the independent AML/CFT testing required by the proposed rule.

Final Rule: FinCEN is implementing this requirement without change from the proposed rule. The final rule, like the proposed rule, permits independent testing to be conducted by the investment adviser's personnel or a qualified outside party. FinCEN recognizes the potential burden from using an external party to conduct the required independent testing.

Although the final rule permits the use of an investment adviser's personnel with certain restrictions, FinCEN declines to accept the recommendation that an individual involved in implementing the adviser's AML/CFT program may participate in the independent testing of such a program. Doing so would undermine the very purpose of this requirement, which is to allow an *independent* party to verify whether the AML/CFT program is functioning effectively. While investment advisers may use trained internal staff who are not involved in the function being tested, the AML/CFT officer or any party who directly, and in some cases, indirectly reports to the AML/CFT officer, or an equivalent role, generally would not be considered sufficiently ''independent'' for these purposes.[221] Any individual conducting the testing, whether internal or external, would be required to be independent of the function being tested in the investment adviser's AML/CFT program, including its oversight. Investment advisers with less complex operations, and lower money laundering, terrorist financing, or other illicit finance activity risk profiles may consider utilizing a shared resource as part of a collaborative arrangement with similarly less complex and lower risk profile advisers to conduct testing, as long as the testing is independent.[222]

[221] This is consistent with current 31 CFR 1022.210, which provides that independent review may be conducted by an officer or employee of an MSB so long as the tester is not the AML/CFT officer. Similarly, current 31 CFR 1025.210, 1029.210, and 1030.210 provide that independent testing at insurance companies, loan or finance companies, and housing government sponsored enterprises, respectively, may be conducted by a third party or by any officer or employee of the financial institution, other than the AML/CFT officer. Likewise, 31 CFR 1027.210 and 1028.210 provide that independent testing of a dealer in precious metals, precious stones, or jewels or an operator of a credit card system, respectively, can be conducted by an officer or employee of the institution, so long as the tester is not the AML/CFT officer or a person involved in the operation of the AML/CFT program. The criteria to meet the ''independent requirement'' for independent testing at U.S. operations of foreign financial institutions may include a review of the reporting arrangements between the party conducting the independent testing and the AML/CFT officer, or equivalent management function such as a head of business line or a general manager, to assess any conflicts of interests and the level of independence with the party conducting the independent testing.

[222] *See* Interagency Statement on Sharing Bank Secrecy Act Resources (Oct. 3, 2018), available at *https://www.fincen.gov/news/news-releases/interagency-statement-sharing-bank-secrecy-act-resources.*

4. AML/CFT Officer

Proposed Rule: Proposed section 1032.210(b)(3) would have required that an investment adviser designate a person or persons to be responsible for implementing and monitoring the operations and internal controls of the AML/CFT program. The IA AML NPRM explained that the designated person or persons should be knowledgeable and competent regarding AML/CFT requirements, the adviser's relevant internal policies, procedures, and controls, as well as the adviser's money laundering, terrorist financing, and other illicit finance risks. A person designated as a compliance officer should be an officer of the investment adviser (or individual of similar authority within the particular corporate structure of the investment adviser) and someone who has established channels of communication with senior management demonstrating sufficient independence and access to resources to implement a risk-based and reasonably designed AML/CFT program.

Comments Received: Four commenters requested FinCEN modify this requirement to provide additional flexibility given the varying organizational structures of investment advisers. Three commenters requested that an investment adviser be able to designate an employee of the adviser's affiliate as its AML/CFT officer, provided that the employee is sufficiently qualified to perform this role, including possessing the appropriate level of authority, independence, access to information, and resources to perform the responsibilities of compliance with BSA/AML regulatory obligations.

Another commenter suggested that any sufficiently senior employee of the adviser (including its chief compliance officer)—or of any other affiliate or entity within the investment adviser's organizational structure—be permitted to serve as the AML/CFT officer so long as (i) such employee meets the other requirements set forth in at 1032.210(b)(2); and (ii) is either a member of, or reports directly to, the advisers or its affiliate's senior management. The reason for this suggestion was that investment advisers may not have formally designated corporate ''officers'' or have officers who are well-suited to serve as the adviser's AML/CFT compliance officer. Another commenter echoed the recommendation but suggested that an adviser also be able to designate a third-party expert.

Final Rule: FinCEN is implementing this requirement without change from

the proposed rule. The final rule, like the proposed rule, will require an investment adviser to designate a person or persons responsible for implementing and monitoring the internal policies, procedures, and controls of the adviser's AML/CFT program. Inherent in the requirement that an investment adviser designate an AML/CFT officer is the expectation that the designated individual is qualified to oversee the investment adviser's compliance with the BSA and FinCEN's implementing regulations. Accordingly, for an AML/CFT program to be risk-based and reasonably designed to achieve compliance with the BSA, the compliance officer must be sufficiently qualified. Whether an individual is sufficiently qualified as an AML/CFT officer will depend, in part, on the investment adviser's risk profile. Among other criteria, a qualified AML/CFT officer must have the expertise and experience to adequately perform the duties of the position, including having sufficient knowledge and understanding of the investment adviser and the risks of its use for money laundering, terrorist financing, or other illicit finance activities, the BSA and its implementing regulations, and how those laws and regulations apply to the investment adviser and its activities. Additionally, the AML/CFT officer's position in the financial institution's organizational structure must enable the AML/CFT officer to effectively implement the adviser's AML/CFT program. And, as explained in the proposed rule, an investment adviser may designate a single person or persons (including in a committee) to be responsible for compliance.

Given these necessary qualifications and the comments received, FinCEN clarifies that for purposes of compliance with the final rule, the actual title of the individual responsible for day-to-day AML/CFT compliance is not determinative, and the AML/CFT officer for these purposes need not be an ''officer'' of the adviser. The individual's authority, independence, and access to necessary AML/CFT compliance resources, however, are critical. Importantly, an AML/CFT officer should have decision-making capability regarding the AML/CFT program and sufficient stature within the organization to ensure that the program meets the applicable requirements of the BSA. The AML/CFT officer's access to resources may include the following: adequate compliance funds and staffing with the skills and expertise appropriate to the investment adviser's risk profile, size, and complexity; an organizational structure that supports compliance and effectiveness; and sufficient technology and systems to support the timely identification, measurement, monitoring, reporting, and management of the investment adviser's illicit finance activity risks. An AML/CFT officer that has multiple additional job duties or conflicting responsibilities that adversely impact the officer's ability to effectively coordinate and monitor day-to-day AML/CFT compliance generally would not fulfill this requirement.[165]

FinCEN clarifies that, as noted by the comments received, so long as the AML/CFT officer fulfils these qualifications and requirements, the officer may be an employee of the adviser's affiliate, or of an entity within an adviser's organizational structure. However, while an investment adviser may delegate the implementation and operation of certain aspects of its AML/CFT program to a third party or outside consultant (as discussed above), that individual or group of individuals cannot serve as the adviser's AML/CFT officer. Said differently, the designated AML/CFT officer must be an employee of the investment adviser or of its affiliate. This approach is consistent with FinCEN's treatment of equivalent requirements for the designated officers of other financial institutions.

5. Employee Training

Proposed Rule: Section 1032.210(b)(4) would have required that an investment adviser's AML/CFT program provide ongoing training for appropriate persons. The IA AML NPRM explained that such training may be conducted through, among other things, outside or in-house seminars, and may include computer-based or virtual training. The nature, scope, and frequency of the investment adviser's training program would be determined by the responsibilities of the employees and the extent to which their functions would bring them in contact with AML/CFT requirements or possible money laundering, terrorist financing, or other illicit finance activity.

Comments Received: No comments were received regarding employee training.

Final Rule: FinCEN is implementing this requirement without change from the proposed rule. As noted in the proposed rule, to carry out their responsibilities effectively, employees of an investment adviser (and of any agent or third-party service provider that is delegated with administering any portion of the investment adviser's AML/CFT program) must be trained in AML/CFT requirements relevant to their functions and to recognize possible signs of money laundering, terrorist financing, and other illicit finance activity that could arise in the course of their duties. Such training may be conducted through, among other things, outside or in-house seminars, and may include computer-based or virtual training. The nature, scope, and frequency of the investment adviser's training program should be determined by the responsibilities of the employees and the extent to which their functions would bring them in contact with AML/CFT requirements or possible money laundering, terrorist financing, or other illicit finance activity. Consequently, the training program should provide a general awareness of overall AML/CFT requirements and money laundering, terrorist financing, and other illicit finance risks, as well as more job-specific guidance tailored to particular employees' roles and functions with respect to the entities' particular AML/CFT program.[223] For those employees whose duties bring them in contact with AML/CFT requirements or possible money laundering, terrorist financing, or other illicit finance risks, the requisite training would have to occur when the employee assumes those duties. Moreover, these employees should receive periodic updates and refreshers regarding the AML/CFT program.[224]

6. Ongoing Customer Due Diligence

Proposed Rule: Proposed section 1032.210(b)(5) would have required that an investment adviser implement appropriate risk-based procedures for conducting ongoing CDD that includes (i) understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and (ii) conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.

[165] An RIA that is subject to the SEC's Compliance Rule (17 CFR 275.206(4)–7) could designate its chief compliance officer under the Compliance Rule to be responsible for this provision of this final rule. The final rule does not, however, require that an investment adviser designate the same person.

[223] *See, e.g.,* DWS Investment Management Americas Inc., Investment Company Act Rel. No. 6431, ¶ 28 (Sept. 25, 2023) (noting DWS' failure to conduct AML training that was specific to the DWS Mutual Funds or the risks applicable to mutual funds for those employees with mutual fund responsibilities).

[224] The frequency of these periodic updates and refreshers would depend upon the money laundering, terrorist financing, and other illicit finance risks of the adviser and the adviser's overall risk management strategy.

As described in the IA AML NPRM, these are two of the four core elements of CDD. The other two elements of CDD are: (1) identifying and verifying the identity of customers; and (2) identifying and verifying the identity of the beneficial owners of legal entity customers opening accounts. As stated in the IA AML NPRM, FinCEN will address the customer identification and verification element of CDD in a separate joint rulemaking with the SEC. On May 21, 2024, FinCEN and the SEC issued the IA CIP NPRM to apply CIP requirements to investment advisers.[225]

Regarding the identification and verification of the identity of the beneficial owners of legal entity customers opening accounts, in the proposed rule FinCEN noted it would take the first step towards incorporating this element by including investment advisers in the definition of ''covered financial institution'' under 31 CFR 1010.605(e)(1). However, as discussed in the IA AML NPRM, given that FinCEN expects to revise the CDD Rule as mandated by the Corporate Transparency Act, investment advisers would not be required to apply the current requirements to identify and verify the beneficial owners of legal entity customer accounts until the effective date of the revised CDD Rule.[226] FinCEN requested comment on various aspects of the CDD requirement in the proposed rule.

Comments Received: Seven commenters provided comments on various aspects of the proposed CDD obligation.

One commenter asked FinCEN to clarify that investment advisers are not required to adopt formal risk-rating models or methodologies and that advisers have discretion to apply risk factors as they deem appropriate and as suitable for their business activities and products. The commenter stated that advisers should be permitted to evaluate lower risk relationships through consideration of ''inherent or self-evident information,'' including the type of customer or type of account, service or product, without any requirement to obtain additional information regarding the customer or the relationship.

That same commenter asked that FinCEN clarify its expectations for transaction monitoring, noting that the number of SARs used to help estimate certain costs related to transaction monitoring in the proposed rule may not accord with the business model of many investment advisers. The commenter requested that FinCEN clarify that (i) in the absence of transactional activity, advisers should not have to monitor media reports and similar external events that do not have direct bearing on their relationships with the clients; and (ii) advisers' transaction monitoring systems need not be automated.

Another commenter requested that CIP requirements and the requirement to identify the beneficial owners of legal entity customers either (i) not apply to subadvisers, particularly where the sponsor or primary adviser represents or confirms that it has independent CIP and CDD obligations under the BSA's implementing regulations; or that (ii) FinCEN permit subadvisers to allocate CIP and CDD rule responsibilities to the sponsor. Another commenter requested that RIAs for employer-sponsored retirement plans be exempt from having to collect information or verify the beneficial ownership information relating to employer-sponsored retirement plans.

Regarding the timing for implementing the various elements of CDD, three commenters indicated that the decision to split the timeline for implementation of these requirements could be problematic, particularly if there are delays in finalizing any related regulatory proposals. Two commenters requested that the CDD requirements in the proposed rule be deferred until a CIP Rule for investment advisers is finalized and the CDD Rule is revised. The commenter claimed that it would be difficult for advisers to conduct ongoing CDD without a CIP obligation and when the full scope of the CDD Rule has not been clarified, as well as costly if they have to implement and then alter a CDD program to align it with a CIP requirement and revised CDD Rules.

Two commenters supported the timing for CDD obligations in the proposed rule. One commenter encouraged FinCEN to propose and finalize a joint CIP rule and the revised CDD Rule as soon as possible so investment advisers would be required to implement the other two core elements of the CDD Rule. Another commenter also strongly supported swiftly applying the requirement for investment advisers to obtain beneficial ownership information for legal entity customers.

Three commenters raised questions about applying CDD requirements in the context of private funds and other pooled investment vehicles. One of these three commenters stated that advisers do not usually carry out the investor onboarding functions that yield information relevant for customer risk, as these functions are typically carried out by the placement agent, who is already subject to AML requirements, or the administrator on behalf of the fund. The commenter asserted that this means advisers would not be best placed to identify activity that would potentially support filing a SAR.

One commenter requested that FinCEN acknowledge certain existing due diligence practices—including with intermediaries in the private funds context—are appropriate in a risk-based AML/CFT program and to make clear that risk-based AML/CFT programs will not require investment advisers to conduct diligence on underlying investors or customers that are represented by intermediaries. Another commenter requested additional clarification on who would be the ''customer'' for an adviser when the adviser manages a pooled investment vehicle and has an advisory relationship with the pooled vehicle and not the investors in the vehicle, and how the adviser is expected to apply its due diligence procedures to the pooled vehicle and its investors where the adviser does not have a direct relationship with the investors.

Final Rule: FinCEN is implementing this requirement without change from the proposed rule. Accordingly, an investment adviser's AML/CFT program must implement appropriate risk-based procedures for conducting ongoing customer due diligence. In addition, ''investment adviser'' will be included in the definition of ''covered financial institution'' under 31 CFR 1010.605(e). FinCEN notes that this rule does not require the categorical collection of beneficial ownership information for legal entity customers of investment advisers. FinCEN may consider a subsequent rulemaking imposing such an obligation on investment advisers. Rather, an investment adviser should make a risk-based determination as to whether it needs to collect beneficial ownership information based on the customer's risk profile. Regarding CIP, FinCEN will address issues related to the application of CIP requirements to certain advisory customers or activities in a CIP final rule for investment advisers, but reiterates that the IA CIP NPRM proposed a provision permitting investment advisers to rely on other financial institutions to perform CIP

[225] *See Customer Identification Programs for Registered Investment Advisers and Exempt Reporting Advisers,* Notice of Proposed Rulemaking, 89 FR 44571 (May 21, 2024).

[226] *Customer Due Diligence Requirements for Financial Institutions,* Final Rule, 81 FR 29398 (May 11, 2016); *see also Revisions to Customer Due Diligence Requirements for Financial Institutions,* available at *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202404&RIN=1506-AB60.*

subject to certain conditions, including when the financial institution is subject to a rule implementing the AML/CFT compliance program requirements of 31 U.S.C. 5318(h) and is regulated by a Federal functional regulator.[227]

FinCEN acknowledges the impact of a staggered implementation of the CDD requirements in this rule, the CIP requirements that would be applied in a final CIP Rule, and a potential future obligation to apply a requirement for investment advisers to collect the beneficial ownership information of legal entity customers. Recognizing the interrelationship of these rulemakings, FinCEN intends for this rule and a CIP final rule to have the same compliance date, and that any obligation for investment advisers to collect the beneficial ownership information of legal entity customers to not be effective until a CIP rule is finalized and until the CDD Rule applicable to covered financial institutions is revised.

Understand the Nature and Purpose of Customer Relationships to Develop Customer Risk Profiles. As is the case for banks, broker-dealers, and mutual funds, the term ''customer risk profile'' for investment advisers refers to information gathered—typically at the time of account opening or, in the case of an RIA or ERA, at the onset of an advisory relationship—about a customer to develop the baseline against which customer activity is assessed for suspicious activity reporting and to develop appropriate risk-based procedures for conducting ongoing customer due diligence.

Under the final rule, and as discussed below, investment advisers are obligated to report certain suspicious transactions by filing SARs. Suspicious transactions are those that, among other things, have no business or apparent lawful purpose or are not the sort in which the particular customers would normally be expected to engage. Fulfilling this proposed requirement will necessitate that an investment adviser gathers sufficient information to form an understanding of the nature and purpose of the customer relationship for the purpose of developing a customer risk profile, which informs the baseline against which the investment adviser can identify aberrant, suspicious transactions. In some circumstances, an understanding of the nature and purpose of a customer relationship can also be sufficiently developed by inherent or self-evident information about the product or customer type, such as the type of customer or the service or product offered, or other basic information about the customer, and such information may be sufficient to understand the nature and purpose of the relationship. This information may include the customer's explanation about its initial decision to seek advisory services from the adviser and may be reflected in the particular type of advisory service the customer seeks, as well as information already collected by the investment adviser, such as investment objective, net worth, domicile, citizenship, or principal occupation or business.

FinCEN is clarifying that, although investment advisers may determine that formal risk-rating models or methodologies assist them in complying with this requirement, advisers may comply with this requirement through other approaches and have discretion to apply risk factors appropriate for their business activities and products. These approaches should be informed by an investment adviser's assessment of overall risk for its advisory business and should be sufficiently detailed to distinguish between significant variations in the illicit finance risks of its customers. FinCEN further notes that there are no required risk profile categories, and the number and detail of these risk characterizations will vary based on the adviser's size and complexity. As explained above, FinCEN is also clarifying that, consistent with existing BSA regulatory guidance for other financial institutions, an investment adviser can evaluate certain lower risk relationships through consideration of ''inherent or self-evident information,'' including the type of customer or type of account, service or product.[228]

For investment advisers, the risks associated with a particular type of customer may vary significantly. For instance, key risk factors for a natural person customer may include the source of funds, the jurisdiction in which the customer resides, the customer's country(ies) of citizenship, and the customer's status as a PEP,[229] among other things. For a legal entity customer, key risk factors an investment adviser may consider may include the type of entity (*e.g.,* limited partnership, limited liability company, trust), the jurisdiction in which it is domiciled and located, and the statutory and regulatory regime of that jurisdiction with respect to corporate formation and other financial transparency requirements, if relevant. The investment adviser's historical experience with the customer or entity and the references of other financial institutions may also be relevant factors.

In understanding the nature and purpose of customers that are private funds, FinCEN notes that investment advisers can (1) create and administer a private fund; or (2) provide advice to a private fund that is created and administered by a third party—for example, a financial intermediary. While the particular role played by the investment adviser will affect the type of information the adviser reasonably can collect about the investors in such a fund, in either case the adviser should collect sufficient information to develop a customer baseline for suspicious activity reporting regarding the private fund.

FinCEN expects advisers to subject non-intermediary legal entity customers that are not BSA-defined financial institutions with their own AML/CFT requirements to a different assessment than intermediary customers that are BSA-defined financial institutions in order to understand the nature and purpose of the customer relationship. For example, FinCEN expects that an investment adviser would assess the risks of a customer that is a registered broker-dealer, and therefore a financial institution, as different from the risks of an unregulated operating company or private holding company. The final rule's requirement to assess customer risk must be understood in this context.

FinCEN recognizes that certain information regarding underlying investors initially may not be collected by investment advisers to private funds, and that the investment adviser may not always have a direct relationship with the investors in its legal entity or private fund customers. Those investors may be introduced to the adviser by other entities who may or may not have their own AML/CFT obligations (such as a bank, broker-dealer, other investment adviser, or other intermediary). Even though investment advisers would not be required to collect beneficial ownership information on all legal entity customers, investment advisers should collect sufficient information such that they are able to detect and report suspicious activity associated

[227] 89 FR at 44578–79 (discussing section 1032.220(a)(6) of the proposed CIP rule).

[228] *See* FIN–2020–G002, *Frequently Asked Questions Regarding Customer Due Diligence (CDD) Requirements for Covered Financial Institutions* (Aug. 3, 2020), *https://www.fincen.gov/sites/default/files/2020-08/FinCEN_Guidance_CDD_508_FINAL.pdf; see also* FFIEC BSA/AML Examination Manual, *Customer Due Diligence -Overview https://bsaaml.ffiec.gov/manual/AssessingComplianceWithBSARegulatoryRequirements/02.*

[229] *See generally* Joint Statement on Bank Secrecy Act Due Diligence Requirements for Customers Who May Be Considered Politically Exposed Persons (Aug. 21, 2020), *https://www.fincen.gov/sites/default/files/shared/PEP%20Interagency%20Statement_FINAL%20508.pdf.*

with intermediaries or nominee holders representing underlying investors, as well as activity related to underlying investors.[230] FinCEN acknowledges that advisers to private funds may already engage in AML/CFT due diligence practices, including diligence on intermediaries representing underlying investors in a fund. In some instances, depending on the risk associated with the private fund, an investment adviser may determine that it does not need to conduct additional diligence on underlying investors or customers that are represented by intermediaries. However, in other instances when an investment adviser assesses a private fund or its investors presents higher risk, the investment adviser may need to collect additional information about the underlying investors to develop a customer baseline for suspicious activity reporting regarding the private fund.

Ongoing Monitoring to Identify Suspicious Transactions and Update Customer Information. Similar to the CDD obligations for mutual funds,[231] under the proposed section1032.210(b)(5)(ii), investment advisers would have been required to implement appropriate risk-based procedures to conduct ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information. FinCEN is implementing this requirement without change from the proposed rule. Accordingly, the final rule will require an investment adviser's AML/CFT program to implement appropriate risk-based procedures for conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information. This element of CDD will oblige investment advisers to perform ongoing monitoring, drawing on customer information, as well as to file SARs in a timely manner in accordance with their reporting obligations.[232] As proposed, the obligation to update customer information will generally only be triggered when the investment adviser becomes aware of information relevant to assessing the potential risk posed by a customer; it does not impose a categorical requirement to update customer information on a regularly occurring, pre-determined basis.

Ongoing monitoring may be accomplished in several ways, any of which can be included in an investment adviser's AML/CFT program. Customer information may be integrated into the investment adviser's transaction monitoring system and may be used after a potentially suspicious transaction has been identified, as one means of determining whether the identified activity is suspicious. An investment adviser may also utilize the information sharing provisions under section 314(b) of the USA PATRIOT Act to request relevant information from other financial institutions that may hold relevant information, such as the qualified custodians of customer funds.

FinCEN would also like to clarify, as discussed in detail in the Regulatory Analysis at Section V, that the estimated number of SARs to be filed by each investment adviser is intended to assist FinCEN in estimating the costs associated with identifying and reviewing alerts and cases that may eventually lead to a SAR filing. There is no regulatory expectation or obligation that an investment adviser file a certain minimum number of SARs to be in compliance with the requirements of the final rule.

Regarding transaction monitoring, FinCEN is clarifying that investment advisers are not categorically required to perform media searches or particular screenings for all customers, but they should conduct risk-based monitoring of such reports and events.[233] In circumstances where a customer presents certain risk indicators, an adviser may need to collect additional information to better understand the customer relationship and monitor for material changes based on external developments. For example, an investment adviser may need to do additional research, including open-source media searches, where a customer claims their funds are derived from a source of wealth that is inconsistent with the adviser's understanding of the customer's financial activities and sources of funds. Similarly, if an adviser knows, or reasonably should know, that a customer has ties to a jurisdiction, or legal or natural person, that is subject to OFAC sanctions, an adviser should regularly confirm that the customer themselves has not been designated or otherwise been made subject to OFAC sanctions. Regardless of the approach that an investment adviser follows with respect to media searches and similar screenings, the adviser should reassess and update customer risk profiles based on material information that personnel in customer-facing roles identify in the course of performing their duties or that the customer discloses as part of an ongoing customer relationship—even if not specifically undertaken to support the adviser's AML/CFT program.

FinCEN also notes that this rule does not require investment advisers to implement automated transaction monitoring systems. The type of transaction monitoring system used by an investment adviser should be commensurate with its risk profile; rather than any particular technology solution, the adviser should have reasonable internal policies, procedures, and controls to monitor and identify unusual activity, and adequate resources to identify, report, and monitor suspicious activity. RIAs, including smaller RIAs, whose customer funds are custodied with a qualified custodian that may employ its own transaction monitoring system, may not have a need for their own transaction monitoring systems, and so may delegate certain aspects of transaction monitoring to the qualified custodian, although such RIAs remain legally responsible for such transaction monitoring, and, if applicable, reporting to FinCEN on suspicious transactions identified through such monitoring.

As FinCEN noted in the preamble to the CDD Rule, the ongoing monitoring obligation is intended to apply to ''all transactions by, at, or through the financial institution,'' [234] and not just those that are made by direct customers of the financial institution. Given that risks posed by each customer differ, FinCEN believes that the level of risk posed by a customer relationship with a legal entity customer that is a pooled investment vehicle should be a factor influencing the decision to request information regarding underlying investors, and if the legal entity customer does not provide such information, how the investment adviser should adjust the risk profile of that legal entity customer.

[230] *See Customer Due Diligence Requirements for Financial Institutions,* Notice of Proposed Rulemaking, 79 FR 45141, 45161 (Aug. 4, 2014).

[231] 31 CFR 1024.210(b)(5)(ii); *see also* 81 FR at 29424.

[232] The proposed SAR filing obligations being adopted for investment advisers are discussed below.

[233] As stated in previous FinCEN guidance on the CDD Rule, compliance with the CDD Rule does not categorically require the performance of media searches or particular screenings. *See* FIN–2020–G002, *Frequently Asked Questions Regarding Customer Due Diligence (CDD) Requirements for Covered Financial Institutions* (Aug. 3, 2020). *See also,* FinCEN, *Answers to Frequently Asked Questions Regarding Suspicious Activity Reporting and Other Anti-Money Laundering Considerations,* (Jan. 19, 2021), available at *https://www.fincen.gov/sites/default/files/2021-01/Joint%20SAR%20FAQs%20Final%20508.pdf,* at questions 4 and 5.

[234] 81 FR at 29424.

7. AML/CFT Program Approval

Proposed Rule: Proposed section 1032.210(a)(2) would require that each investment adviser's AML/CFT program be approved in writing by its board of directors or trustees, or if it does not have a board, by its sole proprietor, general partner, trustee, or other persons that have functions similar to a board of directors. The proposed rule would require an investment adviser's written program to be made available for inspection by FinCEN or the SEC.

Comments Received: Three commenters asserted that, as owners and principals of advisers may not be most familiar with operational aspects of an adviser's AML/CFT program, the final rule should permit approval by a member of senior management. The commenters noted this would be consistent with the corresponding rules for broker-dealers and with the integration of the AML program into the adviser's existing compliance program.

Final Rule: The final rule retains the proposed requirement without change. FinCEN recognizes that some investment advisers might have other individuals or groups with similar status or functions as a board of directors or trustees, including sole proprietor, general partner, trustee, or other persons that have functions similar to a board of directors and are able to approve the AML/CFT program. FinCEN agrees with the points raised by several commenters and notes that, in such circumstances (where an adviser does not have a board of directors or trustees but has individuals or groups with similar status or functions to such a board), other members of senior management may also be appropriately suited to approve the AML/CFT program. Such individuals may include the Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Legal Officer, Chief Compliance Officer, Director, and other senior management with similar status or function. In addition, groups with oversight responsibilities may include board committees such as compliance or audit committees as well as a group of some, or all of these individuals with aforementioned titles, as senior management that can provide effective oversight of the AML/CFT program to comply with the rule. Accordingly, under the circumstances noted above, an investment adviser may comply with this provision of the final rule by having its program approved in writing by any of the foregoing persons or groups.

8. Other Comments Regarding AML/CFT Program Requirements

One commenter suggested FinCEN expressly recognize that investment advisers are already subject to significant recordkeeping obligations and the intention of the AML/CFT program requirement is not to require advisers to create additional records outside of those that are created in the ordinary course.

One commenter suggested that FinCEN create an AML examination team for activities or entities that may be subject to AML/CFT regulation but do not have a primary Federal regulator. The commenter suggested this could include family offices, real estate funds, title insurers, escrow agents, and money services businesses. The commenter stated that other AML conduct regulators around the world have similarly done so. The same commenter recommended that the SEC and CFIUS strengthen oversight of private funds, and that CFIUS should be reviewing more foreign investments in sensitive economic sectors, aided by the SEC.

As FinCEN stated in the IA AML NPRM, investment advisers are subject to a range of reporting obligations under Federal securities laws.[235] Those laws and regulations, however, only have limited overlap with the purposes and requirements of AML/CFT laws and regulations. FinCEN further acknowledges the suggestion to create an AML examination team for other types of activities (some of which may relate to investment advisers), but has determined that they apply to a broader set of activities beyond the scope of the proposed rule and declines to address them further at this time. Regarding the scope of CFIUS reviews and CFIUS oversight of private funds, FinCEN notes that this is outside the scope of the current rulemaking.

9. Duty Provision

Proposed Rule: As noted in the IA AML NPRM, section 6101(b)(2)(C) of the AML Act, codified at 31 U.S.C. 5318(h)(5), provides that the duty to establish, maintain, and enforce a financial institution's AML/CFT program shall remain the responsibility of, and be performed by, persons in the United States who are accessible to, and subject to oversight and supervision by, the Secretary of the Treasury and the appropriate Federal functional regulator (the ''Duty Provision''). Proposed section1032.210(d) would have incorporated this statutory requirement with respect to investment advisers' AML/CFT programs by restating that the duty to establish, maintain, and enforce the AML/CFT program must remain the responsibility of, and be performed by, persons in the United States who are accessible to, and subject to oversight and supervision by, FinCEN and the financial institution's appropriate Federal functional regulator (*i.e.,* for investment advisers, the SEC). FinCEN requested comment on a variety of potential questions or challenges that may arise for financial institutions as they address this requirement and noted that it would consider whether additional interpretive language would be appropriate in a final rule.

Comments Received: FinCEN received four comments on the proposal that an investment adviser's AML/CFT program be based in the United States. Commenters questioned how foreign advisers without U.S.-based staff could implement the AML/CFT program located in the U.S. One commenter called for FinCEN to acknowledge that a foreign adviser could accomplish that requirement through retention of a U.S.-based contractor or administrator or through other means. Another commenter called for FinCEN to exclude foreign-located investment advisers from the rule or eliminate the obligation of foreign-located investment advisers to have persons implementing the AML/CFT program located in the United States. A third commenter asked that FinCEN analyze the impacts on foreign-located advisers and extend the implementation period to allow sufficient time for foreign-located advisers to hire and train staff in the United States. Another commenter requested that the final rule expressly permit foreign-located persons to participate in AML/CFT compliance oversight.

Final Rule: FinCEN has determined not to include this requirement in this final rule as discussed below. The statutory text of the Duty Provision [236] came into effect for all BSA-defined financial institutions on January 1, 2021, as part of the National Defense Authorization Act for Fiscal Year 2021.[237] At the same time, the Duty Provision previously has not been incorporated into a FinCEN regulatory requirement. FinCEN acknowledges the comments seeking further guidance, an exemption from, or a delay in implementation for, foreign-located investment advisers regarding the Duty Provision, as well as the comment requesting use of a U.S.-based contractor or service provider to comply with this

[235] 89 FR at 12110–11.

[236] 31 U.S.C. 5318(h)(5).

[237] Public Law 116–283, Div F, Title LXI 6101(b).

requirement. FinCEN has recently sought comment on a proposed regulation incorporating the Duty Provision for existing BSA-defined financial institutions as a part of broader updates to the AML/CFT Program requirements issued on July 3, 2024 (July AML/CFT Program NPRM).[238] In light of the comments seeking further guidance regarding the Duty Provision, as well as the July AML/CFT Program NPRM, FinCEN has determined not to include this requirement in this final rule. FinCEN continues to take the Duty Provision under advisement and may consider incorporating the Duty Provision in a subsequent rulemaking applicable to investment advisers.

10. Statutory Factors Considered in Applying AML/CFT Program Requirements

The BSA authorizes FinCEN, after consultation with the appropriate Federal functional regulator (for investment advisers, the SEC), to prescribe minimum standards for such AML/CFT programs.[239] In developing this final rule, FinCEN consulted and coordinated with SEC staff, including with respect to the statutorily specified factors set out in 31 U.S.C. 5318(h)(2)(B). These factors are:

- financial institutions are spending private compliance funds for a public and private benefit, including protecting the United States financial system from illicit finance risks;
- the extension of financial services to the underbanked and the facilitation of financial transactions, including remittances, coming from the United States and abroad in ways that simultaneously prevent criminal persons from abusing formal or informal financial services networks are key policy goals of the United States;
- effective anti-money laundering and countering the financing of terrorism programs safeguard national security and generate significant public benefits by preventing the flow of illicit funds in the financial system and by assisting law enforcement and national security agencies with the identification and prosecution of persons attempting to launder money and undertake other illicit activity through the financial system;
- anti-money laundering and countering the financing of terrorism programs should be—
  - reasonably designed to assure and monitor compliance with the requirements of the BSA and regulations promulgated under the BSA; and
  - risk-based, including ensuring that more attention and resources of financial institutions should be directed toward higher-risk customers and activities, consistent with the risk profile of a financial institution, rather than toward lower-risk customers and activities.

FinCEN has considered these factors in section 5318(h)(2)(B) in the drafting of this final rule. In finalizing this rule, FinCEN has considered the fact that comprehensive AML/CFT requirements for investment advisers, which will require investment advisers to have effective AML/CFT programs and subject them to SAR reporting requirements, will aid in preventing the flow of illicit funds in the U.S. financial system and in assisting law enforcement and national security agencies with the identification and prosecution of those who attempt to launder money and undertake other illicit finance activity through the financial system. Additionally, FinCEN recognizes that AML/CFT programs at an investment adviser should be reasonably designed and risk-based consistent with the investment adviser's respective risk profile, and therefore is adopting an AML/CFT program rule that requires internal policies, procedures, and controls reasonably designed to prevent the investment adviser from being used for money laundering, terrorist financing, or other illicit finance activities, as well as risk-based procedures that consider an investment adviser's risk profile. Further, as discussed in the Regulatory Impact Analysis, FinCEN has analyzed the financial costs to investment advisers in imposing AML/CFT obligations, including AML/CFT program requirements and SAR filing requirements, and has determined that the public and private benefit to this proposed rule would outweigh the private compliance costs.[240]

F. Suspicious Activity Reporting

The BSA authorizes Treasury—and thereby FinCEN—to require ''any financial institution, and any director, officer, employee, or agent of any financial institution, to report any suspicious transaction relevant to a possible violation of law or regulation.'' [241] Existing FinCEN regulations issued under this authority require banks, casinos, card clubs, money services businesses, broker-dealers in securities, mutual funds, insurance companies, futures commission merchants, introducing brokers in commodities, and loan or finance companies to report suspicious activity by submitting SARs to FinCEN.[242] As discussed further below, in this final rule, FinCEN is subjecting covered investment advisers to suspicious activity reporting requirements similar to those previously issued by FinCEN.

Proposed Rule: Proposed section 1032.320 would have required investment advisers to file SARs for any suspicious transaction relevant to a possible violation of law or regulation and as otherwise defined.

Proposed section 1032.320(a) set forth the criteria for which an investment adviser would be obligated to report any suspicious transactions in line with those imposed on other financial institutions. Under this proposal, filing a report of a suspicious transaction would not relieve an investment adviser from the responsibility of complying with any other reporting requirement imposed by the SEC.

Proposed section 1032.320(a)(1) contained the general statement of the obligation to file reports of suspicious transactions. The obligation would have extended to transactions conducted or attempted by, at, or through an investment adviser. Proposed section 1032.320(a)(2) would have required the reporting of any suspicious activity transaction that involves or aggregates at least $5,000 in funds or other assets. Furthermore, proposed section 1032.320(a)(1) would have permitted an investment adviser to report voluntarily any transaction the investment adviser believes is relevant to the possible violation of any law or regulation but that is not otherwise required to be reported by this proposed rule. As proposed, such voluntary reporting would be subject to the same protection from liability as mandatory reporting pursuant to 31 U.S.C. 5318(g)(3).

[238] *Anti-Money Laundering and Countering the Financing of Terrorism Programs,* Notice of Proposed Rulemaking, 89 FR 55428 (Jul. 3, 2024).

[239] 31 U.S.C. 5318(h)(2)(A).

[240] Further discussion relevant to each factor may be found at: Factor (i): the regulatory impact analysis at Section V and other discussions of the costs and benefits of the rule; Factor (ii): we believe that this factor is not relevant to the rule because investment advisers generally do not provide services to the unbanked, process remittances, or participate in informal financial networks. This may be inferred from the risk discussion at Section II.C and accompanying discussions of the structure of the investment advisory industry; and Factor (iii): the risk analysis at Section II.C; Factor (iv): the risk analysis at Section II.C and the discussion of building upon existing requirements and examination programs in this Section and at Section III.D.

[241] 31 U.S.C. 5318(g)(1).

[242] *See* 31 CFR 1020.320, 1021.320, 1022.320, 1023.320, 1024.320, 1025.320, 1026.320, and 1029.320.

Proposed section 1032.320(a)(2)(i) through (iv) would have specified that an investment adviser would be required to report a transaction if it knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part): (i) involves funds derived from illegal activity or is intended or conducted to hide or disguise funds or assets derived from illegal activity as a part of a plan to violate or evade any Federal law or regulation or to avoid any transaction reporting requirement under Federal law or regulation; (ii) is designed, whether through structuring or other means, to evade the requirements of the BSA; (iii) has no business or apparent lawful purpose, and the investment adviser knows of no reasonable explanation for the transaction after examining the available facts; or (iv) involves the use of the investment adviser to facilitate criminal activity. Proposed section 1032.320(a)(3) would have provided that where more than one investment adviser, or another financial institution with a separate suspicious activity reporting obligation,[243] is involved in the same transaction, only one report jointly filed on behalf of all involved financial institutions would be required.

Comments Received: 11 commenters commented on the requirement for investment advisers to file SARs. Commenters generally supported applying the SAR filing requirement and the safe harbor from liability, but requested clarification on how the SAR filing obligation would apply to advisory activities in general and in certain circumstances, noting the difference between advisers' role in funds transfers and those of other financial institutions. Some commenters supported the proposed obligation as an important way to prevent abuse of the investment adviser sector and to provide law enforcement with useful information to combat illicit finance. Regarding the proposal to allow for joint filing of SARs, a number of commenters suggested that the regulation require specifically that the SAR narrative describe the respective roles and involvement of each financial institution with respect to the reported transaction.

However, other commenters expressed skepticism about the utility of this obligation given the limited information available to some investment advisers considering their access to the information necessary to file SARs and the low number of reported SARs involving investment advisers to date. One commenter requested that FinCEN clarify its expectations of investment advisers regarding the volume of SARs to be filed. Finally, several commenters noted the importance of clarifying that foreign-located investment advisers should not be required to file SARs where doing so creates a conflict of law with the law of the jurisdiction in which the entity is located. The subsections below address some of the specific issues raised by commenters related to the SAR filing obligation as well as the other provisions in the SAR filing requirement.

1. Scope of the SAR Filing Obligation

Comments Received: One commenter requested that FinCEN revise the SAR threshold upwards from $5,000 to $25,000. One commenter requested FinCEN clarify that the requirement to file SARs applies to transactions initiated after the specified compliance date for the AML/CFT program, so there is no confusion regarding whether SARs must be filed as an adviser begins to implement and test its AML program. One commenter suggested that the proposed rule sought to transform the SAR requirement into a tool to assist CFIUS efforts and asked FinCEN to confirm that the SAR filing obligation require reports where the adviser knows, suspects, or has reason to suspect that the activity or transaction in question involves a violation of law.

FinCEN is implementing this requirement without change from the proposed rule. FinCEN declines to revise the SAR threshold for this specific requirement as applied to investment advisers. FinCEN is currently reviewing the threshold for SARs and other applicable BSA reports for all covered financial institutions, as required by sections 6204 and 6205 of the AML Act, and will consider potential changes in the context of that review, as appropriate.

FinCEN is also clarifying in this final rule that while investment advisers are not required to file SARs until after the compliance date of the final rule, some SAR filings triggered by activity after the compliance date may implicate transactions that occur on behalf of a customer prior to the compliance date. In this circumstance, an adviser should not exclude relevant information from a SAR filing even where the information is about activity that occurred prior to the compliance date. However, FinCEN does not expect investment advisers to look back through activity prior to the compliance date to identify conduct that may warrant filing a SAR.

As set out in 1032.320, the SAR filing obligation requires reporting where the adviser knows, suspects, or has reason to suspect a possible violation of law or regulation. Contrary to one commenter's suggestion, FinCEN does not seek to transform or change SAR filing obligations in order to assist the CFIUS process. Rather, as discussed further below, FinCEN is adopting SAR filing obligations for advisers similar to existing SAR regulations.

2. Transactions ''By, At, or Through'' Investment Advisers

Proposed Rule: Section 1032.320(a)(1) of the proposed rule stated that a transaction ''requires reporting if it is conducted or attempted by, at, or through an investment adviser.''

Comments Received: Seven commenters requested clarification about the language ''by, at, or through'' investment advisers in section 1032.320(a)(1), claiming it was a broad and ambiguous definition, and that it did not correspond with the role played by investment advisers in the management of funds or processing of transactions. Commenters believed that this language was more appropriate for banks or other financial institutions that directly hold funds or process transactions. Commenters also expressed concern about the prospect of being required to file SARs in relation to the underlying changes in a fund's portfolio or for the portfolio companies in which their funds are invested. One commenter suggested narrowing the reporting obligation to transactions by, at, or through a pooled investment vehicle or account for which an investment adviser acts as adviser given an investment adviser would be better able to file a SAR in relation to transactions involving these customers. Two commenters requested FinCEN clarify that for an adviser advising a fund serviced by a foreign-located fund administrator that is subject to SAR filing or similar obligations under their home country AML/CFT regulations is not required to file a SAR in the United States, which could otherwise raise data privacy and conflicts of laws issues.

Final Rule: FinCEN is implementing this requirement without significant change from the proposed rule. FinCEN has added ''Advisers Act'' to this provision to clarify that filing a SAR does not relieve an investment adviser from the responsibility of complying with any other reporting requirements that may be imposed directly by the Advisers Act, as well as SEC rules and regulations that implement the Advisers

[243] Other BSA-defined financial institutions, such as broker-dealers in securities, mutual funds, and banks have separate reporting obligations that may involve the same suspicious activity. *See* 31 CFR 1023.320, 1024.320, 1020.320.

Act or other Federal securities laws. FinCEN clarifies that section 1032.320(a)(1) contains the general statement of the obligation to file reports of suspicious transactions, and the obligation extends to transactions conducted or attempted *by, at, or through* an investment adviser. FinCEN interprets ''transactions conducted or attempted by, at, or through'' to encompass an investment adviser's advisory activities on behalf of its clients. In response to comments that the rule text for the SAR filing obligation is more appropriate for banks or other financial institutions, FinCEN is providing additional detail below on suspicious transactions that may occur by, at, or through an investment adviser, as well as suspicious transactions involving a portfolio company in which an advised fund is invested.

The requirement to file SARs for transactions conducted or attempted by, at, or through an investment adviser parallels the language of the BSA regulations for money service businesses, broker-dealers, and mutual funds.[244] Investment advisers may be familiar with applying this requirement if they are affiliated with a broker-dealer or otherwise transact through them, or in the context of mutual funds they advise.[245] Examples of activities occurring by, at, or through an investment adviser include: when an investment adviser's customer provides an instruction to an investment adviser for the investment adviser to pass on to the custodian (*e.g.,* an instruction to withdraw assets, to liquidate particular securities, or a suggestion that the adviser purchase certain securities for the customer's account) or an adviser instructs a custodian to execute transactions on behalf of its client. However, an adviser's obligation to file a SAR does not extend to activity that is outside the scope of their AML/CFT program.

Because investment advisers are already subject to the anti-fraud and anti-manipulation provisions of the Advisers Act and other Federal securities laws, they should already have in place policies and procedures to prevent and detect fraud by the investment adviser or its supervised persons, including the identification of suspicious activities that may be conducted by employees of an investment adviser as it they relate to discretionary client or proprietary investment decisions made by an investment adviser's employees. In either case, the investment adviser should ensure it has systems in place to determine if suspicious transactions are being conducted ''by'' an investment adviser via client or proprietary investments.

Some of the types of suspicious activity transactions an investment adviser may identify and report are transactions designed to hide the source or destination of funds and fraudulent activity. Other suspicious activity tied to private funds, particularly venture capital funds, could, for example, involve an investor in such a fund requesting access to detailed non-public technical information about a portfolio company the fund is invested in that is inconsistent with a professed focus on economic return, in a potential case of illicit technology transfer in violation of sanctions, export controls, or other applicable law. As such, the activity would be eligible for reporting in a SAR. A money launderer also could engage in placement and layering by funding a managed account or investing in a private fund by using multiple wire transfers from different accounts maintained at different financial institutions or requesting that a transaction be processed in a manner to avoid funds being transmitted through certain jurisdictions. Suspicious activity could also include other unusual wire activity that does not correlate with a customer's stated investment objectives; transferring funds or other assets involving the accounts of third parties with no plausible relationship to the customer, transfers of funds or assets involving suspicious counterparties—such as those subject to adverse media, exhibiting shell company characteristics, or located in jurisdictions with which the customer has no apparent nexus; the customer behaving in a manner that suggests that the customer is acting as a ''proxy'' to manage the assets of a third party; or an unusual withdrawal request by a customer with ties to activity or individuals subject to U.S sanctions following or shortly prior to news of a potential sanctions listing. Additionally, suspicious activity could include potential fraud and manipulation of customer funds directed by the investment adviser. These typologies can consist of insider trading, market manipulation, or an unusual wire transfer request by an investment adviser from a private fund's account held for the fund's benefit at a qualified custodian.

FinCEN notes, however, that the techniques of money laundering, terrorist financing, and other illicit finance activity are continually evolving, and there is no way to provide a definitive list of suspicious transactions. A determination to file a SAR should be based on all the facts and circumstances relating to the transaction and the customer in question.

FinCEN recognizes that an investment adviser's own proprietary investments may be lower risk in comparison to discretionary investment decisions made on behalf of clients. However, FinCEN further clarifies that it is the investment adviser's responsibility to assess the risk of its own proprietary investment activity and determine the level of monitoring necessary to be commensurate with the investment adviser's assessment of the risks associated with its proprietary investments.

For foreign-located investment advisers (as defined in the final rule), the SAR filing requirements would apply to advisory activities covered by this rule, which are advisory activities that (i) take place within the United States, including through involvement of U.S. personnel of the investment adviser, such as the involvement of an agency, branch, or office within the United States, or (ii) provide advisory services to a U.S. person or a foreign-located private fund with an investor that is a U.S. person. In these circumstances, regardless of whether AML/CFT, administrative, or other advisory services are delegated to a non-U.S. fund administrator by the adviser, a foreign-located investment adviser would be subject to the SAR filing requirement with respect to activities covered by the final rule—including the

[244] *See* 31 CFR 1022.230(a)(2) (money service businesses); 31 CFR 1023.320(a)(2) (broker-dealers); 31 CFR 1024.320(a)(2) (mutual funds).

[245] For instance, pursuant to the Securities Industry and Financial Markets Association (SIFMA) No-Action Letter under which the staff of the SEC's Division of Trading and Markets stated that it would not recommend enforcement action against broker-dealers, an investment adviser must promptly disclose to the broker-dealer potentially suspicious or unusual activity detected as part of the CIP and/or beneficial ownership procedures being performed on the broker-dealer's behalf in order to enable the broker-dealer to file a suspicious activity report, as appropriate based on the broker-dealer's judgment. *See* SEC, Letter to Mr. Bernard V. Canepa, Associate General Counsel, Securities Industry and Financial Markets Association (SIFMA), Request for No-Action Relief Under Broker-Dealer Customer Identification Program Rule (31 CFR 1023.220) and Beneficial Ownership Requirements for Legal Entity Customers (31 CFR 1010.230) (Dec. 9, 2022), *https://www.sec.gov/files/nal-sifma-120922.pdf* [hereinafter SIFMA No-Action Letter]. This request for No-Action Relief was originally issued in 2004 and has been periodically reissued and remains effective. Any SEC staff statements cited represent the views of the SEC staff. They are not a rule, regulation, or statement of the SEC. Furthermore, the SEC has neither approved nor disapproved their content. These SEC staff statements, like all SEC staff statements, have no legal force or effect: they do not alter or amend applicable law; and they create no new or additional obligations for any person.

reporting of suspicious transactions involving a foreign-located private fund with an investor that is a U.S. person. FinCEN would also note that while commenters reported potential data privacy or conflicts of laws issues, no specific jurisdictions or statutes were identified where this is a significant challenge.

Additionally, private fund advisers may have limited involvement in and visibility into the operation of their portfolio companies, including ''material non-public technical information.'' However, there are times when an adviser may be required to file a SAR on a portfolio company, such as where the adviser: (i) is approached by a limited partner or other investor in a fund about unusual access to particular technology or processes being developed by a portfolio company, (ii) becomes aware that such a limited partner or investor has reached out to a portfolio company for such information, or (iii) is asked to obscure participation by an investor in a particular transaction to avoid notification to government authorities; FinCEN would consider such activity to be potentially relevant to a possible violation of law or regulation or otherwise indicative of suspicious activity, and an adviser should consider filing a SAR. The preceding examples are not an exhaustive list and are provided for illustrative purposes only, and private fund advisers' determinations to file a SAR should be based on all the facts and circumstances relating to the transaction and the customer in question.

FinCEN acknowledges the comments regarding investment advisers' potentially limited visibility into the portfolios of funds that they do not advise (such as funds of funds) and the activities of portfolio companies. In response to these comments, FinCEN has decided to clarify the extent of SAR obligations in these contexts. The requirement for reporting of suspicious transactions by, at, or through an investment adviser focuses on the activities of the adviser, and as discussed above, the SAR filing obligation does not extend to activities outside the scope of an adviser's AML/CFT program. This excludes non-advisory activities such as staff of the adviser occupying management roles at portfolio companies. In addition, section 1024.320(a)(2) of the final rule limits the SAR filing obligation to transactions where the adviser ''knows, suspects, or has to reason to suspect'' enumerated types of illicit activity. This is an objective standard that focuses on the evidence available to an adviser in the particular facts and circumstances of a transaction.

FinCEN applies the same standards in existing SAR regulations, such as those for broker-dealers and mutual funds.[246] The release adopting the broker-dealer rule states that ''this is a flexible standard that adequately takes into account the differences in operating realities among various types of broker-dealers,'' some of which, such as clearing brokers, may have less information about their customers.[247] Similarly, FinCEN has issued guidance stating that ''mutual funds should be able to meet the 'knows, suspects, or has reason to suspect' standard . . . based on information available to the mutual fund that was obtained through the account opening process and in the course of processing transactions, consistent with the mutual fund's required anti-money laundering procedures.'' [248] Thus, the standard takes into account both the operational realities of different kinds of financial institutions and the information that they typically collect, including through their AML/CFT procedures.

FinCEN intends the SAR filing requirement to function in a similar fashion with regard to investment advisers. The information that an investment adviser has access to depends upon the operational realities of an adviser in its portion of the market, which includes whether it advises the fund at issue and whether it has portfolio companies over which it exercises significant influence. The standard is not intended to require investment advisers to gather additional information beyond what an adviser in their position would normally possess and what is required by their AML/CFT program. The information such an adviser would have is based upon the due diligence and other information they obtain as an adviser. As discussed above, non-advisory activities—such as having common employees with a portfolio company—are not covered by the SAR filing obligation.

FinCEN emphasizes that this does not mean that investment advisers may disregard indications of suspicious transactions by, at, or through the adviser because they involve funds that the adviser does not advise (such as funds of funds) or portfolio companies. As FinCEN has stated with regard to mutual funds, even if personnel of another entity are better positioned to file a SAR under certain circumstances, a financial institution remains responsible for meeting its SAR obligations.[249] Thus, if under the relevant facts and circumstances, the investment adviser has information causing it to know, suspect, or have to reason to suspect suspicious transactions by, at, or through the investment adviser that involve funds it does not advise or portfolio companies, it is required to file a SAR.

3. Filing and Notification Procedures

Proposed Rule: Section 1032.320(b)(1) through (4) of the proposed rule sets forth the filing and notification procedures investment advisers would need to follow to make reports of suspicious transactions. Within 30 days of initial detection by the investment adviser of facts that may constitute a basis for filing a SAR, the adviser would have needed to report the transaction by completing and filing a SAR with FinCEN in accordance with all form instructions and applicable guidance. The investment adviser would have also needed to collect and maintain supporting documentation relating to each SAR separately and make such documentation available to (1) FinCEN, (2) any Federal, State, or local law enforcement agency, and (3); or any Federal regulatory authority, such as the SEC, that examines the investment adviser for compliance with the BSA under the proposed rule, upon request of that agency or authority. If no suspect is identified on the date of such initial detection, an investment adviser may delay filing a SAR for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection. Under the proposed rule with respect to SAR filing obligations for investment advisers, which are in line with existing SAR regulations for other BSA-defined financial institutions, any supporting documents filed with the SAR would have needed to be disclosed to those authorities or agencies to whom a SAR may be disclosed. For situations requiring immediate attention, such as suspected terrorist financing or ongoing money laundering schemes, investment advisers would have been required under section 1032.320(b)(4) to notify immediately by telephone the

[246] 31 CFR 1023.230; 31 CFR 1024.320.

[247] 67 FR 44048, 44053–54 (Jul. 1, 2002).

[248] FinCEN, *Frequently Asked Questions Suspicious Activity Reporting Requirements for Mutual Funds* (Oct. 4, 2006), available at *https://www.fincen.gov/sites/default/files/shared/guidance_faqs_sar_10042006.pdf* (internal citation omitted).

[249] *Amendment to the Bank Secrecy Act-Requirement that Mutual Funds Report Suspicious Transactions,* Final Rule, 71 FR 26213, 26216 (May 4, 2006).

appropriate law enforcement authority in addition to filing a timely SAR.

Comments Received: No comments were received on this issue.

Final Rule: FinCEN is adopting the requirements regarding SAR filing and notification as proposed.

4. Retention of Records

Proposed Rule: Section 1032.320(c) would have required that investment advisers maintain copies of filed SARs and the underlying related documentation for a period of five years from the date of filing. Supporting documentation would have needed to be made available to FinCEN and the prescribed law enforcement and regulatory authorities, upon request.

Comments Received: No comments were received on this issue.

Final Rule: FinCEN is adopting the requirements regarding SAR filing and retention of records as proposed.

5. SAR Sharing and Confidentiality

Proposed Rule: Section 1032.320(d) would have required that a SAR and any information that would reveal the existence of a SAR are confidential and shall not be disclosed except as authorized in section 1032.320(d)(1)(ii). Section 1032.320(d)(1)(i) generally would have provided that no investment adviser, and no current or former director, officer, employee, or agent of any investment adviser, shall disclose a SAR or any information that would reveal the existence of a SAR. This provision of the proposed rule would have further provided that any investment adviser and any current or former director, officer, employee, or agent of any investment adviser that is subpoenaed or otherwise requested to disclose a SAR or any information that would reveal the existence of a SAR, would decline to produce the SAR or such information and would be required to notify FinCEN of such a request and any response thereto. Investment advisers would be prohibited from disclosing voluntary as well as required SARs.

Section 1032.320(d)(1)(ii) of the proposed rule would have provided three rules of construction that clarify the scope of the prohibition against the disclosure of a SAR by an investment adviser and closely parallel the rules of construction in the suspicious activity reporting rules for other financial institutions. The proposed rules of construction would have primarily described situations that are not covered by the prohibition against the disclosure of a SAR or information that would reveal the existence of a SAR contained in section 1032.320(d)(1). The rules of construction proposed would have remained qualified by, and subordinate to, the statutory mandate that revealing to one or more subjects of a SAR of the SAR's existence would remain a crime.

The first rule of construction, in section 1032.320(d)(1)(ii)(A)(*1*), would have authorized an investment adviser, or any director, officer, employee or agent of an investment adviser, to disclose a SAR, or any information that would reveal the existence of a SAR, to various authorities—FinCEN; any Federal, State or local law enforcement agency; or a Federal regulatory authority that examines the investment adviser for compliance with the BSA—provided that no person involved in the reported transaction is notified that the transaction has been reported. As discussed above, FinCEN is proposing to delegate its examination authority for compliance by investment advisers with FinCEN's rules implementing the BSA to the SEC.

The second rule of construction, in section 1032.320(d)(1)(ii)(A)(*2*), would have provided two instances where disclosures of underlying facts, transactions, and documents upon which a SAR was based would be permissible: in connection with (i) preparation of a joint SAR or (ii) certain employment references or termination notices.[250] This would enable an investment adviser to share the underlying facts, transactions, and documents upon which a SAR is based with certain entities consistent with existing FinCEN guidance where the investment adviser and the recipient entity or entities are jointly filing a SAR. Similarly, an investment adviser, or any current or former director, officer, employee, or agent of an investment adviser would not be prohibited from disclosing the underlying facts, transactions, and documents upon which a SAR is based in connection with certain employment references or termination notices, to the full extent authorized in 31 U.S.C. 5318(g)(2)(B). The third rule of construction, in section 1032.320(d)(1)(ii)(B), would authorize sharing of a SAR within an investment adviser's corporate organizational structure for purposes consistent with the BSA as determined by regulation or in guidance.

Section 1032.320(d)(2) would also incorporate the statutory prohibition against disclosure of SAR information by government authorities that have access to SARs other than in fulfillment of their official duties consistent with the BSA.[251] The paragraph would clarify that official duties do not include the disclosure of SAR information in response to a request by a non-governmental entity for non-public information [252] or for use in a private legal proceeding, including a request under 31 CFR 1.11.[253] Accordingly, the provision would not permit such disclosure by government users in response to these requests or uses.

Comments Received: Four commenters stated that advisers should be able to share SARs with affiliates, noting the benefits to industry-wide efforts to identify and reduce illicit finance risks. Two of the four commenters recommended that advisers be permitted to share SARs with (1) affiliates; (2) the directors and officers of the funds managed by the adviser; and (3) the funds' administrator(s). One commenter requested that FinCEN authorize advisers to share SARs with service providers that may need to be informed of SAR filings for compliance monitoring and other purposes. One commenter requested FinCEN clarify how an RIA would oversee compliance with a qualified custodian that it had delegated responsibility for SAR filing to if any SAR the third-party files is by definition kept confidential from the adviser.

Final Rule: FinCEN is implementing this requirement without change from the proposed rule.[254] FinCEN understands that investment advisers may find it necessary to share SARs within their organizational structures to fulfill reporting obligations under the BSA, and to facilitate more effective enterprise-wide BSA compliance. FinCEN will consider issuing additional guidance, consistent with SAR sharing guidance finalized in 2010 and applicable to other BSA-defined financial institutions, that would permit investment advisers to share SARs with certain U.S. affiliates, provided the affiliate is subject to a regulation providing for the confidentiality of SARs issued by FinCEN or by the affiliate's Federal functional regulator.[255]

[250] To the extent permitted by existing FinCEN regulations and guidance, this would include non-U.S. financial institutions.

[251] 31 U.S.C. 5318(g)(2)(ii).

[252] For purposes of this rulemaking, ''non-public information'' refers to information that is exempt from disclosure under the Freedom of Information Act.

[253] 31 CFR 1.11 is Treasury's regulation governing demands for testimony or the production of records of Treasury employees and former employes in a court or other proceeding.

[254] This provision as proposed, and as set out in the final rule, is consistent with the notification prohibitions for suspicious activity reporting provided in the BSA. 31 U.S.C. 5318(g)(2).

[255] *See, e.g.,* FIN–2010–G005, *Sharing Suspicious Activity Reports by Securities Broker-Dealers,*

FinCEN would like to reiterate that, as outlined in section 1032.320(d)(1)(ii)(A)(*2*) of the final rule, an investment adviser, or any director, officer, employee, or agent of an investment adviser, is not prohibited from disclosing the underlying facts, transactions, and documents upon which a SAR is based, including but not limited to, disclosures of such information to another financial institution or any director, officer, employee, or agent of a financial institution, for the preparation of a joint SAR, provided that no person involved in the reported transaction is notified that the transaction has been reported. For example, this would permit a qualified custodian engaging in transaction monitoring on behalf of an investment adviser to share any underlying information with an investment adviser for activity involving both institutions, so long as the SAR did not involve suspected misconduct by the adviser or its employees.

(a) Sharing With Other Regulators

Comments Received: One commenter requested that proposed section 1032.320(c)(2) be revised to clarify that government authorities' official duties may include disclosing a SAR to an SRO, consistent with the SRO's existing access to SARs. The commenter noted that, unlike existing rules addressing the confidentiality of SARs for other types of financial institutions, the proposal inserts the phrase ''to a non-governmental entity'' before ''in response to a request for disclosure of non-public information.'' The commenter was concerned that this insertion could be misread as restricting the SRO's access to SARs, because SROs are not governmental entities. The commenter also noted that it may be important for SROs to have access to SARs filed by financial institutions for oversight of broker dealers' compliance with BSA requirements and the identification of areas of potential AML/CFT risk.

Final Rule: FinCEN is implementing this requirement with one change to the proposed rule, in response to comments. FinCEN does not intend that the requirements of this rule interfere with any existing access to BSA information. This includes access to BSA information for SROs that may have delegated authority to examine other BSA-defined financial institutions, including broker-dealers and future commission merchants. Therefore, FinCEN has removed the words ''to a non-governmental entity'' in the regulatory text.[256]

(b) Filings by More Than One Financial Institution

Proposed Rule: Section 1032.320(a)(3) would have provided that more than one investment adviser may have an obligation to report the same suspicious transaction and that other financial institutions may have separate obligations to report suspicious activity with respect to the same transaction pursuant to other provisions in the BSA. The provision would clarify that no more than one report would be required to be filed by all financial institutions (including investment advisers) involved in the transaction, under specified conditions.

Comments Received: Three commenters commented on SAR filing obligations when more than one financial institution is associated with the same suspicious activity. Two commenters asked for clarification on how advisers should manage SAR filings obligations for custodians of client accounts, as well as with fund administrators, service providers, and other third parties. One commenter agreed that SARs filed jointly with investment advisers should specifically include the name of each financial institution involved in the transaction and the words ''joint filing'' in the narrative section, and that FinCEN should also consider requiring specifically that the SAR narrative describe the respective roles and involvement of each financial institution with respect to the transaction.

Final Rule: FinCEN is implementing this requirement without change from the proposed rule. FinCEN would like to clarify that section 1032.320(a)(3) of the final rule provides that the obligation to identify and report a suspicious transaction rests with the investment adviser ''by, at, or through'' which the transaction occurs. However, where more than one investment adviser, or another financial institution with a separate SAR obligation, is involved in the same transaction, only one report is required to be filed. FinCEN recognizes that other financial institutions, such as broker-dealers in securities, mutual funds, and banks have separate reporting obligations that may involve the same suspicious transaction.[257] Therefore, in those instances, when an investment adviser and another financial institution, such as a broker-dealer, are involved in the same transaction, only one report for the transaction is required to be filed. It is permissible for either the investment adviser or the other financial institution to file a single joint report provided it contains all relevant facts and that each institution maintains a copy of the report and any supporting documentation. In filing a joint SAR, the filing entities should include the name of each financial institution involved in the transaction, their role in the transactions, and the words ''joint filing'' in the narrative. A single jointly filed SAR will satisfy both financial institutions' independent filing obligations so long as each institution maintains a copy of the SAR filed, along with any supporting documentation. Although financial institutions are permitted to file a joint SAR, they may also choose to file their own individual SARs instead.

(c) Sharing With Other Government Agencies

In the IA AML NPRM, FinCEN stated that SAR filing requirements for investment advisers, particularly venture capital advisers, may help CFIUS agencies identify certain transactions that could pose national security risks. One commenter stated that mandating SAR filing to support CFIUS efforts would be a major departure from standard practice under the BSA. The commenter indicated that requiring venture capital advisers to submit SARs filings to supplement CFIUS reviews would impose a significant burden, and FinCEN should consider more targeted regulatory options besides AML/CFT requirements.

FinCEN notes that CFIUS member agencies may already have access to BSA information as part of their normal duties. FinCEN is also clarifying that it is not requesting venture capital advisers file SARs for the purpose of supplementing notices or declarations submitted to CFIUS. Rather, and as explained elsewhere in this document, an adviser's SAR filing obligations may provide information that is relevant for CFIUS, specifically in the case of technology transfers. In identifying the potential relevance of information in filings related to technology transfers, FinCEN is simply providing more targeted guidance to such advisers as to circumstances specific to venture

Mutual Funds, Futures Commission Merchants, and Introducing Brokers in Commodities with Certain U.S. Affiliates (Nov. 23, 2010); FIN–2010–G006, *Sharing Suspicious Activity Reports by Depository Institutions with Certain U.S. Affiliates* (Nov. 23, 2010).

[256] For the avoidance of doubt, the final rule is not intended to change SROs' confidentiality obligations pursuant to 31 U.S.C. 5318(g) or pursuant to other provisions of this chapter.

[257] *See* 31 CFR 1023.320, 1024.320, and 1020.320.

capital activity where a SAR filing may be required.

6. Limitation of Liability

Section 1032.320(e) of the proposed rule will would have provided protection from liability, also known as a safe harbor, for making either required or voluntary reports of suspicious transactions, or for failures to provide notice of such disclosure to any person identified in the disclosure to the full extent provided by 31 U.S.C. 5318(g)(3).[258] This protection would extend to an investment adviser and any current or former director, officer, employee, or agent of an investment adviser under the conditions of this regulation.

Comments Received: No comments were received on this issue.

Final Rule: FinCEN is adopting the requirements regarding limitations of liability for SAR filing as proposed.

7. Compliance

Under section 1032.320(f) of the proposed rule, FinCEN or its delegates would have examined compliance by investment advisers with the obligation to report suspicious transactions. The section also would provide that failure to comply with the proposed rule may constitute a violation of the BSA and FinCEN's regulations. As discussed above, pursuant to 31 CFR 1010.810(a), FinCEN has overall authority for enforcement and compliance with its regulations, including coordination and direction of procedures and activities of all other agencies exercising delegated authority. Further, pursuant to section 1010.810(d), FinCEN has the authority to impose civil penalties for violations of the BSA and its regulations.

Comments Received: No comments were received on this issue.

Final Rule: FinCEN is adopting the requirements regarding compliance by investment advisers with the obligation to report suspicious transactions as proposed.

8. Consultation With Federal and State Authorities

Under section 6202 of the AML Act (codified at 31 U.S.C. 5318(g)(5)), in imposing any requirement to report any suspicious transaction under this subsection, the Secretary of the Treasury, in consultation with the Attorney General, appropriate representatives of State bank supervisors, State credit union supervisors, and the Federal functional regulators, shall consider items that include—

- the national priorities established by the Secretary;
- the purposes described in section 5311 of the BSA; and
- the means by or form in which the Secretary shall receive such reporting, including the burdens imposed by such means or form of reporting on persons required to provide such reporting, the efficiency of the means or form, and the benefits derived by the means or form of reporting by Federal law enforcement agencies and the intelligence community in countering financial crime, including money laundering and the financing of terrorism.[259]

These items have been considered by the Treasury as described elsewhere in this final rule.[260] The AML/CFT National Priorities include, among other considerations, combating corruption, fraud, and transnational crime.[261] For example, as discussed above and in the Risk Assessment, the absence of AML/CFT requirements for investment advisers, including SAR filing requirements, enables criminals to gain access to the U.S. financial system for purposes of fraud, laundering the proceeds of corruption, and other forms of transnational crime. For these reasons, and the risk of foreign adversaries using investment advisers to gain access to U.S. technology, requiring investment advisers to file SARs will be highly useful for criminal and regulatory investigations and intelligence or counterintelligence activities to combat terrorism, and are otherwise consistent with the purposes set forth in section 5311 of the BSA.

During the drafting of the IA AML NPRM, the comment period for that NPRM, and this final rule, Treasury has consulted with the relevant State and Federal regulators. The IA AML NPRM and final rule were sent to the Department of Justice and to the staff of the SEC as the Federal functional regulator for investment advisers for interagency consultation. Federal banking regulators were also invited to comment on all aspects of this proposed rule. Treasury also reached out to the Conference of State Banking Supervisors as a representative of State banking and credit union supervisors and the North American Securities Administrators Association (NASAA) as a representative of state securities regulators.

G. Information Sharing, Special Due Diligence, and Special Measures

1. Sections 314(a) and 314(b)

Proposed Rule: Proposed sections 1032.500, 1032.520, and 1032.540 would expressly subject investment advisers to FinCEN's rules implementing the special information-sharing procedures to detect money laundering or terrorist activity of sections 314(a) and 314(b) of the USA PATRIOT Act.[262] These provisions generally would require an investment adviser, upon request from FinCEN, to expeditiously search its records for specified information to determine whether the investment adviser maintains or has maintained any account for, or has engaged in any transaction with, an individual, entity, or organization named in FinCEN's request. An investment adviser would then be required to report any such identified information to FinCEN. Further, investment advisers would be able to participate in voluntary section 314(b) information sharing arrangements, through which they would be able to gather additional information from other financial institutions.

Comments Received on Section 314(a): Three commenters were supportive of applying these requirements, as the requirements had been applied by other BSA-defined financial institutions for the past twenty years and doing so with investment advisers would ensure consistent and effective implementation across the U.S. financial sector.

Five commenters opposed applying section 314(a) requirements, stating that advisers do not maintain accounts or engage in transactions with the investors or clients, and that custodians and other financial institutions involved in the activity already have to comply with section 314(a) information requests, and would have any relevant transactional information. One commenter asserted that RIAs and ERAs lack insight into client account information, while another commenter indicated that requiring RIAs and ERAs

[258] To encourage the reporting of possible violations of law or regulation and the filing of SARs, the BSA contains a safe harbor provision that shields financial institutions making such reports from civil liability. In 2001, the USA PATRIOT Act clarified that the safe harbor also covers voluntary disclosure of possible violations of law and regulations to a government agency and expanded the scope of the safe harbor to cover any civil liability which may exist under any contract or other legally enforceable agreement (including any arbitration agreement). *See* USA PATRIOT Act, sec. 351(a). Public Law 107–56, Title III, 351, 115 Stat. 272, 321 (2001); 31 U.S.C. 5318(g)(3).

[259] 31 U.S.C. 5318(g)(5).

[260] *See supra* Section III.A and *infra* Section IV.A.4.

[261] *See* FinCEN, *Anti-Money Laundering and Countering the Financing of Terrorism National Priorities* (Jun. 30, 2021), *https://www.fincen.gov/sites/default/files/shared/AML_CFTPriorities(June30%2C2021).pdf.*

[262] *See* 31 CFR part 1010, subpart E, including 31 CFR 1010.520 and 1010.540.

to respond to bi-weekly section 314(a) requests would be duplicative and impose a significant administrative burden without a corresponding benefit. Another commenter requested that, as information collected under the CDD Rule is relevant for complying with section 314(a) requests, FinCEN wait to apply this requirement to investment advisers until the CDD Rule is revised so parties may comment on how that revision will impact 314(a) requests.

Three commenters requested that if these requirements are applied to RIAs and ERAs, that FinCEN offer guidance on how advisers should comply with 314(a) requests, such as for specific requirements related to funds transfer information. Two commenters requested confirmation that section 314(a) requests can be delegated to offshore fund administrators and other service providers.

Regarding private funds, one commenter requested that an adviser not be directly responsible for reviewing underlying investors in funds because the adviser has effectively delegated this function to the administrator, while two commenters requested that an RIA or ERA be exempt from applying 314(a) requests to underlying investors in foreign-located funds because such investors are not clients of the adviser, are located outside of the United States, and may have no U.S. touchpoints. These commenters also asked for clarification on how the requirements would apply to foreign-located advisers and their foreign-located customers.

Comments Received on Section 314(b): FinCEN received five comments on permitting RIAs and ERAs to enter into information sharing arrangements under section 314(b) of the USA PATRIOT Act. All five commenters supported allowing RIAs and ERAs to enter into information sharing arrangements under Section 314(b), noting that this would assist RIAs and ERAs in detecting and reporting suspicious activity. One commenter recommend that FinCEN provide a clear procedure for sharing relevant information under 314(b) in the final rule.

Applicability to Mutual Funds: One commenter also requested that FinCEN exempt investment advisers from having to apply the information sharing, due diligence, and special measures requirements of part 1032, subparts E and F, to their mutual fund customers. The commenter noted that a mutual fund is highly unlikely to be named in a section 314(a) request, and that the shareholders of mutual fund accounts would be covered by section 314(a) obligations applicable to mutual funds. Regarding the due diligence and special measures requirements of subpart F, the commenter noted that as all mutual funds must be organized under U.S. law, mutual funds would never be a foreign institution subject to those requirements.

Final Rule: FinCEN is implementing this requirement with one substantive change from the proposed rule in response to comments. Regarding section 314(a), FinCEN will include the proposed requirement in the final rule. FinCEN recognizes that implementing this will impose some burden on investment advisers to implement this requirement, but that given the binary nature of the response (yes or no as to whether the adviser has an account for the subject), FinCEN believes such a burden is manageable. In addition, the nature of the request is also something an adviser can answer with existing information. Further, while responding to a 314(a) request requires access to the FinCEN Secure Information Sharing System (SISS), this need not require the purchase of additional technology.

FinCEN recognizes that investment advisers will not necessarily have, as a matter of course, all the information that is considered part of an account when reviewing relevant information to include as funds transfers records that may be maintained by a custodian in response to a section 314(a) request. However, certain information, such as instructions collected from customers or financial information collected to understand the customer's investment objectives, may still be useful for a law enforcement investigation involving the subject of such a request.

Additionally, FinCEN would like to clarify that, for purposes of section 314(a) requests, FinCEN would not expect investment advisers to have ''accounts'' for the underlying investors in a private fund unless the adviser has a separate advisory relationship with that underlying investor, and, as described above, an investment adviser is not at this time categorically required to collect beneficial ownership information for private funds. Therefore, when responding to a section 314(a) request for a private fund, an investment adviser would generally be expected to respond for the fund, and not for the underlying investors in the fund.

Regarding section 314(b), FinCEN will include, at section 1032.540, a reference to 1010.540, which will permit investment advisers to enter into voluntary information sharing agreements under section 314(b). As described in the proposed rule, under the final rule, investment advisers will now be able to participate in voluntary section 314(b) information sharing arrangements, through which they can gather additional information from other financial institutions, which would enable broader understanding of customer risk and filing of/or file more comprehensive SARs, for example.[263] FinCEN will further consider whether existing guidance on section 314(b) information sharing arrangements is sufficient, or if investment advisers require additional guidance specific to their activities.[264]

Regarding mutual funds, FinCEN also agrees with the arguments raised by the commenter regarding the application of section 314(a) information requests and the implementation of special due diligence and special measures applicable under the sections 311 and 312 of the USA PATRIOT Act. FinCEN agrees with the commenter that a mutual fund is highly unlikely to be named in a section 314(a) request, and, as also noted by the commenter, a mutual fund covered by this exclusion generally could not be a ''foreign financial institution'' subject to the special due diligence and special measures under sections 311 and 312. Therefore, FinCEN has modified the proposed rule text to permit investment advisers to exclude mutual funds from these requirements at subpart E and subpart F, which is reflected at section 1032.500 and 1032.600, respectively. This exclusion will also apply to (a) collective investment funds sponsored by a bank or trust company subject to the BSA and (b) any other investment adviser subject to the final rule that is advised by the investment adviser.

2. Special Due Diligence and Special Measures

Proposed Rule: FinCEN proposed to implement special due diligence requirements for correspondent and private banking accounts, as well as certain prohibitions on correspondent banking and special measures under section 311 of the USA PATRIOT Act and section 9714 of the Combating Russian Money Laundering Act,[265] including by amending the definitions in 31 CFR 1010.605 for ''account'' and ''covered financial institutions'' so that these would apply to investment

[263] FinCEN, *Section 314(b) Fact Sheet* (Dec. 2020), available at *https://www.fincen.gov/sites/default/files/shared/314bfactsheet.pdf.*

[264] *Id.*

[265] FinCEN is clarifying that in addition to special measures under section 311 of the USA PATRIOT Act, investment advisers must also comply with actions taken under section 9714(a) of the Combating Russian Money Laundering Act, codified as a note to 31 U.S.C. 5318A, and section 7213A of the Fentanyl Sanctions Act, codified at 21 U.S.C. 2313a.

advisers. FinCEN proposed to add a general cross reference, proposed 1032.600, that would state that investment advisers are subject to the ''special standards of due diligence; prohibitions; and special measures'' already applicable to covered financial institutions, with no exclusion for business activities involving mutual funds advised by the investment adviser.

Comments Received: FinCEN received a range of comments on these proposals. Some commenters supported the proposals without qualification, stating that imposing these requirements on investment advisers would help prevent abuse of the U.S. financial system from criminals and malign actors. One commenter also proposed that FinCEN consider including foreign investment advisers as ''within the definition of foreign financial institutions that are subject to special due diligence programs'' under 31 CFR 1010.610(a), noting that such foreign investment advisers may ''present similar or more significant illicit finance risks than those presented by foreign banks and broker-dealers that are currently subject to those requirements.''

However, one commenter suggested that these requirements should not apply to an adviser to, or sponsor of, a private fund, because private funds are not in a position to provide the information required by these requirements regarding details of transactions and the corresponding beneficiaries and originators, unlike a bank providing a correspondent account. Further, some commenters suggested that FinCEN exempt mutual funds from an investment adviser's requirements to apply certain due diligence and special measures to relevant aspects of their business activities because sections 311 and 312 of the USA PATRIOT ACT (which supply the statutory authority for these requirements) apply only to relationships outside of the United States, while mutual funds are required to be organized under the laws of the United States or of a U.S. state.

Final Rule: FinCEN is implementing this requirement with one substantive change from the proposed rule in response to comments. Under the final rule, investment advisers may exclude from these requirements mutual funds, collective investment funds, and other investment advisers they advise that are subject to this rule. Accordingly, investment advisers will be subject to the special standards of diligence, prohibitions, and special measures requirements with respect to their customers that are not mutual funds, or collective investment funds, or other investment advisers that they advise.

This approach will maintain the requirements in the proposed rule with regard to special due diligence and special measures requirements given the final rule's intent to bring the investment advisers' AML/CFT obligations on the investment adviser sector in line with those imposed on other comparable financial institutions.[266] As discussed in the IA AML NPRM and in line with some comments received, applying these measures to investment advisers would assist RIAs and ERAs in managing risk and identifying illicit activity in certain intermediated advisory relationships. In response to the comment that certain private funds may not have the information necessary to conduct such due diligence, FinCEN recognizes the differing role that many investment advisers play in the movement and storage of funds relative to other financial service providers such as banks. Consistent with the approach taken in prior rules regarding special due diligence and special measure requirements, only covered investment advisers that offer accounts that provide financial institutions with a conduit for engaging in ongoing transactions in the U.S. financial system are subject to this requirement.[267]Accordingly, this requirement is intended to be limited to those types of relationships that provide ongoing services, excluding isolated or infrequent transactions.[268] FinCEN will work with the SEC staff with respect to implementation and examination of this requirement and may issue guidance, if deemed necessary.

With respect to the special due diligence requirements for private banking accounts, FinCEN would like to clarify that in the context of private funds, the term ''minimum aggregate deposit of funds'' would apply to the assets in the private fund, if held by the adviser. In other words, the rule applies where an investment adviser manages more than the minimum aggregate deposit of funds for a customer (which may be a private fund or another type of customer).

Regarding the comment suggesting to include foreign ''investment adviser'' within the definition of ''foreign financial institution'' under 31 CFR 1010.610(a) in order to require that special due diligence program requirements apply to correspondent accounts that covered financial institutions open for foreign investment advisers, FinCEN declines to do so because it assesses at this time that illicit finance risks to the U.S. financial system are adequately addressed by the application of the final rule to the U.S. advisory activities of certain foreign-located investment advisers, as described above. As a result a financial institution will not need to apply these requirements with respect to accounts for foreign investment advisers; instead, a financial institution (including an investment adviser under the final rule) will would still need to apply its overall AML/CFT program (regardless of special due diligence program requirements) to a foreign investment adviser, as it would any other customer covered by the AML/CFT program.

H. Delegation of Examination Authority to the SEC

Proposed Rule: FinCEN proposed to delegate its examination authority for investment advisers to the SEC given the SEC's expertise in the regulation of investment advisers and the existing delegation to the SEC of authority to examine broker-dealers and mutual funds for compliance with FinCEN's regulations implementing the BSA.

Comments Received: FinCEN received four comments pertaining to the delegation of examination authority to the SEC. One commenter supported the delegation of authority. Two commenters called on FinCEN to require that the SEC publicly release a copy of its relevant AML examination manual as the FFIEC has done with its BSA/AML examination manual. A commenter recommended that the final rule expressly recognize that the SEC should not prioritize examination or enforcement activities with respect to investment advisers who work with fund clients that (1) predominantly engage in investment activities in the U.S. and (2) predominantly accept subscriptions from domestic sources or through unaffiliated U.S.-regulated financial institutions. Instead, the commenter asked FinCEN to make clear that investment advisers with a domestic focus in their operations will be selected for examination by the SEC only if additional risk factors (*e.g.,* unusual transactions flagged by the banks) are present. One commenter called on FinCEN to ensure, to the fullest extent possible, that agencies avoid duplication of examination

[266] *See Special Due Diligence Programs for Certain Foreign Accounts,* Final Rule, 71 FR 496 (Jan. 4, 2006), available at: *https://www.federalregister.gov/documents/2006/01/04/06-5/financial-crimes-enforcement-network-anti-money-laundering-programs-special-due-diligence-programs.*

[267] *Id.*

[268] Other requirements, such as suspicious activity reporting and recordkeeping, however, apply to such transactions as set out in this final rule.

activities, reporting requirements, and requests for information, and called on the SEC as the functional regulator of investment advisers, to leverage the work of other BSA/AML examiners.

Final Rule: FinCEN is implementing this provision without change from the proposed rule. The final rule maintains the proposed rule's delegation of examination authority to the SEC over investment advisers' compliance with the rule.[269] This delegation reflects FinCEN's recognition that the SEC is best equipped to handle such examinations given the existing SEC regulatory and examination apparatus with respect to investment advisers. FinCEN declines to expressly adopt the comments suggesting that the SEC should not prioritize its examination activities for those investment advisers ''predominantly engaged in investment activities in the U.S. and predominantly accept subscriptions from domestic sources or through unaffiliated U.S.-regulated financial institutions'' absent other risk factors. In recognizing that the SEC is best equipped to handle such examinations, FinCEN has determined that the SEC is best able to determine its own examination procedures and priorities.

FinCEN also declines to publish an AML/CFT examination manual for investment advisers. FinCEN notes that the SEC has not published an investment adviser examination manual. FinCEN does note that the SEC maintains a compilation of relevant resources on AML/CFT for both broker-dealers and mutual funds, and FinCEN will discuss with the SEC whether to prepare something similar for investment advisers.[270] Regarding the commenter request that the SEC leverage the work of other BSA/AML examiners, FinCEN notes that, as with other types of entities that may have more than one Federal functional regulator, supervisory coordination with regard to investment advisers is important to maintain efficiencies and avoid duplication.

I. Compliance Date

Proposed Rule: Proposed section 1032.210(c) would have required an investment adviser to develop and implement an AML/CFT program and comply with the other AML/CFT requirements of the proposed rule on or before 12 months after the effective date of the regulation.

Comments Received: Several commenters expressed concern about the proposed compliance date, stating that FinCEN had underestimated the overall impact of complying with the regulation. Several commenters requested that the compliance date be extended to 18 or 24 months (the majority of commenters recommended 24 months) from the effective date of the regulation to take into account the burden of complying with the regulation, with one also suggesting that this extended timeline would allow FinCEN to align the effective date of the proposed rule and the pending CIP rule. Some commenters noted that a 12-month compliance date would have a disproportionate impact on smaller entities, with one suggesting that advisers with 100 or fewer staff be given 36 months to comply should they remain in scope of the final rule. Two commenters noted that many advisers may need to renegotiate or amend contracts with a range of banks and broker-dealers to whom investment advisers may need to delegate or with whom they may need to share compliance obligations. One commenter also noted that there exist relatively few custodians, prime brokers, trading counterparties, and fund administrators that are responsible for revising all of these agreements on behalf of the entire universe of RIAs.

Final Rule: FinCEN will require that an investment adviser must be in compliance with the final rule on or before January 1, 2026. FinCEN recognizes that the final rule will create new burdens on investment advisers, that investment advisers have other new regulatory obligations in addition to existing regulatory obligations, and that some advisers may need to develop, build, and integrate technology solutions to comply with certain requirements of final rule.

However, based on FinCEN's experience issuing regulations for other financial institutions requiring them to meet similar requirements, FinCEN believes that a compliance date of January 1, 2026, provides an adequate amount of time to comply with the regulation. As noted by two commenters, FinCEN recognizes that advisers may need to renegotiate or amend contracts with a range of banks and broker-dealers, as well as fund administrators and other market participants, to whom investment advisers may need to delegate or with whom they may need to share compliance obligations. Given that the effective dates of these agreements may vary throughout the industry, FinCEN wants to ensure advisers have at least a full calendar year to adjust any contractual arrangements with custodians, broker-dealers, fund administrators, or other service providers.

J. Other Issues

1. Extend Comment Period

FinCEN received one comment asking for an extended comment period, saying that the IA AML NPRM, by coming in the first quarter of the year (specifically, February) coincided with a time when RIAs are required to update Form ADV as well as oversee audited financials and the preparation of tax statements.

FinCEN declines to re-open or otherwise extend the comment period, believing those options to be unnecessary, given the number of comments received, the wide array of content in the comments received, and the various types of advisers and organizations who submitted comments during this comment period.

2. Use of Legal Entity Identifiers

One commenter suggested that FinCEN ''leverage existing collection procedures from the SEC'' to require investment advisers to collect the legal entity identifier (LEI) [271] of their legal entity customers as part of this rule. The commenter stated that the LEI is ''an open and non-proprietary identifier [that] increases transparency and promotes information sharing among financial regulators'' The commenter noted that the SEC had already included the LEI in other proposed rules applicable to investment advisers, including amending forms for required filings to include LEI.

FinCEN recognizes that using uniform entity identifiers such as an LEI may assist investment advisers and law enforcement agencies in detecting illicit finance activity, such as by assisting in ongoing monitoring of legal entity customer activity. However, not all customers of investment advisers have an LEI. Moreover, FinCEN aims to offer investment advisers flexibility in implementing the proposed requirements while maintaining consistency with how AML/CFT requirements are applied to other financial institutions. Therefore, it will

[269] *See also* 31 CFR 1010.810(b)(6) (FinCEN's delegation of examination to determine compliance with requirements of Chapter X for brokers and dealers in securities and investment companies to the Securities and Exchange Commission).

[270] *See* SEC, *Anti-Money Laundering (AML) Source Tool for Broker-Dealers, https://www.sec.gov/about/offices/ocie/amlsourcetool* and *Anti-Money Laundering (AML) Source Tool for Mutual Funds, https://www.sec.gov/about/offices/ocie/amlmfsourcetool.*

[271] The LEI is an identification number based on the International Organization for Standardization (''ISO'') 17442–1 standard that uniquely identifies a legal entity. As noted by the commenter, the SEC requires an adviser to provide an LEI, if it has one, on Item 1.P on Form ADV.

not require investment advisers to collect the LEI of their legal entity customers. Notwithstanding the absence of an LEI requirement, advisers may still collect LEIs from customers or third party advisers if they believe it is helpful in assessing and mitigating illicit finance risk or complying with specific requirements in the proposed rule.

3. Use of Foreign Jurisdiction Compliance

FinCEN received two comments calling on FinCEN to exempt from the final rule foreign-located advisers who are compliant with the AML/CFT laws of other jurisdictions. One comment noted that there is global acceptance of and adherence to FATF requirements, adding that the SEC and the Commodity Futures Trading Commission are signatories to the International Organization of Securities Commissions (IOSCO) Multilateral Memorandum of Understanding Concerning the Consultation and Cooperation and the Exchange of Information (MMoU).[272] Another commenter stated that foreign-located investment advisers based in the United Kingdom and EU are already subject to similar AML/CFT laws and regulations and the burden of applying the proposed rule to foreign-located investment advisers would be disproportionate and duplicative.

FinCEN recognizes the importance of consistency and international coordination in applying and supervising for AML/CFT requirements on financial institutions active in multiple jurisdictions. As described above, the requirements of the final rule with respect to foreign-located investment advisers will apply only with respect to certain advisory activities with a nexus to the United States. This is consistent not only with the SEC's own supervisory authority under the Advisers Act, but also with AML/CFT supervision of other types of financial institutions, including foreign-located advisers, which are subject to AML/CFT supervision by regulators in multiple jurisdictions. Further, as noted by the commenters, supervisors are able to make use of established fora and mechanisms, such as IOSCO's MMoU, to coordinate their activities and help minimize the burden on regulated entities. Therefore, FinCEN declines to exempt from the rule foreign-located advisers on the basis that they are compliant with the AML/CFT laws of other jurisdictions.

4. Interaction of Proposed Rule With Other Investment Adviser or AML/CFT Rulemakings

Commenters raised several questions pertaining to the interaction of the proposed rule with other rulemakings. Several commenters discussed the plan to issue CIP requirements for investment advisers jointly with the SEC. Commenters noted confusion over the plan for the SEC to issue new CIP rules allowing for adherence to this rulemaking. Several comments called on FinCEN to reopen the comment period for this proposed rule if a joint CIP rule were proposed prior to this rule being finalized. One commenter also requested that FinCEN continue to coordinate with staff at the SEC, especially on rulemakings that are interrelated or will have significant implications for one another, including on the SEC's proposed Outsourcing[273] and Safeguarding[274] rules. One commenter stated that given the overlap between CIP and some of the requirements in the proposed rule—such as the Recordkeeping and Travel Rules and Special Information Sharing Procedures FinCEN should not implement those requirements until the CIP rule is finalized.

Another commenter raised concerns that if the CDD Rule is applied as currently written, many funds would potentially not have to report the identities of any of their beneficial owners as limited partner investors will be below the 25 percent ownership reporting threshold. One commenter also suggested that FinCEN consider requiring investment advisers to begin customer and beneficial ownership identification and verification within a set timeframe, not specifically linked to the CDD update. The commenter also noted that given some of the unique issues related to pooled investment vehicles, FinCEN should not rely solely on an updated CDD rule to implement these requirements for pooled investment vehicles.

FinCEN recognizes and has considered the potential challenges that may arise with multiple rulemaking processes that could affect investment advisers' AML/CFT requirements. As such, FinCEN intends to carefully coordinate on these rulemakings to ensure consistency in how investment advisers, as well as other financial institutions, are treated under these rules. Regarding CIP, as noted above, FinCEN and the SEC intend to align the compliance dates for both AML/CFT Program and SAR Rule as well as a potential final CIP rule. Regarding the revisions to the CDD Rule, FinCEN is considering how any such revisions may impact investment advisers and, as required by the Corporate Transparency Act, intends to issue a notice of proposed rulemaking, which would be subject to public comment. FinCEN will continue to coordinate with the SEC on these and other rulemakings.

IV. Severability

In the IA AML NPRM, FinCEN proposed that if any provision of the final rule, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions, or application of such provisions to other persons or circumstances, that can be given effect without the invalid provision or application. FinCEN did not receive any comments on this issue.

FinCEN adopts this position without change and, separately, incorporates this position into the text of the rule at section 1032.112 for the avoidance of doubt. FinCEN also clarifies its intent regarding the severability of specific parts of the final rule. It is FinCEN's position that if any of the provisions of this final rule, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions, or application of such provisions to other persons or circumstances, that can be given effect without the invalid provision or application. Each provision of the final rule and application thereof serves an important, related, but distinct purpose; provides a distinct benefit separate from, and in addition to, the benefit provided by other provisions and applications; is supported by evidence and findings that stand independent of each other; and is capable of operating independently such that the invalidity of any particular provision or application would not undermine the operability or usefulness of other aspects of the final rules. Based on its analysis, FinCEN believes that although more limited application would change the magnitude of the overall benefit of the final rule, it would not undermine the important benefit of, and justification for, the final rule's application to other persons or circumstances. The qualitative and

[272] Per the IOSCO, the MMoU sets an international benchmark for cross-border co-operation among its signatories. Established in 2002, the MMoU provides securities regulators with the tools for combating cross-border fraud and misconduct. *See* IOSCO, *Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information* (May 2002; rev'd May 2012), available at *https://www.iosco.org/library/pubdocs/pdf/IOSCOPD386.pdf.*

[273] *Outsourcing by Investment Advisers,* Proposed Rule, 87 FR 68816 (Nov. 16, 2022).

[274] *Safeguarding Advisory Client Assets,* Proposed Rule, 88 FR 14672 (Mar. 9, 2023).

quantitative benefits of the rule outweigh the costs for all persons and circumstances covered by the final rule.

For example, but without limitation, if application of the final rule to any subcategory of investment advisers, such as foreign-located advisers, private fund advisers, or venture capital fund advisers, is held to be invalid, it is FinCEN's intent that the final rule remain in effect as to all other subcategories of investment advisers. The purpose of the final rule is to reduce the risk that investment advisers may be misused by money launderers, terrorists, or other actors who seek access to the U.S. financial system for illicit purposes and who threaten U.S. national security; and it is consistent with this purpose to cover some, but not all, investment advisers as defined in the final rule if the application of the rule to a subcategory of investment advisers is held to be invalid. Furthermore, subcategories of investment advisers generally do not depend on each other to comply with the requirements of the final rule and may continue to reduce illicit finance risk even if another subcategory of advisers is no longer covered by the final rule.

The substantive requirements of this final rule—the AML/CFT program, SAR filing, recordkeeping, special standards of diligence, and other requirements—are likewise severable. FinCEN intends for investment advisers to implement each requirement regardless of whether another requirement is held to be invalid, and if the application of a requirement is held to be invalid in certain circumstances, to continue to apply a requirement to the extent it can be given effect in circumstances where it has not been held invalid. Many of the requirements are unaffected if another requirement is held to be invalid. While some substantive requirements facilitate compliance with another requirement of the final rule, no substantive requirement is unworkable if another requirement is invalidated or has its application limited. For example, but without limitation, an investment adviser may continue to maintain an AML/CFT program even if it is not obligated to file SARs or maintain special standards of diligence, which is already the case for certain categories of financial institutions under the BSA.[275] Thus, although an AML/CFT program establishes a structure to facilitate SAR filing, an investment adviser may still report suspicious activity even if it is not required to have an AML/CFT program as set out under the final rule. FinCEN therefore intends for each substantive requirement of the rule to be severable from each of the others and to be applied to the extent possible if its application is limited.

V. Regulatory Analysis

In accordance with Executive Orders 12866, 13563, and 14094 (*i.e.,* E.O. 12866 and its amendments), this regulatory impact analysis (Impact Analysis) is composed of assessments of the anticipated impacts of the final rule—in particular, the final rule's expected costs and benefits to affected parties. This analysis also includes assessments of the rule's impact on small entities pursuant to the Regulatory Flexibility Act (RFA) and of its reporting and recordkeeping burdens under the Paperwork Reduction Act (PRA), as well as consideration of whether an assessment under the Unfunded Mandates Reform Act of 1995 (UMRA) is required and of the implications of the Congressional Review Act for the final rule.

This Impact Analysis finds that the impact associated with the final rule would primarily affect investment advisers (specifically, covered RIAs and ERAs) and U.S. Federal agencies, and estimates that the total present value of costs of the final rule over a 10-year time horizon ranges from $4.3 billion to $8.7 billion, with a primary estimate of $7.4 billion, using a 2 percent discount rate. The annualized costs over a 10-year time horizon range from $470 million to $950 million, with a primary estimate of $810 million, using a 2 percent discount rate.[276] This final rule has been determined to be a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and significant under section 3(f)(1) because it may have an annual effect on the economy of $200 million or greater.

Table 1 summarizes the benefits and costs of the final rule. The potential benefits are difficult to quantify—and thus are unquantified in this Impact Analysis—but are reported alongside the monetized costs:

[275] *See, e.g.,* 31 CFR part 1027 (dealers in precious metals, precious stones or jewels); 31 CFR 1023.230(a)(1) (foreign-located broker-dealers not required to file SARs).

[276] All aggregate figures are approximate and not precise estimates unless otherwise specified.

Table 1. Summary of Benefits and Costs of the Final Rule

Category	Primary Estimate ($M)	Low Estimate ($M)	High Estimate ($M)	Dollar Year	Discount Rate	Time Horizon
BENEFITS						
Annualized Monetized Benefits	N/A	N/A	N/A	2022	2%	10 years
Unquantified Benefits	• Increase access for law enforcement to relevant information for complex financial crime investigations and asset forfeiture. • Enhance the ability of law enforcement to identify and prosecute money laundering and other financial crimes. • Enhance interagency understanding of priority national security threats and their associated financial activity. • Enhance the ability of national security personnel to protect against priority national security threats. • Improve financial system transparency and integrity. • Align with international financial standards to strengthen the U.S. financial system from abuse by illicit actors.					
COSTS						
Annualized Monetized Costs	$810	$470	$950	2022	2%	10 years
Unquantified Costs	N/A					
Category	**Effects**				**Notes**	
Effects on State, Local, or Tribal Governments	No estimated impact to State, local, or Tribal governments.					
Effects on Small Businesses	Estimated annualized cost burden of $40,000 for small investment advisers, approximately 4.7 percent of average revenues or 0.8 percent of assets under management.				Annualized cost burden estimated over 10 years using a 2 percent discount rate.	
Effects on Wages	The final rule is not anticipated to have significant impacts on wages.					
Effects on Growth	Investment advisers are likely to pass on the increased costs of managing accounts to clients through higher fees, which may reduce earnings on investments.					

FinCEN has chosen to issue the final rule applying AML/CFT requirements to RIAs and ERAs (with certain exemptions) instead of two regulatory alternatives: (1) applying AML/CFT requirements to RIAs, ERAs, and State-registered investment advisers, and (2) merely requiring private funds to collect beneficial ownership information on legal entity investors. The first alternative would expand the regulatory requirements of the BSA applied to nearly twice as many entities (as compared to the final rule) at a greater overall cost but provide a similar level of benefits (with only limited incremental benefits attributable to the inclusion of State-registered investment advisers in the definition of financial institution). The second alternative would reduce the costs of the regulation (as compared to the final rule) while providing fewer benefits and only achieving a small proportion of the objectives of the BSA in the investment adviser industry.

FinCEN has conducted a final regulatory flexibility analysis (FRFA) pursuant to the RFA. In response to the findings in the initial regulatory flexibility analysis and public comments on the IA AML NPRM, for the final rule FinCEN has specifically exempted RIAs that register with the SEC as mid-sized advisers to reduce the

potential regulatory burden on small entities.

As detailed in the PRA analysis, for the private sector, the final rule is estimated to result in a one-time, upfront information collection burden of 6.83 million hours and an average annual information collection burden of 4.86 million hours thereafter. The estimated one-time, upfront information collection cost is approximately $408 million, and the estimated average annual recurring information collection cost is approximately $278 million thereafter. These costs are included in the Impact Analysis.

Pursuant to its UMRA-related analysis, FinCEN has not anticipated any expenditures for State, local, and Tribal governments. FinCEN anticipates expenditures by the private sector of more than $177 million, the current UMRA threshold.[277] The UMRA-related analysis for private sector entities has been incorporated into this Impact Analysis.

A. Executive Orders 12866, 13563, and 14094

As detailed below, Treasury assesses that RIAs and ERAs pose a material risk of misuse for illicit finance. Including investment advisers as ''financial institutions'' under FinCEN regulations issued under the BSA and applying comprehensive AML/CFT measures to these investment advisers are likely to reduce this risk.

Executive Order 12866, as amended by Executive Order 14094, directs agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, and public health and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This final rule has been designated a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and significant under section 3(f)(1). Accordingly, this final rule has been reviewed by the Office of Management and Budget (OMB).

1. Discussion of Comments to the Initial Impact Analysis

Seven commenters commented on the initial impact analysis accompanying the proposed rule. Three of these seven commenters commented on the initial impact analysis's cost estimates; all seven commented on the analysis's estimated benefits; and two commented on the analysis's estimates regarding the frequency of SAR filing. As explained below, in response to these comments, FinCEN increased its estimates of costs and expanded its discussion of benefits in the final Impact Analysis, but left the initial SAR estimates unchanged.

(a) Comments Related to Costs

Comments Received: Three commenters provided views on the estimated costs in the initial regulatory analysis. Two commenters argued that advisers would not be able to easily adapt existing policies and procedures to comply with the requirements of the proposed rule, suggesting that the initial impact analysis had thus underestimated the proposed rule's costs by assuming that some such existing policies and procedures could be so adapted. The commenters stated that existing requirements are principles-based and designed to prevent violations of the Advisers Act, and that there is little overlap between those requirements and the purpose and substantive requirements of the BSA that the proposed rule would impose on investment advisers. One commenter also indicated that the annual reviews that investment advisers must conduct for compliance with the Advisers Act do not necessarily equip them to implement the independent testing under the AML/CFT program requirement that the proposed rule would impose.

Regarding those AML/CFT programs that some investment advisers do already have, one commenter noted that even affiliated and dual registered advisers would need to update their compliance programs under the proposed rule. The commenter also noted that advisers with a voluntary AML/CFT program would still need to modify their program, as it is unlikely that their existing program (and systems developed to implement that program) would fully track the requirements in the proposed rule.

In addition, one commenter asserted that FinCEN had underestimated the costs for several specific requirements of the proposed rule, including the costs of implementing an AML/CFT program (particularly for unaffiliated RIAs with limited existing measures), training employees, and filing SARs. The commenter indicated these burdens may be particularly significant for small firms. The commenter also disagreed that a ''risk-based'' program will manage the costs of these requirements for investment advisers, as many financial institutions feel pressure to implement more extensive controls than strictly required to minimize potential regulatory risk. The commenter further reasoned that some firms may decide to not take on customers that may make compliance more difficult, and that this hesitancy may hinder innovation and competition in financial markets, a difficult-to-quantify cost.

One commenter stated that FinCEN had failed to estimate the degree to which ERAs currently implement AML/CFT requirements, which the commenter suggested compromises FinCEN's ability to estimate the rule's compliance costs for ERAs. The commenter believed that FinCEN's failure to do so also would ''inevitably affect'' FinCEN's ability to accurately estimate the compliance costs for many RIAs as well, but without explaining why this would be so.

Two commenters indicated that the proposed rule would have costs on the broader venture capital ecosystem, as venture capital advisers would be forced to take time away from their work supporting businesses in which they invest to instead address compliance with the proposed rule. One commenter concluded that higher costs for smaller venture capital advisers would gradually price them out of the market, leaving only the large institutional advisers who already dominate most asset classes, and suggested that FinCEN consider not only the actual costs of implementation, but the consequences of these costs for investors and the overall innovation ecosystem.

Final Impact Analysis: FinCEN recognizes that there are both substantive and procedural differences in the requirements under the Advisers Act and those being applied in this final rule. As such, FinCEN has not sought to discount or adjust the potential costs of the rule based on existing technology systems, staff, or processes designed to meet requirements of the Advisers Act or other Federal securities laws. Thus, because FinCEN's initial estimates did not generally assume that investment advisers would be able to readily adapt

[277] As explained below in the section V.D, the UMRA threshold is $100 million adjusted annually for inflation. The U.S. Bureau of Economic Analysis reported the annual value of the gross domestic product (GDP) deflator in 1995 (the year in which UMRA was enacted) as 71.823, and in 2022 as 127.215. *See* U.S. Bureau of Economic Analysis, Table 1.1.9, ''Implicit Price Deflators for Gross Domestic Product,'' available at *https://apps.bea.gov/iTable/?reqid=19&step=2&isuri=1&categories=survey%23eyJhcHBpZCI6MTksInN0ZXBzIjpbMSwyLDMsM10sImRhdGEiOltbIkNhdGVnb3JpZXMiLCJTdXJ2ZXkiXSxbIk5JUEFfVGFibGVfTGlzdCIsIjEzIl0sWyJGaXJzdF9ZZWFyIiwiMTk5NSJdLFsiTGFzdF9ZZWFyIiwiMjAyMSJdLFsiU2NhbGUiLCIwIl0sWyJTZXJpZXMiLCJBll1dfQ.* Thus, the inflation adjusted estimate for $100 million is 127.215 divided by 71.823 and then multiplied by 100, or $177 million.

such existing Advisers Act programs to comply with the rule's requirements, no broad change to these estimates is required. FinCEN would note, however, that having organizational experience with complying with certain requirements of the Advisers Act, such as those related to recordkeeping and anti-fraud measures, may help an adviser determine how to best apply similar customer-specific or enterprise-wide recordkeeping or reporting obligations under the final rule.

FinCEN agrees with commenters' conclusion that even dual registrants or affiliates may incur additional costs in conforming their existing AML/CFT programs to the requirements of the rule, despite FinCEN's initial assessment that a dual registrant or affiliate was highly likely to be already applying a significant number of AML/CFT measures. Therefore, FinCEN has increased its estimate of the cost of the rule to these entities in this final Impact Analysis. FinCEN also agrees with commenters that advisers with a voluntary AML/CFT program may still need to adjust their voluntary programs to comply with the requirements of the final rule, but FinCEN assesses that these costs were already accounted for in FinCEN's initial impact analysis, and thus that adjustment to this estimate is not required.

Regarding comments that FinCEN is underestimating the cost of specific requirements and is unable to determine the degree to which ERAs already implement certain AML/CFT measures, FinCEN recognizes that there is some uncertainty about specific costs and about the number of entities already applying certain AML/CFT measures. All estimates of a rule's potential impact, however, involve some level of uncertainty—indeed no commenter identified costs with certainty—and FinCEN's uncertainty analysis in this final Impact Analysis is intended to help address those concerns. Moreover, the commenters who claimed FinCEN was underestimating the cost of these requirements did not provide an alternative estimate for those costs. Regarding concerns that investment advisers will minimize regulatory risk by implementing extensive measures to comply with this rule, FinCEN reiterates that the AML/CFT framework does not utilize a zero tolerance philosophy, and that any enforcement action taken is dependent on the facts and circumstances of each situation.[278]

FinCEN has also, in coordination with Federal functional regulators, continued to emphasize that financial institutions should manage customer relationships and mitigate risks based on customer relationships, rather than decline to provide financial services to entire categories of customers.[279]

In response to one commenter, FinCEN recognizes that there may be additional impact from this rule on general investment activities, including those associated with venture capital advisers, but notes that given the relatively small number of private funds that such exempt venture capital advisers service, such costs will not be significant for each individual adviser, and these requirements will be consistently applied for all investors seeking to invest in private funds advised by venture capital or other exempt reporting advisers. Thus, contrary to the fears raised by commenters, FinCEN does not expect that this rule's costs will drive smaller investment advisers out of the market or fundamentally alter the broader venture capital ecosystem.

(b) Comments Related to Benefits

Comments Received: Seven commenters commented on the benefits of the proposed rule. Four commenters agreed with FinCEN's initial assessment of these benefits. One commenter noted that adding regulations to financial advisors would make it harder for money laundering operations to operate, and thus reduce the lucrative nature of crime in general. Another commenter argued that the proposed rule could assist the IRS in addressing tax evasion through private funds, while another commenter noted that the proposed rule's benefits would significantly outweigh the costs, especially considering the size of the investment advisory market and that some advisers already voluntarily implemented AML/CFT requirements. An individual commenter also provided data from the U.S. Sentencing Commission indicating that over 1,000 people were charged with money laundering in fiscal year 2022, and that the median offense was for over $300,000, to stress the importance of controlling money laundering through regulations like the proposed rule and the benefits that may be obtained by doing so.

Several commenters, however, stated that the proposed rule had no quantifiable benefit despite imposing billions of dollars in costs on investment advisers. One commenter accordingly encouraged FinCEN to quantify the proposed rule's benefits and to include a graph that visualizes a breakeven analysis of the rule. In addition, two commenters specifically disagreed with FinCEN's assessment of benefits. These commenters argued that the proposed rule should consider only the incremental benefit to law enforcement from the application of the proposed rule to venture capital advisers, given the existing AML/CFT obligations to which financial institutions that interact with venture capital funds are already subject. One of those commenters also argued that the initial impact analysis's explanation of benefits was broad and suffered from a lack of specificity, while the other commenter noted that transactional and customer information held by RIAs and ERAs is already available to law enforcement if a warrant has been obtained, or to regulators through their examination process, thereby suggesting that the proposed rule would not provide significant new information to law enforcement.

Final Impact Analysis: In response to these comments on benefits, FinCEN has expanded the discussion on certain benefits in the final Impact Analysis and has added additional detail as to why FinCEN is choosing to not quantify the benefits of this final rule. In particular, FinCEN added additional discussion and detail on benefits associated with measures designed to combat crime, including money laundering, terrorist financing, and other types of illicit finance activity. FinCEN also expanded the Analysis's discussion of benefits associated with international regulatory cooperation for AML/CFT, a type of benefit on which recently updated OMB guidance places an increased emphasis.[280] In response to comments, FinCEN also provided additional discussion on some of the challenges with quantifying the benefits from AML/CFT regulations, such as the deterrent and detection effects of such rules. FinCEN added some additional guidance from OMB on difficulties in

[278] *See, e.g., Joint Fact Sheet on Foreign Correspondent Banking: Approach to BSA/AML and OFAC Sanctions Supervision and Enforcement* (Aug. 30, 2016), available at *https://home.treasury.gov/system/files/136/archive-documents/Foreign-Correspondent-Banking-Fact-Sheet.pdf; see also* Joint Statement on Enforcement of Bank Secrecy Act/Anti-Money Laundering Requirements (Aug. 13, 2020), available at *https://www.fdic.gov/sites/default/files/2024-03/pr20091a.pdf.*

[279] *See Joint Statement on the Risk-Based Approach to Assessing Customer Relationships and Conducting Customer Due Diligence* (Jul. 6, 2022), available at *https://www.fincen.gov/sites/default/files/2022-07/Joint%20Statement%20on%20the%20Risk%20Based%20Approach%20to%20Assessing%20Customer%20Relationships%20and%20Conducting%20CDD%20FINAL.pdf.*

[280] *See* OMB Circular No. A–4 (2023).

quantifying benefits in certain rulemakings as well.

As further explained in the final Impact Analysis, however, the rule does have clearly identifiable benefits, even if those benefits cannot be readily quantified given their nature: difficulty quantifying a rule's benefits does not indicate that the rule lacks benefits or that its benefits are unimportant. Moreover, the final Impact Analysis expressly acknowledges that existing legal requirements provide similar benefits to the rule in some circumstances, but also highlights significant gaps in the existing requirements, and explains how the rule will create new benefits by filling those gaps and more comprehensively promoting AML/CFT compliance in the investment adviser industry.

(c) Estimate of Suspicious Activity Reports

Comments Received: FinCEN's initial impact analysis used the number of SARs currently filed by dual registrants to estimate the number of SARs that RIAs would submit under the proposed rule. One commenter claimed that, by doing so, FinCEN significantly overstated the frequency with which RIAs would submit SARs under the proposed rule, as the vast majority of RIAs do not execute transactions in the way that dual registrants do, but instead rely on custodians. Another commenter stated that the number of SARs that may be filed under the proposed rule should not be used as a proxy for effectiveness of the rule.

Final Impact Analysis: In the final Impact Analysis, FinCEN continues to use the estimated number of SARs to be filed by each investment adviser to assist FinCEN in estimating the costs associated with identifying and reviewing alerts and cases that may eventually lead to a SAR filing, as well as the costs associated with investment advisers documenting cases where SARs are not filed. FinCEN agrees with the commenters that the frequency with which dual registrants file SARs may differ from the frequency with which all RIAs file SARs under the rule: for example, dual registrants may have significantly more transactional activity than entities that are solely investment advisers and may encounter suspicious activity that they would not if they were serving solely as an investment adviser. Thus, by relying on the frequency with which dual registrants file SARs, FinCEN's Impact Analysis may overestimate the number of SARs that RIAs will file under the rule, and thus may overestimate the related costs that the rule would impose. Nonetheless, FinCEN is keeping this estimate given the difficulty of otherwise reliably estimating the frequency of SAR filing and to avoid underestimating time and labor costs associated with the SAR filing process.

FinCEN agrees that the number of SARs a financial institution files does not, in and of itself, necessarily indicate whether that institution has an effective AML/CFT program. FinCEN thus clarifies that there is no regulatory expectation that an investment adviser file a certain number of SARs to be in compliance with the requirements of the final rule. FinCEN recognizes that the amount of potentially suspicious transactions that occur by, at, or through an investment adviser will vary significantly with its AUM, advisory activities, and the risk profile associated with its customers. As such, some advisers may file several hundred SARs per year, while many other advisers, particularly smaller advisers who have fewer customers, may file few if any SARs in a given year. FinCEN also notes that in other sectors subject to SAR filing obligations, a small number of entities are responsible for a large number of total SAR filings for those institutions.[281]

2. Final Regulatory Impact Analysis

In accordance with OMB guidance, this Impact Analysis contains, as follows: (1) a statement of the need for the regulatory action; (2) a clear identification of a range of regulatory approaches; and (3) an estimate of the benefits and costs—quantitative and qualitative—of the final regulatory action and its alternatives.

(a) Statement of the Need for, and Objectives of, the Final Rule

The primary purpose of the final rule is to address identified illicit finance risks among investment advisers (*i.e.,* RIAs and ERAs). Currently, investment advisers are not required by regulation to apply measures designed to address money laundering, terrorist financing, and other illicit finance risks similar to those to which other financial institutions are subject. For example, investment advisers are generally not required to establish an AML/CFT program, to conduct customer due diligence, or to report suspicious customer activity to FinCEN. This means that tens of thousands of investment advisers overseeing the investment of hundreds of trillions of dollars into the U.S. economy currently do not face regulatory sanction for failing to implement the above-mentioned measures, creating a material weakness in the United States's framework to combat illicit finance.

As described in detail above, investment advisers work closely with and provide services that are similar or related to, services authorized to be provided by other BSA-defined financial institutions.[282] While investment advisers do not usually custody customer assets, they generally must understand their customers' financial background and investment goals to provide advisory services, and they direct banks and broker-dealers to execute transactions and disperse funds to support their customers' investment objectives.

Under the current AML/CFT regulatory framework applicable to investment advisory activities, the financial institutions that engage in trading or transactional activities on behalf of investment advisers or their customers, such as banks and broker-dealers, are subject to AML/CFT reporting and recordkeeping obligations. However, for many of these financial institutions, the investment adviser, and not the investment adviser's customers, is their customer. Consequently, they may rely solely on an investment adviser's instructions and lack independent knowledge of the adviser's customers. In some cases, an investment adviser may be the only person or entity with a complete understanding of the source of a customer's invested assets, background information regarding the customer, or the objectives for which the assets are invested. Additionally, an investment adviser may use multiple broker-dealers or banks for trading or custody services.

As a result, one financial institution may not have the complete picture of an adviser's activity or information regarding the identity and source of wealth of the advisers' customers, and thus may not be well-positioned to assess whether funds managed by the adviser may be derived from illicit proceeds or associated with a criminal or other illicit finance activity. Without more complete information, such an institution may not have sufficient information to warrant filing a SAR, or may be required to file a SAR that only has limited information concerning the investment adviser's transactions on behalf of a particular customer. This limits the ability of law enforcement to

[281] *See* FinCEN, *Year in Review for FY 2022* (Apr. 21, 2023), p.3 (noting that the top 10 SAR filers filed approximately 52 percent of all SARs in FY 2022), available at *https://www.fincen.gov/sites/default/files/shared/FinCEN_Infographic_Public_2023_April_21_FINAL.pdf.*

[282] *See supra* Section II.B.

identify illicit activity that may be occurring through investment advisers.

As discussed in the preamble, the final rule addresses this gap by requiring covered RIAs and ERAs to implement AML/CFT programs, which include risk-based procedures for conducting ongoing customer due diligence, and report suspicious activity to FinCEN, among other requirements. These RIAs and ERAs will be subject to examination for compliance with these requirements by the SEC. FinCEN expects this will reduce instances of investment advisers' unwittingly laundering illicit proceeds on behalf of clients and increase the likelihood that authorities detect illicit activity occurring through unwitting investment advisers. It also allows law enforcement to better detect complicit investment advisers that knowingly facilitate money laundering, terrorist financing, or other illicit finance activity. The final rule will also bring the investment adviser industry more in line with its counterparts in the U.S. financial sector and around the world.

(b) Summary of the Final Rule

The final rule adds ''investment adviser'' to the definition of ''financial institution'' at 31 CFR 1010.100(t) and adds a new provision to section 1010.100 defining the term ''investment adviser'' to mean RIAs (except for those RIAs exempted as described below) and ERAs. The final rule also clarifies that for certain ''foreign-located investment advisers'' (RIAs and ERAs that have their principal office and place of business outside the United States), the requirements of the final rule only apply to certain advisory activities with a nexus to the United States.

With these changes to 31 CFR 1010.100, the final rule then subjects such ''investment advisers'' to AML/CFT requirements applied to financial institutions, including requiring them to: (i) develop and implement an AML/CFT program; (ii) file SARs and CTRs; (iii) record originator and beneficiary information for transactions (Recordkeeping and Travel Rules); (iv) respond to section 314(a) requests; and (v) implement special due diligence measures for correspondent and private banking accounts.

AML/CFT Program. These investment advisers are required to maintain an AML/CFT program under the final rule, including: (i) developing internal policies, procedures, and controls to comply with the requirements of the BSA and address money laundering, terrorist financing, and other illicit finance risks; (ii) designating an AML/CFT compliance officer; (iii) instituting an ongoing employee training program; (iv) soliciting an independent test of AML/CFT programs for compliance; and (v) implementing risk-based procedures for conducting ongoing customer due diligence. As discussed above, FinCEN has determined that investment advisers can exempt from their AML/CFT programs any (i) mutual fund, (ii) collective investment fund, or (iii) investment adviser that they advise and that is subject to the final rule. Also as noted above, FinCEN has determined to not include the Duty Provision in this final rule.

File SARs and CTRs. Investment advisers are required to file a report of any suspicious transaction relevant to a possible violation of law or regulation with FinCEN. In addition, investment advisers are required to report transactions in currency over $10,000. Currently, all investment advisers report such transactions on Form 8300.Under the final rule, a CTR replaces Form 8300 for RIAs and ERAs meeting the rule's definition of ''investment adviser.''

Recordkeeping and Travel Rules. Under the final rule, investment advisers are required to obtain and retain originator and beneficiary information for certain transactions and pass on this information to the next financial institution in certain funds transmittals involving more than one financial institution.

Respond to Section 314(a) Requests. FinCEN's regulations under section 314(a) enable law enforcement agencies, through FinCEN, to reach out to financial institutions to locate accounts and transactions of persons that may be involved in terrorism or money laundering. Requests contain subject and business names, addresses, and as much identifying data as possible to assist the financial industry in searching their records. The final rule allows these requests to be made to investment advisers.

Special Due Diligence Measures for Correspondent and Private Banking Accounts. The final rule requires investment advisers to maintain due diligence measures that include policies, procedures, and controls that are reasonably designed to enable the investment adviser to detect and report, on an ongoing basis, any known or suspected money laundering or suspicious activity conducted through or involving any correspondent or private banking account that is established, maintained, administered, or managed in the United States for a foreign financial institution.

(c) Discussion of Concurrent/Overlapping/Conflicting Regulations

There are no Federal rules that directly and fully duplicate, overlap, or conflict with the final rule. The majority of the investment adviser industry is not subject to any comprehensive AML/CFT requirements. FinCEN is aware that requirements within the Advisers Act and other Federal securities laws impose requirements upon investment advisers that in some instances are similar to the requirements in the final rule and perform similar roles (*i.e.,* improving the integrity of the U.S. financial system and protecting customers). FinCEN also recognizes that the Advisers Act and its implementing regulations authorize the SEC to regulate the investment adviser industry for compliance with these requirements.

However, while these existing requirements are important, and may provide a supporting framework for implementing certain obligations in the final rule, they do not impose the specific AML/CFT measures in the final rule in support of the BSA's statutory purposes. Specifically, investment advisers are not required to develop internal policies, procedures, and controls to identify and mitigate the risk that the adviser might be used for money laundering, terrorist financing, or other illicit finance purposes. Currently, investment advisers are not required to appoint an AML/CFT officer or train their employees to comply with AML/CFT requirements. They are not required to report suspicious activity, maintain certain transaction records, or respond to section 314(a) requests for information on customer accounts or transactions. The existing rules and regulations under the Advisers Act are designed to prevent adviser fraud or theft of client assets and otherwise protect investors, maintain fair, orderly and efficient markets, and facilitate capital formation. Preventing illicit actors from using the investment adviser industry to launder the proceeds of crime or finance terrorism is not contemplated in existing obligations on the industry.

FinCEN recognizes that investment advisers that are dually registered as broker-dealers or are chartered as banks (and bank subsidiaries) are already subject to AML/CFT requirements. As noted above, FinCEN is not requiring such entities to establish multiple or separate AML/CFT programs so long as a comprehensive AML/CFT program covers all of the entity's applicable legal and regulatory obligations. The program should be designed to address the different money laundering, terrorist

financing, or other illicit finance activity risks posed by the different aspects of the overall business's activities and satisfy each of the risk-based AML/CFT program requirements to which it is subject in its capacity as both an investment adviser and a broker-dealer or bank. Similarly, an investment adviser that is affiliated with, or a subsidiary of, another entity required to establish an AML/CFT program in another capacity is not required to implement multiple or separate programs and instead may elect to extend a single program to all affiliated entities that are subject to the BSA, so long as it is designed to identify and mitigate the different money laundering, terrorist financing, and other illicit finance activity risks posed by the different aspects of each affiliate's (or subsidiary's) business(es) and satisfies each of the risk-based AML/CFT program and other BSA requirements to which the entities are subject in all of their regulated capacities.

FinCEN is likewise aware that investment advisers serve as advisers to mutual funds, which have their own AML/CFT program requirements, and bank-and trust-company sponsored collective investment funds, as well as to other investment advisers covered by the final rule (including as subadvisers). For the reasons described above, FinCEN is mandating under the final rule that an RIA advising a mutual fund or collective investment fund may deem satisfied its AML/CFT program requirements with respect to such mutual fund, collective investment fund, or another investment adviser the adviser advises so long as the mutual fund, collective investment fund, or investment adviser is subject to an AML/CFT program requirement applicable under another provision of 31 CFR chapter X.

FinCEN is also aware that the SEC already examines certain investment advisers for compliance with the Advisers Act and implementing regulations. FinCEN anticipates that the SEC's examination of RIA and ERA compliance with the final rule's new requirements will be incorporated into its risk-based examination program.

(d) Report Organization

This Impact Analysis is structured as follows. Section 3 assesses the nature and characteristics of the entities and their business that will be affected by the final rule. Section 4 then identifies the expected benefits of the final rule, and section 5 then assesses the expected costs of the final rule to both the private sector and government and explains the methodology for doing so. Finally, Section 6 assesses potential regulatory alternatives to issuing the final rule. Following the Impact Analysis are the regulatory analyses required by the RFA, PRA, and UMRA. These analyses rely on certain calculations in the Impact Analysis.

3. Affected Entities

This section identifies and characterizes the population of investment advisers that are likely to be impacted by the final rule. The final rule covers both RIAs (with certain exemptions) and ERAs. These groups generally may vary in terms of their business structure, AUM, number of employees, and number of client relationships. As explained below, these differences affect the estimated burden of the final rule, in part, because depending on their business structure, some RIAs and ERAs may already be implementing AML/CFT measures to some degree.

To establish a pre-regulation baseline, this section provides a profile of investment advisers likely to be affected by the final rule. First, it describes which investment advisers will be affected by the final rule and on what basis. Next, it describes how RIAs and ERAs are categorized based on business structure, in ways that align with the expected costs of the final rule. Next, it describes the baseline level of economic activity for each type of entity. Finally, it describes other characteristics of the regulated population, including the number of small businesses.

(a) Universe of Investment Advisers Impacted by the Final Rule

The Advisers Act defines an investment adviser as a person or firm that, for compensation, is engaged in the business of providing advice to others or issuing reports or analyses regarding securities.[283] The final rule would cover two subsets of such investment advisers: RIAs, who register or are required to register with the SEC (with certain exemptions); and ERAs, who are exempt from registration but must report certain information to the SEC. Each RIA and ERA must submit the Uniform Application for Investment Adviser Registration (commonly known as Form ADV) and update it on an annual basis with the SEC.[284] Form ADV is an SEC-administered self-disclosure form that collects certain information about each RIA and ERA. On Form ADV, RIAs must report ownership, clients, employees, business practices, custodians of client funds, and affiliations, as well as any disciplinary events of the adviser or its employees, and marketing and certain disclosure reporting materials it provides to clients. ERAs report a subset of this information.

i. SEC Registration and Reporting Criteria

Unless eligible to rely on an exemption, investment advisers that manage more than $110 million must register with the SEC, rather than a State authority, as well as submit a Form ADV and update it at least annually.[285] Besides having AUM above $110 million, additional criteria may result in an investment adviser registering with the SEC.[286] For example, investment advisers with AUM of at least $100 million but less than $110 million are allowed, but not required, to register with the SEC. Unless a different exception from the prohibition on registration applies, investment advisers with AUM under $100 million are prohibited from registering with the SEC,[287] but must register instead with the relevant State securities regulator.

An ERA is an investment adviser that would be required to register with the SEC but is statutorily exempt from such requirement because: (1) it is an adviser solely to one or more venture capital funds, or (2) it is an adviser solely to private funds and has AUM in the United States of less than $150

[283] *See* 15 U.S.C. 80b–2(a)(11) for this definition of ''investment adviser.'' The statute excludes some persons and firms, such as certain banks, certain professionals, certain broker-dealers, publishers, statistical ratings agencies, and family offices. *See* 15 U.S.C. 80b–2(a)(11)(A)–(G).

[284] *See* 17 CFR 275.203–1 and 204–4. A detailed description of Form ADV's requirements is available at *https://www.sec.gov/oiea/investor-alerts-bulletins/ib_formadv.html.*

[285] Exceptions to this registration requirement include (1) venture capital advisers, (2) private fund advisers with AUM under $150 million, (3) advisers to life insurance companies, (4) foreign private advisers, (5) advisers to charitable organizations, (6) certain commodity trading advisers, (7) advisers to small business investment companies, and (8) advisers to rural business investment companies. *See* 15 U.S.C. 80b–3(b).

[286] Other exceptions to the prohibition on SEC registration include: (1) an adviser that would be required to register with 15 or more States (the multi-State exemption); (2) an adviser advising a registered investment company; (3) an adviser affiliated with an RIA; and (4) a pension consultant. Persons satisfying these criteria and the definition of ''investment adviser'' are required to register as investment advisers with the SEC. *See* Form ADV: Instructions for Part IA, Item 2. Advisers with a principal office and place of business in New York and over $25 million AUM are required to register with the SEC.

[287] 17 CFR 275.203A–1. Note that if an RIA's AUM falls below $90 million as of the end of such RIA's fiscal year, then it must withdraw its registration with the SEC, unless otherwise eligible for an exception to the prohibition on SEC registration.

million.[288] ERAs are required to report to the SEC on Form ADV.

Based on FinCEN's initial regulatory flexibility analysis and public comments submitted on the proposed rule, in the final rule, FinCEN has exempted several classes of investment advisers from the rule's requirements. FinCEN is making these adjustments to the definition of ''investment adviser'' to reduce the regulatory burden on small advisers and appropriately tailor the final rule to balance regulatory burden, identified illicit finance risk, and the range of advisory activities in clearly understood and administrable fashion. First, the final rule exempts RIAs that report $0 in AUM. Second, the final rule also exempts RIAs that register with the SEC (as indicated on their Form ADV) solely for one or more of the following reason(s):

- Mid-Sized Adviser [Item 2.A.(2)]
- Pension Consultant [Item 2.A.(7)]
- Multi-state Adviser [Item 2.A.(10)]

In addition, FinCEN has clarified how the rule will apply to foreign-located investment advisers (RIAs and ERAs that have their principal office and place of business outside the United States). As described at section 1032.111, the rule will apply only to advisory activities of foreign-located investment advisers that (i) take place within the United States, including through the involvement of U.S. personnel of the investment adviser, such as the involvement of an agency, branch, or office within the United States or (ii) provide services to a U.S. person or a foreign-located private fund with an investor that is a U.S. person. As of July 31, 2023, there were 830 RIAs and 2,145 ERAs with their principal office and place of business outside the United States.[289] No ERAs are exempt from the final rule.

As of July 31, 2023, there were 212 small RIAs[290] that would have been subject to the final rule had it then been in effect. Based on information in the IA CIP NPRM, FinCEN estimates that, due to SEC registration thresholds, the only small ERAs that would be subject to the final rule would be those that maintain their principal office and place of business outside the United States.[291] Thus, FinCEN estimates there are 173 small ERAs.[292] Therefore, approximately 385 investment advisers, or 1.9 percent of all investment advisers, impacted by the final rule are estimated to be small advisers.

ii. Size of the Regulated Population

The number of RIAs and ERAs is well-defined based on the number of Form ADV filings. The four subcategories of RIAs that are exempted from the final rule, noted above, account for 1,318 entities as of July 31, 2023. Table 3.1 shows the number of RIAs and ERAs as of July 31, 2023, subject to the final rule. For this Impact Analysis, one additional RIA was omitted because it reported an implausibly high number of total clients.

Table 3.1. Estimated Population of RIAs and ERAs Subject to the Final Rule[293]

	RIAs	ERAs	Total Investment Advisers
Number of Investment Advisers	14,073	5,846	19,919

In total, there are 14,073 RIAs subject to the final rule. These firms manage a total of $119 trillion in assets and have roughly 861,000 total employees.[294] Additionally, there are 5,846 ERAs subject to the final rule with total gross assets of $5.2 trillion (ERAs do not report the number of employees to the SEC).[295] With limited exceptions, the final rule does not apply to RIAs with respect to their mutual fund or collective investment fund customers, or when they advise other investment advisers subject to this rule.[296] ERAs do not advise mutual funds or collective investment funds. Therefore, as a practical matter, RIAs that exclusively advise such funds or other investment advisers subject to this rule are exempt from most of the requirements of this rule.[297] Details on cost estimates for

[288] *See* sections 203(*l*) and 203(m) of the Advisers Act and 17 CFR 275.203(*l*)–1 and 275.203(m)–1, respectively.

[289] According to Form ADV data as of July 31, 2023. FinCEN is not able to determine from available information which particularly advisory activities of the 830 RIAs and 2,145 ERAs that may be foreign-located investment advisers would be subject to the rule, so for the purposes of this cost-benefit analysis, it is assuming all their advisory activities would be subject to the rule.

[290] As noted below, FinCEN is relying on the small entity definition under the Advisers Act rule adopted for purposes of the RFA. Under SEC regulations implementing the Advisers Act, which FinCEN is relying on for its analysis under the Regulatory Flexibility Act, an investment adviser is considered a small entity if (i) it has, and reports on Form ADV, less than $25 million in AUM; (ii) it has less than $5 million in total assets on the last day of its most recent fiscal year; and (iii) it does not control, is not controlled by, and is not under common control with another investment adviser that is not a small entity. *See* 17 CFR 275.0–7.

[291] *See* 89 FR 44571 (May 21, 2024).

[292] There are no direct data indicating which ERAs that maintain their principal office and place of business outside the United States are small entities because, although ERAs are required to report in Part 1A, Schedule D, the gross asset value of each private fund they manage, advisers with their principal office and place of business outside the United States may have additional AUM other than what they report in Schedule D. Therefore, to estimate how many of the ERAs that maintain their principal office and place of business outside the United States could be small entities, an analysis was conducted from a comparable data set: SEC-registered investment advisers. According to Form ADV data as of July 31, 2023, there are 67 small RIAs with their principal office and place of business outside the United States and 830 total RIAs with their principal office and place of business outside the United States (67 ÷ 830 = 8.1%). Based on Form ADV data, there are approximately 2,145 ERAs with their principal office and place of business outside the United States. Applying the same percentage (8.1%) to ERAs, FinCEN estimates there are 173 ERAs that are small entities.

[293] Based on a Treasury review of Form ADV information filed as of July 31, 2023. *See supra* note 23. The sum across individual categories for RIAs and ERAs is greater than the total because each investment adviser may belong in more than one category.

[294] *See supra* note 25.

[295] ERAs report gross assets for each fund they advise, but only if that fund is not reported by another adviser in its own Form ADV; therefore, some ERAs report zero gross assets because all of the funds they advise are also reported by another adviser. *See* Form ADV, Instructions for Part 1A.

[296] *See, e.g.,* section1032.210(a) *infra. See supra* Section III.D.1 for additional detail on the treatment of mutual funds and collective investment funds under the final rule.

[297] But an RIA would still be required to designate an AML/CFT officer, for example.

these advisers are provided in the next sub-section.

(b) Categorizing the Regulated Population Based on Business Structure

The economic impact of the final rule will depend on an adviser's business structure and the extent to which such an adviser is already implementing some AML/CFT requirements. FinCEN assesses that RIAs and ERAs dually registered as broker-dealers or banks, are a subsidiary or affiliate of a bank or broker-dealer are more likely to already apply a *significant* or *moderate* number of the requirements of the final rule. Additionally, as described below, survey data indicate that some RIAs are already implementing certain requirements of the final rule.

RIAs and ERAs are also subject to a variety of regulations and reporting requirements, such as those under Federal securities laws, in addition to the final rule. In some cases, compliance with existing regulations under Federal securities laws may reduce the burden of the final rule. In addition, RIAs and ERAs rely on third-party entities to execute business services, and those entities may be required to comply with AML/CFT regulations. Depending on the business structure of an RIA or ERA, such third-party relationships may also reduce the burden of the final rule.

Therefore, FinCEN categorized RIAs and ERAs based on their likelihood of having existing AML/CFT measures in place, and the extent of those measures. This subsection first details the justification for the categorization, based on the regulatory structure of the investment adviser industry and associated institutions. The subsection then describes each category of the regulated population.

i. Dual Registrants and AML/CFT-Compliant Entities Associated With RIAs and ERAs

Some RIAs and ERAs are dually registered as, subsidiaries of, or affiliated with entities that are already subject to AML/CFT obligations and, therefore, may already be applying such obligations to their advisory activities, although they may not be legally obligated to do so.[298] For instance, dual registrants may seek to provide customers with both brokerage and advisory services, and apply AML/CFT measures across their businesses rather than incurring greater costs by duplicating measures across each business. Additionally, some AML/CFT measures, such as employee training and initial customer due diligence, can be designed to apply across a firm rather than to specific activities.

Further, in past Treasury outreach to financial institutions, those that have a financial subsidiary subject to AML/CFT program obligations as well as a subsidiary investment adviser have indicated they choose to typically apply an enterprise-wide AML/CFT program extending to all their subsidiaries and their customers so that all business lines or entities in their corporate enterprise are subject to consistent risk practices and procedures.

In other circumstances, an RIA or ERA may perform AML/CFT functions via contract with a broker-dealer or other financial institution, such as when the adviser advises a mutual fund, or the adviser may have voluntarily implemented certain AML/CFT measures, such as due diligence or identification requirements.[299] Many RIAs and ERAs also frequently use the services of certain third-party entities that are required to comply with AML/CFT regulations, namely, prime brokers, qualified custodians (*e.g.,* banks), and in some circumstances, fund administrators.

ii. Existing Laws and Regulations

The Advisers Act and its implementing rules and regulations form the primary existing framework governing investment adviser activity. Some rules and regulations that apply to RIAs are relevant to AML/CFT compliance and may lower the cost of compliance, including, as discussed further below: (1) the Custody Rule, which governs the custody of client funds and securities, often through relationships with qualified custodians who are often subject to AML/CFT requirements; and (2) the Compliance Rule, which governs policies and procedures designed to prevent violations of the Advisers Act, and establishes a procedural and organizational framework that RIAs may be able to build upon to implement AML/CFT measures, thus lowering the cost of compliance with the final rule.

Custody Rule. The Custody Rule requires that client funds or securities over which an RIA has custody be held at a qualified custodian.[300] The qualified custodian may hold the funds or securities in separate accounts for each client under that client's name; or in accounts under the name of the RIA as agent or trustee for clients, with only client funds and securities inside. Qualified custodians can be banks, registered broker-dealers, futures commission merchants, or certain foreign entities. Because such qualified custodians are BSA-defined financial institutions (or their equivalents under foreign law) that must comply with AML/CFT regulations, accounts maintained on behalf of an RIA—and the associated client relationships—are subject to AML/CFT requirements.

Compliance Rule. Under the Compliance Rule,[301] an RIA must adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder. RIAs must review their policies and procedures at least annually and designate a chief compliance officer to administer the policies and procedures. Although these policies and procedures do not include requirements that an RIA comply with the BSA, having written policies in place may reduce the time needed to develop and review specific AML/CFT policies and procedures. Alternatively, having a framework in place for establishing policies and procedures may be useful for RIAs in complying with the final rule. Additionally, the presence of a chief compliance officer may reduce costs associated with designating an AML/CFT compliance officer, for example by dual-hatting the current chief compliance officer.

Other Requirements. Certain private fund advisers also fill out Form PF, which requires disclosure of limited beneficial ownership information for private funds; for example, the percentage of the private fund's equity owned by broker-dealers, pension plans, and U.S. and foreign-located persons.[302] Some investment advisers may have policies and procedures to comply with OFAC sanctions, which similarly may provide a framework for implementing certain AML/CFT measures included in the final rule.

Due to these information collection requirements, RIAs and ERAs already compile varying amounts of information that could be useful in AML/CFT compliance—particularly information related to the identity and citizenship of various clients. Such information collection activities would lower the burden of the final rule on covered RIAs and ERAs.

[298] *See* Treasury, *2022 National Money Laundering Risk Assessment,* pp. 63–66, *https://home.treasury.gov/system/files/136/2022-National-Money-Laundering-Risk-Assessment.pdf.*

[299] *See id. See also* Managed Funds Association, Sound Practices for Hedge Fund Managers (2009), Chapter 6 (Anti-Money Laundering) (recommending voluntary implementation).

[300] *See* 17 CFR 275.206(4)–2.

[301] *See* 17 CFR 275.206(4)–7.

[302] *See* 17 CFR 279.9.

iii. RIA and ERA Categories for Cost Analyses

As described above, some RIAs and ERAs are already applying some AML/CFT requirements (although there is no legal requirement to do so). This is primarily because of their registration as or affiliation with another type of BSA-defined financial institution (such as a broker-dealer). Therefore, the baseline level of AML/CFT measures for an RIA or ERA may vary with their business structure. For the purposes of the cost analysis, FinCEN categorized RIAs and ERAs based on business structure and likelihood of having existing AML/CFT measures in place in the baseline.

Based on discussions with industry, information from the 2016 Investment Management Compliance Testing Survey (IMCT Survey),[303] and the framework described above, FinCEN assessed that dual registrants are most likely to already have a *significant* number of AML/CFT measures in place. An RIA or ERA with a *significant* number of AML/CFT measures in place is assessed to be applying most requirements in the final rule, including filing SARs, recordkeeping, information sharing, and special due diligence measures. Any modifications to existing policies or procedures, such as training programs, are likely to be less burdensome than developing new policies and procedures as some processes could be incorporated into existing routine maintenance, review, and updating procedures.

FinCEN also assessed that the majority of RIAs and ERAs affiliated with a bank or broker-dealer are most likely to have a *moderate* number of AML/CFT measures, though they are less likely than dual registrants to have a *significant* number AML/CFT measures in place. An RIA or ERA with a *moderate* number of AML/CFT measures in place are assessed as more likely to implement internal recordkeeping, annual training programs, and initial customer due diligence. However, these RIAs and ERAs are less likely to meet SAR filing, ongoing due diligence, information sharing, and special due diligence requirements under the BSA. These additional measures would need to be implemented under the final rule.

Finally, FinCEN assessed that while most RIAs or ERAs that are not dually registered or affiliated with a bank or broker-dealer are currently implementing a *limited* number of AML/CFT measures, a minority of that subgroup are currently implementing a *moderate* number of—rather than a *limited* number of—AML/CFT measures. An RIA or ERA with a *limited* number of AML/CFT measures in place would need to implement most of the requirements in the final rule, except that they are likely to be collecting some customer information at the beginning of the client relationship and filing reports (Form 8300) that are substantially similar to CTRs.

First, RIAs and ERAs were categorized into three types of entities based on business structure: advisers that are dually registered as broker-dealers or as banks (''dual registrants''); advisers that are affiliated with a broker-dealer or bank (''affiliated advisers''); and all others that are not affiliated advisers or dual registrants (*i.e.,* ''other advisers''). Because broker-dealers and banks must comply with AML/CFT requirements, dual registrants are more likely than other investment advisers to have a *significant* number of AML/CFT measures in place, and this is reflected in the baseline. Similarly, affiliated advisers are more likely than other advisers to have a *moderate* number of AML/CFT measures in place in the baseline. Formally, FinCEN defined each group based on Form ADV filings as follows:

- *Dual registrants.* RIAs or ERAs that report to the SEC that they are actively engaged in business as a broker-dealer or bank, responding ''Yes'' to Item 6.A.(1) and/or Item 6.A.(7).[304] As of July 31, 2023, there were 376 dually registered RIAs and 44 dually registered ERAs that would have been subject to the final rule had it then been in effect.
- *Affiliated advisers.* RIAs or ERAs that report to the SEC that they have a related person that is a broker-dealer or bank (responding ''Yes'' to Item 7.A.(1) and/or Item 7.A.(8)) and are not also dual registrants.[305] As of July 31, 2023, there were 2,083 affiliated RIAs and 288 affiliated ERAs that would have been subject to the final rule had it then been in effect.
- *Other advisers.* All RIAs or ERAs that are neither dual registrants nor affiliates of broker-dealers or banks. As of July 2023, there were 11,614 RIAs and 5,514 ERAs that would have been subject to the final rule had it been in effect that were neither a dual registrant nor an affiliated adviser.

FinCEN then divided the RIAs and ERAs in each of these categories into subgroups based on the proportion estimated to be implementing a *significant,* a *moderate,* or a *limited* number of AML/CFT measures in the baseline. Because the exact distribution is unknown, FinCEN relied on different assumptions to generate lower and upper bounds and identify a primary estimate. In this case, ''lower bound'' means more RIAs and ERAs are assumed to have a *significant* or *moderate* number of AML/CFT measures in place and will have to implement relatively fewer additional measures under the final rule, while ''upper bound'' means more RIAs and ERAs are assumed to have a *limited* number of AML/CFT measures in place and will have to implement relatively more additional measures under the final rule. Although the size of each initial group, *i.e.,* dual registrants, affiliated advisers, and other advisers, is well-defined based on Form ADV data, the extent of existing AML/CFT measures within each group is uncertain and may vary considerably.

For this analysis, FinCEN used information from the 2016 IMCT Survey as a benchmark. The 2016 IMCT Survey collected information from approximately 700 RIAs on their existing implementation of AML/CFT measures.[306] According to the 2016 IMCT Survey, as of 2016, approximately 40 percent of RIAs had already adopted AML/CFT policies consistent with FinCEN's 2015 NPRM to apply AML

[303] *Investment Management Compliance Testing Survey,* Investment Adviser Association (2016) [hereinafter 2016 IMCT Survey], Executive Summary available at *https://higherlogicdownload.s3.amazonaws.com/INVESTMENTADVISER/aa03843e-7981-46b2-aa49-c572f2ddb7e8/UploadedImages/publications/2016IMCTexsummary.pdf,* Results available at *https://higherlogicdownload.s3.amazonaws.com/INVESTMENTADVISER/aa03843e-7981-46b2-aa49-c572f2ddb7e8/UploadedImages/publications/2016IMCTresults.pdf.*

[304] Items 6.A.(1) and 6.A.(7) on Form ADV require an investment adviser to identify whether it is actively engaged in a particular business. This response does not necessarily mean that the investment adviser is registered as a broker-dealer or regulated as any particular kind of bank. The phrase ''dual registrant'' should be interpreted on this basis for purposes of this analysis.

[305] A related person is any advisory affiliate (as defined for purposes of Form ADV) of and any person that is under common control (as defined for purposes of Form ADV) with the investment adviser. *See* Form ADV, Glossary of Terms.

[306] *See* 2016 IMCT Survey, *supra* note 301 . The 2024 IMCT Survey, which was published on July 16, 2024, was the first IMCT Survey since 2016 to ask detailed questions about AML policies and procedures. The 2024 IMCT Survey reported a slight drop in the percentage of respondent RIAs with AML policies and procedures that would comply with the requirements of this rule (from 40 percent to 38 percent), and a slight increase in with AML policies and procedures that did not comply with all the requirements of this rule (36 percent to 40 percent). Given this minimal change, FinCEN has determined it is not necessary to adjust its baseline for those investment advisers with *significant, moderate,* or *limited* AML/CFT measures. *See Investment Management Compliance Testing Survey,* Investment Adviser Association (2024), available at *https://www.investmentadviser.org/wp-content/uploads/2024/07/2024_IMCT-Survey.pdf.*

Program and SAR filing requirements to RIAs (2015 NPRM).[307] An additional 36 percent of RIAs adopted some AML/CFT policies and procedures, but those were not in line with those in the 2015 NPRM. Therefore, approximately 76 percent of RIAs had at least some AML/CFT measures in place as of 2016. More granularly, 49 percent had annual employee AML/CFT training, 24 percent had a designated an AML/CFT compliance officer, and 40 percent performed independent testing of their AML/CFT program annually. Similar information was not available for ERAs, and FinCEN thus lacks information on the extent to which ERAs are already implementing AML/CFT measures. Therefore, FinCEN assumed the proportion of dual-registered, affiliated, and other ERAs implementing AML/CFT measures was the same as for RIAs across all scenarios.

FinCEN assumed in the baseline that a minority of RIAs and ERAs had a *significant* number of AML/CFT measures in place consistent with the requirements of the final rule, including filing SARs, recordkeeping, information sharing, and special due diligence measures. However, that proportion likely varies across the three groups defined above. As discussed in the uncertainty analysis, based on the 2016 IMCT Survey this figure could be as high as 40 percent. For this group, modifications to existing policies or procedures, such as training programs, are likely to be less burdensome than developing new policies and procedures as some processes could be incorporated into existing routine maintenance, review, and updating procedures. Based on discussions with industry and the framework described above, for the primary estimate FinCEN assessed only dual registrants—*i.e.,* the 376 RIAs and 44 ERAs cited above or approximately two percent of all investment advisers—are likely to already have a *significant* number of AML/CFT measures in place (even if such measures are not required for their advisory activities).

FinCEN then assessed that the majority of affiliated advisers implement a *moderate* number of AML/CFT measures, though they are less likely than dual registrants to have a *significant* number of AML/CFT measures in place. For RIAs and ERAs with a *moderate* number of AML/CFT measures in place, FinCEN assessed that existing programs most likely include internal recordkeeping, annual training programs, and initial customer due diligence. However, these entities are less likely to meet SAR filing, ongoing due diligence, information sharing, and special due diligence requirements under the BSA. Therefore, they would need to implement additional measures under the final rule. For the primary estimate, FinCEN assumed that 75 percent of affiliated RIAs, amounting to 1,562 entities, have implemented a *moderate* number of AML/CFT measures. FinCEN further assumed that 25 percent of affiliated RIAs, amounting to 521 entities have implemented a limited number of AML/CFT measures. The same percentages are applied to ERAs.

Finally, FinCEN assessed that while most ''other advisers'' are currently implementing a *limited* number of AML/CFT measures, a minority are currently implementing a *moderate* number of AML/CFT measures. The RIAs and ERAs with just a *limited* number of AML/CFT measures in place would need to implement most of the additional AML/CFT requirements under the final rule. However, FinCEN assessed that all RIAs and ERAs, even those in the ''other advisers'' group, are likely to be collecting some customer information at the beginning of the client relationship and filing reports [308] that are substantially similar to CTRs. If 40 percent of RIAs have a significant or moderate number of AML/CFT measures, as reported in the 2016 IMCT Survey, the above estimates for dual registrants and affiliated advisers imply that 32 percent of other RIAs are implementing a moderate number of AML/CFT measures. This suggests that 68 percent of other RIAs have just a *limited* number of AML/CFT measures. The same percentages are applied to ERAs. Overall, this implies that a slightly higher proportion of ERAs have a *limited* number of AML/CFT measures, and a slightly lower proportion of ERAs have a *significant* or *moderate* number of measures, relative to RIAs because fewer ERAs are dually registered or affiliated.

As the true distribution of investment advisers implementing a *significant,* a *moderate,* or a *limited* number of AML/CFT measures is unknown, FinCEN presents an uncertainty analysis using upper and lower bound estimates. For the upper bound estimate, FinCEN assumed that the AML/CFT measures implemented by RIAs and ERAs (either under the current regulatory framework or voluntarily) would not meet the requirements of the final rule, and that therefore all RIAs not dually registered would have to implement for the first time the complete set of AML/CFT measures under the final rule. Based on that assumption, all covered RIAs and ERAs except dually registered entities are assumed to have implemented a *limited* number of AML/CFT measures. Thus, about two percent of all covered entities (376 RIAs and 44 ERAs) are estimated to have a *significant* number of AML/CFT measures, and the remaining 98 percent (13,697 RIAs and 5,802 ERAs) are estimated to have a *limited* number of AML/CFT measures. For the lower bound estimate based on the 2016 IMCT Survey, FinCEN first assumed that approximately 40 percent of all covered RIAs are implementing a *significant* number of AML/CFT measures. This includes dually registered RIAs, 75 percent of affiliated RIAs, and 32 percent of other RIAs. Next, FinCEN assumed that approximately 36 percent of all covered RIAs are implementing a *moderate* number of measures. This includes 25 percent of affiliated RIAs and 39 percent of other RIAs. The remaining 24 percent of all covered RIAs (or 29 percent of ''other'' RIAs) are assumed to have a *limited* number of AML/CFT measures. The same percentages are applied to ERAs.

Classification of RIAs Advising Mutual Funds, Collective Investment Funds, and Other Investment Advisers. As discussed above, RIAs that exclusively advise mutual funds, collective investment funds, or other investment advisers subject to this rule are largely exempt from the requirements of the final rule. However, these RIAs have not been identified specifically through the Form ADV data. FinCEN assumed these advisers were most likely in the other advisers group. Because the clients (mutual funds and, collective investment funds, other investment advisers subject to this rule) of these RIAs are subject to comprehensive AML/CFT obligations, FinCEN assessed these advisers as having a *moderate* number of AML/CFT measures in place.

Table 3.2 shows the resulting size of the population for each of the scenarios described above.

[307] 2016 IMCT Survey, *supra* note 301; *see also* 80 FR 52680 (Sept. 1, 2015).

[308] Investment advisers are currently required to file reports for the receipt of more than $10,000 in cash and negotiable instruments using joint FinCEN/Internal Revenue Service Form 8300. *See supra* note 191.

Table 3.2. Number of RIAs and ERAs, by Scenario[309]

Scenario	Baseline AML/CFT Measures	Registered Investment Advisers		Exempt Reporting Advisers		Total		
		Dual Registrants	Affiliated Advisers	Other Advisers	Dual Registrants	Affiliated Advisers	Other Advisers	
Lower Bound	*Significant*	376 (100%)	1,562 (75%)	3,692 (32%)	44 (100%)	216 (75%)	1,753 (32%)	**7,643 (38%)**
	Moderate	0	521 (25%)	4,546 (39%)	0	72 (25%)	2,158 (39%)	**7,297 (37%)**
	Limited	0	0	3,376 (29%)	0	0	1,603 (29%)	**4,979 (25%)**
	Total	**376 (100%)**	**2,083 (100%)**	**11,614 (100%)**	**44 (100%)**	**288 (100%)**	**5,514 (100%)**	**19,919 (100%)**
Primary Estimate	*Significant*	376 (100%)	0	0	44 (100%)	0	0	**420 (2%)**
	Moderate	0	1,562 (75%)	3,692 (32%)	0	216 (75%)	1,753 (32%)	**7,223 (36%)**
	Limited	0	521 (25%)	7,922 (68%)	0	72 (25%)	3,761 (68%)	**12,276 (62%)**
	Total	**376 (100%)**	**2,083 (100%)**	**11,614 (100%)**	**44 (100%)**	**288 (100%)**	**5,514 (100%)**	**19,919 (100%)**
Upper Bound	*Significant*	376 (100%)	0	0	44 (100%)	0	0	**420 (2%)**
	Moderate	0	0	0	0	0	0	**0 (0%)**
	Limited	0	2,083 (100%)	12,652 (100%)	0	288 (100%)	5,514 (100%)	**19,499 (98%)**
	Total	**376 (100%)**	**2,083 (100%)**	**11,614 (100%)**	**44 (100%)**	**288 (100%)**	**5,514 (100%)**	**19,919 (100%)**

Scenario	Baseline AML/CFT	Registered Investment Advisers			Exempt Reporting Advisers			Total
		Dual Registrants	Affiliated Advisers	Other Advisers	Dual Registrants	Affiliated Advisers	Other Advisers	

[309] Parentheses indicate the percentage of entities within a given category by scenario. Totals may not sum precisely due to rounding.

	Measures							
Lower Bound	*Significant*	376 (100%)	1,562 (75%)	3,692 (32%)	44 (100%)	216 (75%)	1,753 (32%)	**7,643 (38%)**
	Moderate	0	521 (25%)	4,546 (39%)	0	72 (25%)	2,158 (39%)	**7,297 (37%)**
	Limited	0	0	3,376 (29%)	0	0	1,603 (29%)	**4,979 (25%)**
	Total	**376 (100%)**	**2,083 (100%)**	**11,614 (100%)**	**44 (100%)**	**288 (100%)**	**5,514 (100%)**	**19,919 (100%)**
Primary Estimate	*Significant*	376 (100%)	0	0	44 (100%)	0	0	**420 (2%)**
	Moderate	0	1,562 (75%)	3,692 (32%)	0	216 (75%)	1,753 (32%)	**7,223 (36%)**
	Limited	0	521 (25%)	7,922 (68%)	0	72 (25%)	3,761 (68%)	**12,276 (62%)**
	Total	**376 (100%)**	**2,083 (100%)**	**11,614 (100%)**	**44 (100%)**	**288 (100%)**	**5,514 (100%)**	**19,919 (100%)**
Upper Bound	*Significant*	376 (100%)	0	0	44 (100%)	0	0	**420 (2%)**
	Moderate	0	0	0	0	0	0	**0 (0%)**
	Limited	0	2,083 (100%)	12,652 (100%)	0	288 (100%)	5,514 (100%)	**19,499 (98%)**
	Total	**376 (100%)**	**2,083 (100%)**	**11,614 (100%)**	**44 (100%)**	**288 (100%)**	**5,514 (100%)**	**19,919 (100%)**

(c) Baseline Economic and Financial Characteristics of Regulated Population

This subsection describes the economic and financial profiles of RIAs and ERAs subject to the final rule in the baseline, including the number of employees and customer relationships with legal entities, natural persons, and pooled investment vehicles (PIVs)—and annual changes in these numbers.

i. Number of Employees

RIAs report employment figures on their Form ADV, while ERAs do not. To estimate the number of employees at ERAs, FinCEN assumed that the number of employees was similar to those at RIAs with the same number of private funds. In particular, the number of ERA employees was approximated as follows. First, FinCEN focused on RIAs with private funds only. FinCEN calculated deciles for the number of funds among each RIA category: dual registrants, affiliated RIAs, and other RIAs. Then, for each category of ERA, FinCEN calculated the average number of employees for the decile of the corresponding distribution of RIAs, based on the number of private funds advised by that ERA. This served as the approximation for the total number of ERA employees in the cost calculation. Table 3.3 shows the average number of employees for each category of investment adviser.

Table 3.3: Average Number of Employees, by Type of Investment Adviser[310]

Investment Adviser Type	RIAs	ERAs
Dual Registrant	828	27
Affiliated Adviser	152	26
Other Adviser	20	11

ii. Number of Clients

On Form ADV, RIAs report the number of clients, enumerated for specific types of clients.[311] As described in section 3 of this Impact Analysis, certain costs of the final rule vary depending on the type of client, across three categories of clients: individual persons including high-net worth individuals, collectively known as ''natural persons''; PIVs; and various other types of clients collectively denoted as ''legal entities.'' Table 3.4 shows the average number of clients of each type, based on the RIA categories defined above.

Table 3.4: Average Number of Clients per RIA, by Client Type and Category

Investment Adviser Type	Natural Persons	Legal Entities	PIVs
Dual Registrant	46,198	932	13
Affiliated Adviser	11,444	224	20
Other Adviser	701	143	4

ERAs report the number of private funds they advise (*i.e.,* an ERA's clients), including the number of funds for which another investment adviser already reports fund-specific information. Table 3.5 reports the average number of funds reported per ERA, based on the investment adviser categories described above.

Table 3.5: Average Number of Private Funds per ERA, by Category[312]

Investment Adviser Type	Average Number of Private Funds Reported
Dual Registrant	4
Affiliated Adviser	63
Other Adviser	5

(d) Other Characteristics of Regulated Entities

This section describes the industry classification and business size of RIAs and ERAs to be regulated under the final rule.

i. Industry Classification by NAICS Code

In general, businesses may be categorized under multiple industries due to having multiple lines of revenue or multiple business functions. Many RIAs and ERAs, including but not limited to dual registrants, accordingly, may report multiple lines of revenue on their Form ADV, and it is occasionally challenging to identify their primary line of business. Using the North American Industry Classification System (NAICS), the standard classification system used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data on U.S. businesses, FinCEN assesses that most (if not all) RIAs and ERAs are classified within the NAICS subsector 523 (Securities, Commodity Contracts, and Other Financial Investments and Related Activities)—with most entities classified in the national industry NAICS 523940 (Portfolio Management and Investment Advice). However, that subsector may not account for the primary line of business of all investment advisers, and some may be classified under NAICS 522 (Credit Intermediation and Related

[310] Based on a Treasury review of Form ADV information filed as of July 31, 2023. *See supra* note 23. RIAs report total employees in Item 5.A. ERA data come from FinCEN calculations of the median employment among RIAs that report only private fund clients.

[311] *Id.* Clients are reported in Item 5.D. Natural persons are calculated as the sum of 5.D.(a).(1) and 5.D.(b).(1). PIVs are reported in 5.D.(f).(1), and exclude investment companies and business development companies. Legal entities are the sum of the remaining rows of column 1 of Item 5.D. Numbers are rounded to the nearest integer.

[312] *Id.* The total number of funds is calculated as the sum of the number of funds reported in Schedule D, sections 7.B.(1) and 7.B.(2). Numbers are rounded to the nearest integer.

Activities) or NAICS 525 (Funds, Trusts, and Other Financial Vehicles).

ii. Small Entities

To assess the prevalence of small businesses affected by the final rule, FinCEN relied on the small entity definition under the Advisers Act rule adopted for purposes of the RFA. Under this definition, an investment adviser is considered a small entity if (i) it has, and reports on Form ADV, less than $25 million in AUM; (ii) it has less than $5 million in total assets on the last day of its most recent fiscal year; and (iii) it does not control, is not controlled by, and is not under common control with another investment adviser that is not a small entity.[313]

RIAs report whether they meet the conditions listed above in items 5.F and 12 of Form ADV.[314] As of July 31, 2023, there were 212 small entities RIAs that would have been subject to the final rule had it then been in effect. ERAs are not required to report regulatory AUM on Form ADV; therefore, it is not feasible to determine whether they meet the conditions above. Based on information in the IA CIP NPRM, FinCEN estimates that due to SEC registration thresholds, the only small entity ERAs that would be subject to the final rule would be those that maintain their principal office and place of business outside the United States.[315] Thus, FinCEN estimates there are 173 small entity ERAs.[316] Table 3.6 reports the estimated number of small entities subject to the final rule.

Table 3.6: Number of Small Entities, by Type of Investment Adviser

Investment Adviser Type	RIAs	ERAs	Total
Dual Registrant	1	2	3
Affiliated Adviser	17	14	31
Other Adviser	194	157	351
Total	**212**	**173**	**385**

For comparison, Table 3.7 shows the characteristics of small RIAs versus all other RIAs.

Table 3.7: Characteristics of RIAs by Business Size[317]

Characteristic	Small Entity RIAs	All Other RIAs
Avg. Assets Under Management	$5.3M	$8.6B
Avg. No. Employees	4	62
Percent that Advise Private Funds	34%	56%
Avg. No. Individual Clients	2,341	3,524
Avg. No. PIV Clients	0	7
Avg. No. Legal Entity Clients	1	179

[313] 17 CFR 275.0–7 (defining ''small business'' or ''small organization'' for purposes of the Advisers Act).

[314] Based on a Treasury review of Form ADV information filed as of July 31, 2023. *See supra* note 25. An RIA qualifies as a small entity under the SEC's definition if it has fewer than $25 million in regulatory AUM (Item 5.F.(2)(c)) and answers ''No'' to each of the questions in Item 12.

[315] 89 FR 44571, 44592–44593, n.131 (May 21, 2024).

[316] There are no direct data indicating which ERAs that maintain their principal office and place of business outside the United States are small entities because although ERAs are required to report in Part 1A, Schedule D the gross asset value of each private fund they manage, advisers with their principal office and place of business outside the United States may have additional AUM other than what they report in Schedule D. Therefore, to estimate how many of the ERAs that maintain their principal office and place of business outside the United States could be small entities, an analysis was conducted from a comparable data set: SEC-registered investment advisers. According to Form ADV data as of July 31, 2023, there are 67 small RIAs with their principal office and place of business outside the United States and 830 total RIAs with their principal office and place of business outside the United States (67 ÷ 830 = 8.1 percent). Based on Form ADV data as of July 31, 2023, there are approximately 2,145 ERAs with their principal office and place of business outside the U.S. Applying the same percentage (8.1 percent) to ERAs, FinCEN estimates there are 173 ERAs that are small entities.

[317] Based on a Treasury review of Form ADV information filed as of July 31, 2023. See tables above for details on the Form ADV items used to calculate each table entry. Numbers are rounded to nearest whole number or percent.

4. Assessment of Benefits

The benefits assessed here are more difficult to quantify than the costs, but the final rule is nonetheless anticipated to add substantial value directly and indirectly through effects that can contribute to detection, deterrence, and broader policy goals.[318] The principal direct benefits of the final rule are expected to accrue primarily in the public sector, most notably to U.S. law enforcement and the national security community, as well as certain Federal functional regulators, and to the investment adviser industry. Further, the identification of illicit activity in the investment adviser industry by applying program, reporting, and recordkeeping obligations to those industry participants, *i.e.,* covered RIAs and ERAs, that have direct access to customer information would enhance detecting, investigating, and prosecuting illicit finance activity occurring through the industry and contribute to deterrence, which will benefit society more generally though a range of economic, security, and other effects.[319]

The AML/CFT requirements in the final rule will help address existing information gaps regarding suspicious activity reporting discussed in section 1, with potentially significant implications for detection and deterrence.[320] They will also help harmonize AML/CFT requirements between investment advisers and similarly situated financial institutions that must comply with these requirements, which would mean greater parity among them, and between the United States and its allies.

As noted in the Risk Assessment, investment advisers manage tens of trillions of dollars in assets.[321] While some of these assets are subject to AML/CFT requirements, others are not. For instance, as of Q3 2023, RIAs manage approximately $20 trillion in private fund assets, and this included $243 billion owned by foreign-located investors where the RIA did not have the information on hand to identify the beneficial owner because the beneficial interest was held through a chain involving one or more third-party intermediaries.[322] ERAs managed approximately $5 trillion in AUM in private funds.

In addition to the specific direct benefits discussed further below, each provision in the final rule will also convey benefits indirectly by forming part of a comprehensive framework for identifying and reporting money laundering, terrorist financing, or other illicit finance activity. For instance, the requirement for employee training and independent testing will help ensure that the systems and employees who will identify whether an investment adviser is being used for illicit finance activity are best positioned to do so.

Specific direct benefits from the final rule include (a) increasing access for law enforcement to relevant information for complex financial crime investigations, (b) enhancing interagency understanding of priority national security threats and their associated financial activity, (c) improving financial system transparency and integrity to strengthen the U.S. financial system from abuse by illicit actors, and, relatedly, (d) aligning with international financial standards and supporting international regulatory cooperation, including information sharing, with and among allies.[323] Through these direct benefits, crucial indirect benefits will accrue to the public at large by reducing money laundering, which can distort legitimate markets, countering the financing of terrorism and other illicit finance activity, and protecting national security.

(a) Strengthening Law Enforcement Investigations of Certain Financial Crimes

Requiring covered RIAs and ERAs to file SARs and keep certain customer records makes that information more readily available to law enforcement authorities, assisting those authorities in detecting, investigating, and prosecuting financial crimes. The FBI reported that 36.3 percent of active complex financial crimes investigations and 27.5 percent of public corruption investigations involved BSA reporting.[324] However, for other types of criminal investigations, the percentage of criminal investigations supported by BSA reporting was even higher. For example, 46 percent of transnational organized crime investigations were supported by BSA reporting.[325] SAR filing by RIAs and ERAs may increase BSA information availability to support investigations into corruption, fraud, and tax evasion, the criminal activities that the Risk Assessment identified as being most prominently tied to illicit proceeds moving through investment advisers.[326]

Information from the reporting of suspicious activity and recordkeeping by covered RIAs and ERAs may benefit specific types of law enforcement financial crime investigations, particularly those involving the proceeds of foreign corruption, along with other transnational financial crimes. For instance, according to the FBI, in the 1MDB criminal investigation, at least $1 billion traceable to the conspiracy was laundered through the United States,[327] including through private funds advised by at least one RIA, and used to purchase assets in the United States.[328] In another case

[318] In OMB Circular No. A–4 (2023), OMB acknowledges that some regulatory measures may incur costs or benefits that are highly uncertain or cannot be quantified, *e.g.,* for lack of data or methods. Among other challenges in the context of this rule, the so-called dark figure of crime, which is typically defined as the difference between reported or known and actual crime, further complicates the assessment of both illicit activity and the potential effects of changes in policy and regulation. Specifically, faced with criminals' active concealment, one can neither directly observe the true dimensions of the criminal activity (*i.e.,* the baseline) nor unambiguously interpret some common indicators of change. For example, an increase in reported crime can reflect better enforcement, an increase in criminal activity, or a combination of the two. Provisions of this rule will improve the availability of information about financial activity that could make estimation less challenging in the future.

[319] Economists have long argued that increasing the costs and risks of law breaking, *e.g.,* by increasing the likelihood of detection and punishment, makes law breaking less attractive. For the seminal work in this area, see Gary S. Becker, ''Crime and Punishment: An Economic Approach,'' Journal of Political Economy, Mar.-Apr. 1968, pp. 169–217, which has given rise to a vast and still expanding literature.

[320] OMB guidance has addressed such benefits in an analogous context: ''For some regulations, costs are associated with activity that does not itself yield benefits, but instead may prompt intermediate actions that connect those effects with ultimate beneficial outcomes. For instance, a regulation may require collection and dissemination of information related to safety practices; the information itself does not make anyone safer, but its greater availability may prompt more widespread use of effective safety practices.'' OMB Circular No. A–4 (2023), p. 40.

[321] *See* Risk Assessment, *supra* note 2, at 2.

[322] *See* SEC, Private Fund Statistics, Third Calendar Quarter 2023, available at *https://www.sec.gov/files/investment/2023q3-private-funds-statistics-20240331.pdf.*

[323] OMB guidance highlights the relevance of international cooperation, ''Consistent with Executive Order 13609, agencies often engage in international regulatory cooperation (IRC), which can include information exchange, work sharing, scientific collaboration, pilot programs, and alignment of regulatory requirements . . . . [I]nclusion of the foreign effects of a regulation in your primary analysis will often be appropriate when such analysis would help inform cooperative efforts with foreign regulators that aim to minimize unnecessary regulatory differences and meet shared challenges.'' OMB Circular No. A–4 (2023), p. 9.

[324] *See* FinCEN, *Year in Review for FY 2022* (Apr. 21, 2023), p.2, available at *https://www.fincen.gov/sites/default/files/shared/FinCEN_Infographic_Public_2023_April_21_FINAL.pdf.*

[325] *Id.*

[326] *See* Risk Assessment, *supra* note 2, at 16.

[327] *See* FBI, ''U.S. Seeks to Recover $1 Billion in Largest Kleptocracy Case to Date,'' (Jul. 20, 2016), available at *https://www.fbi.gov/news/stories/us-seeks-to-recover-1-billion-in-largest-kleptocracy-case-to-date.*

[328] *See* Verified Compl. for Forfeiture (Dkt. 3) ¶ 760, *United States* v. *Real Property Located in London, United Kingdom Titled in the Name of Red Mountain Global Ltd.,* No. 19–cv–1326, (C.D. Cal.

involving the misuse of private funds, the defendant established fake private equity investment funds in the British Virgin Islands to launder approximately $400 million in proceeds of a large international pyramid fraud scheme called OneCoin.[329]

These examples demonstrate that investment advisers and the funds they advise have been implicated in certain financial crimes and suggest the scope of potential benefit from covering RIAs and ERAs under this proposal. They provide concrete evidence that investment advising relationships can create openings that can be and have been leveraged as conduits in substantial financial crimes that bear on the provisions of this rule. The additional visibility that the final rule will convey may discourage such leveraging and will provide law enforcement with information that it needs to uncover it.

Further, requiring RIAs and ERAs to respond to section 314(a) requests is likely to increase the number of positive responses for law enforcement when trying to locate accounts and transactions of persons that may be involved in terrorism or money laundering activity. In FY 2022, 66 law enforcement agencies made 519 requests under section 314(a) to over 14,000 financial institutions, which resulted in 37,835 positive responses.[330] Adding RIAs and ERAs to these requests is likely to increase positive responses for account and transactions information and then support further investigations using other legal tools.

(b) Improve Understanding of Priority National Security Threats

Applying AML/CFT obligations to RIAs and ERAs may help increase U.S. government understanding of two priority national security threats: (1) funds moving through the U.S. financial system that may be associated with Russian oligarchs and (2) investment activity that may be tied to foreign-state efforts to invest in early-stage companies developing critical or emerging technologies with national security implications.

SAR filings or information collected by RIAs and ERAs in the CDD process could improve the U.S. government's understanding of how illicit funds linked to Russian oligarchs may be accessing the U.S. financial system. According to a 2022 FinCEN Financial Trend Analysis, BSA data provides significant financial intelligence about the movement of oligarch-related funds and assets with a nexus to the United States around the time of Russia's unprovoked military invasion of Ukraine, including likely attempts by Russian oligarchs and elites to conceal their assets, property, and financial activities.[331] Treasury and FinCEN guidance has identified typologies Russian oligarchs and elites have used to access U.S. investment opportunities and the financial system through private funds or other PIVs, to avoid disclosing their identities to other parties.[332]

However, FinCEN currently receives only limited information from investment advisers and the securities industry in general regarding illicit Russian financial activity. For instance, of 454 SARs reviewed as part of a FinCEN Financial Trend Analysis on U.S. financial activity linked to Russian oligarchs, only 11, or less than 3 percent, were filed by the securities and futures industry.[333]

Applying SAR filing, CDD, and other recordkeeping requirements to RIAs and ERAs may also assist the U.S. government in identifying foreign-linked investments in certain U.S. companies that could raise national security issues. This could be beneficial for CFIUS and potentially other programs. In particular, while there are certain transactions where notification to CFIUS is required, most transactions reviewed by CFIUS are filed voluntarily.[334] To complement the largely voluntary nature of the CFIUS process, Treasury (as chair of CFIUS) along with certain member agencies invest staff time and resources in identifying transactions that may be a covered transaction and may raise national security considerations, and assessing whether to request that the parties file with CFIUS.[335] CFIUS transactions that originate through this process (referred to as the non-notified process) remain among the most complicated that CFIUS considers, and often require mitigation measures to address national security risks.[336] SAR filing obligations may help identify these transactions earlier on (such as prior to the closing of a transaction).

Assessing the national security consequences of investments into early-stage companies developing emerging technology can be particularly challenging.[337] Requiring ERAs, particularly venture capital advisers, to submit SARs may help Treasury and some CFIUS member agencies identify transactions where investors affiliated with foreign governments are attempting to use an investment to acquire technology or know-how with national security implications. This could include providing information about transactions CFIUS was unaware of, or providing new information about investors or other parties to transactions already before CFIUS. In addition, law enforcement agencies involved in CFIUS reviews could use section 314(a) information sharing authorities to engage venture capital advisers or other RIAs or ERAs on particular technologies or concerning foreign investors, consistent with CFIUS statutory obligations to protect confidentiality of relevant information.[338]

(c) Protect the U.S. Financial System From Abuse

Applying AML/CFT obligations to RIAs and ERAs will also strengthen the ability of the Federal Government and private sector to better protect the U.S. financial system from being misused for illicit finance. First, the final rule applies a set of AML/CFT obligations to

Feb. 22, 2019), *https://www.justice.gov/opa/press-release/file/1134376/download.*

[329] *See* Department of Justice, ''Former Partner Of Locke Lord LLP Convicted In Manhattan Federal Court Of Conspiracy To Commit Money Laundering And Bank Fraud In Connection With Scheme To Launder $400 Million Of OneCoin Fraud Proceeds,'' (Nov. 21, 2019), available at *https://www.justice.gov/usao-sdny/pr/former-partner-locke-lord-llp-convicted-manhattan-federal-court-conspiracy-commit-money.*

[330] *See* FinCEN, *Year in Review for FY 2022* (Apr. 21, 2023), p. 2, available at *https://www.fincen.gov/sites/default/files/shared/FinCEN_Infographic_Public_2023_April_21_FINAL.pdf.*

[331] *See* FinCEN, *Trends in Bank Secrecy Act Data: Financial Activity by Russian Oligarchs in 2022* (Dec. 2022), available at *https://www.fincen.gov/sites/default/files/2022-12/FinancialTrend Analysis_RussianOligarchsFTA_Final.pdf.*

[332] *See* Department of the Treasury, *Global Advisory on Russian Sanctions Evasion Issued Jointly by the Multilateral REPO Task Force,* p. 3 (Mar. 9, 2023), available at *https://home.treasury.gov/system/files/136/REPO_Joint_Advisory.pdf; see also* FinCEN, *Alert on Potential U.S. Commercial Real Estate Investments by Sanctioned Russian Elites, Oligarchs, and Their Proxies,* p. 4, (Jan. 25, 2023), available at *https://www.fincen.gov/sites/default/files/shared/FinCENAlertRealEstate FINAL508_1-25-23FINALFINAL.pdf.*

[333] *See supra* note 329.

[334] *See* Treasury, ''Remarks by Assistant Secretary for Investment Security Paul Rosen at the Second Annual CFIUS Conference,'' (Sept. 14, 2023), available at *https://home.treasury.gov/news/press-releases/jy1732.*

[335] *See id.*

[336] Committee on Foreign Investment in the United States—Annual Report to Congress CY 2022, p. 52, available at *https://home.treasury.gov/system/files/206/CFIUS%20-%20Annual%20Report%20to%20Congress%20CY%202022_0.pdf.*

[337] *See* The Washington Post, ''Scrutiny mounts over tech investments from Kremlin-connected expatriates'' (Dec. 19, 2022), available at *https://www.washingtonpost.com/technology/2022/12/19/russia-expatriates-links-probed/; see also* The Wall Street Journal, ''Government 'SWAT Team' Is Reviewing Past Startup Deals Tied to Chinese Investors'' (Jan. 31, 2021), available at *https://www.wsj.com/articles/government-swat-team-is-reviewing-past-startup-deals-tied-to-chinese-investors-11612094401.*

[338] *See* 50 U.S.C. 4565(c).

RIAs and ERAs (with certain exemptions), and those investment advisers are subject to enforcement actions for failure to comply with those requirements. Those investment advisers are required to, as described above, implement AML/CFT programs, conduct due diligence on customers, report suspicious activity, and keep certain records, among other obligations. In doing so, these obligations imposed on investment advisers will help identify, prevent, and deter bad actors from using investment advisers to further illicit finance activity, as investment advisers will be required to obtain information from customers to comply with these requirements.

Moreover, the final rule also strengthens the ability of RIAs, ERAs, and other financial institutions to identify and report illicit activity. Covered RIAs and ERAs are able to coordinate with broker-dealers and banks to file joint SARs, and voluntarily share information on illicit activity under section 314(b) of the USA PATRIOT Act. Such reporting by financial institutions under the BSA—and their broader efforts to implement effective AML/CFT programs—are fundamental to the government's effort to detect and prevent illicit finance activity and to protect the integrity of the financial system as a whole.

(d) Improve Alignment With International Standards

The final rule also helps bring the United States into full compliance with several international AML/CFT standards established by the FATF. In the 2016 FATF Mutual Evaluation Report (MER) of the United States, the United States was rated (and remains rated) ''partially compliant'' or ''non compliant'' on eight of the 40 FATF Recommendations.[339] These included partially compliant ratings on Recommendations 1, 12, and 20 for the failure to apply AML/CFT requirements to investment advisers, among other reasons.[340]

As a result of its MER, the United States was put in ''enhanced follow-up.'' [341] For countries in enhanced follow-up, the FATF can take several actions, including ''issuing a formal FATF statement to the effect that the member jurisdiction is insufficiently in compliance with the FATF Standards, and recommending appropriate action.'' [342] These statements and other actions by the FATF can have material consequences on the economy of a jurisdiction.[343] The final rule will assist the U.S. in avoiding these consequences and strengthening compliance with the FATF standards.

In addition to the benefits of increased U.S. compliance with the FATF standards, the final rule will also support international regulatory cooperation, including information sharing, with and among allies. For instance, FinCEN could use information from investment adviser reporting requirements to support illicit finance typology work at the FATF and multilateral information sharing at the Egmont Group of Financial Intelligence Units.[344] This information sharing could increase allies' visibility into relevant financial activity that could both aid their enforcement efforts and feedback into U.S. efforts, all of which would contribute to more robust, mutually beneficial efforts to combat financial crimes globally. The final rule could also strengthen coordination between SEC and foreign securities and financial regulators in identifying and addressing AML/CFT supervisory challenges in the investment adviser sector.

5. Assessment of Costs

This section assesses the potential costs to RIAs and ERAs, their clients, and government agencies associated with the final rule. Specifically, this Impact Analysis estimates the one-time, upfront costs and recurring administrative and maintenance costs incurred by RIAs and ERAs to establish or modify an existing AML/CFT program, which includes conducting ongoing CDD, filings SARs, and the other requirements of the final rule. It also estimates costs to customers to provide additional information to RIAs and ERAs and to the government to enforce those requirements. This Impact Analysis estimates the incremental costs of the final rule over a 10-year period.

Some RIAs and ERAs may have reduced costs because they may already perform certain AML/CFT functions because they are dual registrants or affiliated advisers, as described in section 2, although, depending on the entity and its structure, may not currently be required to do so. Under the final rule, RIAs that are dual registrants or affiliated advisers are not legally required to establish a separate AML/CFT program for their advisory activities, provided that an existing comprehensive AML/CFT program covers all of the investment adviser's applicable legal and regulatory obligations, as described above. RIAs are also exempt from having to apply most of the regulatory requirements with respect to the mutual funds, collective investment funds, and other investment advisers they advise. As described above mutual funds have their own AML/CFT program requirements, must file SARs, and are otherwise required to comply with the other reporting and recordkeeping requirements included in the final rule. Similarly, other investment advisers subject to this rule are also required to implement the same requirements. Collective investment funds, while not separate legal entities, are subject to the AML/CFT requirements of the bank or trust-company that administers the fund. Certain RIAs and ERAs may also already collect and verify and certain information in performing AML/CFT functions provided by customers via contract for a joint customer with another financial institution or through a voluntary AML/CFT program. To the extent that information pertains to a customer of both the investment adviser and the other financial institution, the investment adviser may enjoy reduced costs; in any case, the investment adviser already has a process in place that can be applied to satisfy its new requirements under the final rule.

This section is organized as follows. First, it describes and compiles relevant cost information associated with these activities. Based on this information, it

[339] *See* FATF (2016), *Mutual Evaluation of the United States,* pp. 255–258, available at *https://www.fatf-gafi.org/content/dam/fatf-gafi/mer/MER-United-States-2016.pdf.coredownload.inline.pdf.* The U.S. was re-rated from ''partially compliant'' to ''largely compliant'' on Recommendation 10, and from ''non compliant'' to ''largely compliant'' on Recommendation 24. *See* FATF (2024), *Anti-money laundering and counter-terrorist financing measures—United States, 7th Enhanced Follow-up Report & Technical Compliance Re-Rating,* available at *https://www.fatf-gafi.org/content/dam/fatf-gafi/fur/USA-FUR-2024.pdf.core download.inline.pdf; see also* FATF (2020), *Anti-money laundering and counter-terrorist financing measures—United States, 3rd Enhanced Follow-up Report & Technical Compliance Re-Rating* [hereinafter 2020 US FUR], available at *https://www.fatf-gafi.org/content/dam/fatf-gafi/fur/Follow-Up-Report-United-States-March-2020.pdf.*

[340] *See* FATF (2016), *Mutual Evaluation of the United States,* pp. 255–258, available at *https://www.fatf-gafi.org/content/dam/fatf-gafi/mer/MER-United-States-2016.pdf.coredownload.inline.pdf.* A ''partially compliant'' rating is generally not considered an acceptable rating for purposes of the FATF Follow-Up Process. *See* FATF (2023), Procedures for the FATF Fourth Round of AML/CFT Mutual Evaluations [hereinafter FATF Fourth Round Procedures], pp. 22–23, available at *http://www.fatf-gafi.org/publications/mutualevaluations/documents/4th-round-procedures.html.*

[341] *See* 2020 US FUR, *supra* note 337, at 1.

[342] *See* FATF Fourth Round Procedures, *supra* note 338, at 24.

[343] *See* Julia Morse, *The Bankers Blacklist: Unofficial Market Enforcement and the Global Fight against Illicit Financing* 131–138 (Cornell University Press 2021) (discussing the consequences of FATF listing).

[344] The Egmont Group of Financial Intelligence Units (FIUs) is an international body that facilitates and prompts the exchange of information, knowledge, and cooperation amongst member FIUs.

estimates the costs likely to be incurred by RIAs and ERAs. It then describes government implementation costs for oversight and enforcement. Finally, it summarizes the total costs of the final rule.

(a) Cost Methodology

This section describes and compiles relevant cost information for this Impact Analysis. Based on this information, FinCEN estimates the typical costs RIAs and ERAs are anticipated to incur to comply with the requirements of the final rule. The cost information consists of the amount of time (in hours) and hourly labor cost of staff involved in compliance activities, such as developing and updating AML/CFT policies and procedures and training staff on new requirements, as well as costs associated with third party software licensing and independent testing. The implementation and scope of these activities, however, will vary widely and depend on a number of factors, such as the degree of automation of compliance activities and level of filer sophistication.

All costs are reported in 2022 dollars. For transparency, all costs in this section are reported on an undiscounted basis. At the end of this section, costs are also reported on a discounted basis and the annualized costs of the final rule are calculated. To estimate the value of time associated with various compliance activities, FinCEN identified roles and corresponding staff positions involved in reviewing regulatory requirements; developing policies and procedures; filling out forms; transmitting data; conducting training; and maintaining, updating, and obtaining written approval of AML/CFT programs. FinCEN calculated the fully loaded (*i.e.,* wages plus benefits, leave, *etc.*) hourly labor cost for each of these roles by using the median hourly wage estimated by the U.S. Bureau of Labor Statistics and computing an additional factor accounting for fringe benefits as reported in Table 5.1.[345]

The final rule requires, at a minimum, that an investment adviser designate an AML/CFT compliance officer to implement and monitor its AML/CFT program. This Impact Analysis does not include the direct cost of hiring a full-time equivalent AML/CFT compliance officer, which is not required by the final rule.[346] RIAs must already designate a chief compliance officer responsible for administering policies and procedures to comply with the Advisers Act and the rules thereunder. In smaller banks and broker-dealers, compliance or legal officers are often dual-hatted as AML/CFT compliance officers. Similarly, FinCEN assumes many RIAs and ERAs will appoint or dual hat a compliance or legal officer as their AML/CFT compliance officer. Therefore, this Impact Analysis accounts directly for the fully loaded hourly labor costs (*i.e.,* salary plus fringe benefits) for each compliance activity that would be performed by this individual rather than by calculating an annual salary, to avoid double-counting labor costs for each requirement.

Table 5.1 Hourly Labor Costs (in 2022 dollars)

Occupation	Median Hourly Wage[347]	Adjustment Factor for Fringe Benefits for Private Industry[348]	Fully Loaded Hourly Labor Cost
Chief Executives	$115.00	1.50	$172.42
Financial Managers	$100.28	1.50	$150.35
Compliance Officers	$39.66	1.50	$59.46
New Accounts Clerks	$23.17	1.50	$34.74
Financial Clerk	$23.10	1.50	$34.63
All Employees	$47.45	1.50	$71.14

FinCEN estimates that, in general and on average, each role would spend different amounts of time on each portion of the compliance burden associated with the final rule. These assumptions are provided in detail below for each compliance activity.

In addition to incurring labor costs, RIAs and ERAs will likely need to invest in new technology to comply with the final rule, including purchasing software and entering into licensing agreements with third party vendors. Although financial institutions are not required to use software to meet their AML/CFT requirements, most entities currently subject to the BSA use specialized AML/CFT software for this purpose. It is challenging to allocate technology costs to specific provisions of the final rule as technology may be

[345] U.S. Bureau of Labor Statistics, May 2022 National Industry-Specific Occupational Employment and Wage Estimates for NAICS 523000—Securities, Commodity Contracts, and Other Financial Investments and Related Activities. The adjustment factor for fringe benefits is calculated as 1 + ($18.26 per hour in total benefits ÷ $36.57 per hour in wages and salaries) = 1.50. Based on U.S. Bureau of Labor Statistics, Table 4. Employer Costs for Employee Compensation for Private Industry Workers by Occupational and Industry Group—Financial Activities Industry, June 2022.

[346] This is consistent with how FinCEN assesses burden hours and costs associated with the designation of a BSA officer, whereby the costs are assessed individually across other BSA regulatory requirements that the designated officer may implement. *See* FinCEN, *Agency Information Collection Activities; Proposed Renewal; Comment Request; Renewal Without Change of Anti-Money Laundering Programs for Certain Financial Institutions,* 85 FR 49418 (Oct. 13, 2020).

[347] *See* U.S. Bureau of Labor Statistics, May 2022 National Industry-Specific Occupational Employment and Wage Estimates for NAICS 523000—Securities, Commodity Contracts, and Other Financial Investments and Related Activities. The BLS website notes that the median wage for chief executives in this subsector is greater than or equal to $115 per hour.

[348] *See* U.S. Bureau of Labor Statistics, Table 4. Employer Costs for Employee Compensation for Private Industry Workers by Occupational and Industry Group—Financial Activities Industry, June 2022.

used to implement and automate several processes.[349] This Impact Analysis uses estimates derived from a 2020 Government Accountability Office (GAO) report assessing the costs of financial institutions to comply with the BSA to quantify these technology costs.[350] GAO documented a wide range of compliance costs across a diverse group of banks. For estimating technology and other costs in this Impact Analysis, FinCEN relied on the reported values for ''Large Community Bank B,'' for which the costs were assessed to be most similar to the costs likely to be incurred by the entities affected by the final rule. Table 5.2 reports selected characteristics for this benchmark.

Table 5.2 Characteristics of Selected Financial Institution Benchmark[351]

Characteristic	Value (in 2018)
Financial Institution Type	Community bank
Total Assets Under Management	$401 million to 4500 million
Total Noninterest Expenses	$20.1 million to $30 million
Number of Employees	101 to 500
Number of New Accounts Opened	1,001 to 5,000
Number of SARs filed	51
Number of CTRs filed	73

Table 5.3 reports the estimated compliance costs for specialized AML/CFT software and an independent annual audit to test the AML/CFT program. The costs are based on values for the financial institution benchmark described in the previous paragraph adjusted for inflation to 2022 dollars using the GDP implicit price deflator.[352]

Table 5.3 Estimated Compliance Costs for Independent Testing, Software, and Other Third-Party Technology Vendors (in 2022 dollars)[353]

Compliance Activity	Average Annual Cost
AML/CFT Software Costs	$12,400
Independent Testing	$17,000

(b) Compliance Costs to Industry by Regulatory Provision

As described in section 3, the regulated universe for purposes of the final rule consists of RIAs and ERAs, which vary in terms of their business structure, size, client relationships, and degree of existing AML/CFT measures already in place. Across these advisers, several characteristics vary across groups that directly impact the magnitude of the estimated costs, including the average number of employees and the number/type of customer relationships. However, the most significant cost determinant is the extent of existing AML/CFT measures in place: RIAs and ERAs with established AML/CFT programs in place will likely incur relatively fewer costs under the final rule, while those with few AML/CFT measures in place may incur potentially more significant costs.

For the purposes of estimating the cost impacts of the final rule, this Impact Analysis has sub-divided RIAs and ERAs into groups based on: (1) whether they are dual registrants, affiliated advisers, or other advisers (as described in section 2); and (2) whether they have a *significant, moderate,* or a *limited* number of AML/CFT measures already in place (see Table 3.2). FinCEN believes that these sub-divisions are the best available method of estimating the cost impacts.

i. AML/CFT Program Costs

RIAs and ERAs subject to the final rule will need to implement and maintain an AML/CFT program that

[349] GAO, *Anti-Money Laundering: Opportunities Exist to Increase Law Enforcement Use of Bank Secrecy Act Reports, and Banks' Costs to Comply with the Act Varied* (GAO–20–574), (Sept. 2020), available at *https://www.gao.gov/products/gao-20-574* [hereinafter 2020 GAO BSA Report]. The 2020 GAO BSA Report noted that it reported software costs separately and did not allocate them by requirement because the banks reviewed commonly used the same software to meet multiple BSA/AML requirements.

[350] *Id.*

[351] *Id.* at Table 111: Selected Characteristics of Large Community Bank B, 2018.

[352] Bureau of Economic Analysis, National Income and Product Accounts Tables, Table 1.1.9. Implicit Price Deflators for Gross Domestic Product, *https://www.bea.gov/itable/national-gdp-and-personal-income.*

[353] *See* 2020 GAO BSA Report, *supra* note 347, at Table 113.

meets the minimum requirements of the BSA. This includes developing internal policies, procedures, and controls to comply with the requirements of the BSA and address money laundering, terrorist financing, and other illicit finance risks. Entities that do not already have an AML/CFT program in place will incur costs to establish such a program. In addition, those entities will incur costs for maintaining, updating, storing, and producing upon request the written AML/CFT program. Dual registrants or affiliated advisers do not have to establish multiple AML/CFT programs, provided that an existing comprehensive AML/CFT program would cover all of the entity's advisory businesses. Entities that already have an existing AML/CFT program will need to review and/or modify their AML/CFT program to ensure it complies with the requirements of the final rule.

Based on public comments on the 2015 NPRM,[354] FinCEN estimates it will take approximately 120 hours for affiliated or other RIAs and ERAs that have a *limited* number of existing AML/CFT measures in place to develop the necessary policies, procedures, and controls to establish an AML/CFT program. Once established, FinCEN estimates annually it will take approximately 1 hour to maintain and update the existing AML/CFT program plus an average of 10 minutes to store and produce upon request the written AML/CFT program. In response to public comments on the draft Impact Analysis, FinCEN acknowledges that RIAs and ERAs with existing AML/CFT policies, procedures, and controls will likely need to update those measures as their current measures may not be fully consistent with BSA requirements. Therefore, for the final Impact Analysis FinCEN assumes that the cost burden for dually registered entities covered by an existing AML/CFT program and entities that have a *significant* or *moderate* number of AML/CFT measures in place to update their existing AML/CFT policies, procedures, and controls will be approximately 25 percent of the estimated burden for entities without an existing AML/CFT program, or about 30 hours. FinCEN assumes the vast majority of entities would develop or update a written program within the first year after the promulgation of the regulation. Table 5.4 reports the average costs of establishing and maintaining an AML/CFT program to comply with the BSA requirements.

Table 5.4. Average Cost of Establishing and Updating AML/CFT Program

Activity	Financial Manager		Compliance Officer		Total Hours	Total Cost per Entity
	% Time	Hourly Cost	% Time	Hourly Cost		
Develop New AML/CFT Program	10%	$150.35	90%	$59.46	120	$8,226
Update or Modify Existing AML/CFT Program					30	$2,057
Maintain and Update Written AML/CFT Program					1.0	$69
Store Written AML/CFT Program					0.0833	$6
Produce Written AML/CFT Program Upon Request					0.0833	$6

In addition, the AML/CFT program must be approved in writing by an RIA's or ERA's board of directors or trustees.[355] FinCEN estimates that it will take approximately 4 hours for a trustee or director to review and approve a written AML/CFT program the first year it is implemented and approximately 2 hours each subsequent year to review the program.[356] For this activity, FinCEN uses an average hourly wage based on the minimum BLS estimate for a chief executive as a proxy for a trustee of director's hourly compensation. Therefore, using the fully loaded labor cost of $172.42 per hour, the estimated labor cost for program review and approval is approximately $690 for a new AML/CFT program and $345 for an existing AML/CFT program. This represents an upfront and recurring cost for RIAs and ERAs that do not have an existing AML/CFT program, but only a one-time cost for RIAs and ERAs that currently have a *significant* or *moderate* number of AML/CFT measures in place.

Further, RIAs and ERAs will need to implement an AML/CFT training

[354] *See* Public Comments, Docket ID FINCEN–2014–0003, available at *https://www.regulations.gov/docket/FINCEN-2014-0003/comments.*

[355] If an RIA or ERA does not have a board, then the program must be approved by the adviser's sole proprietor, general partner, trustee, or other persons that have functions similar to a board of directors. And, as explained above in Section III.D.5 other members of senior management may also be appropriately suited to approve the AML/CFT program.

[356] FinCEN notes that this estimate reflects the time spent by one trustee/director, and that for those RIAs or ERAs with a full board of directors, there could be incremental cost for each additional director.

program for employees.[357] FinCEN estimates approximately two-thirds of employees will need to be trained on the AML/CFT program requirements, and assumes that such training could occur annually.[358] FinCEN assesses that RIAs and ERAs with a *significant* or *moderate* number of AML/CFT measures in place are already training staff and will not incur additional training costs under the final rule—with the exception of reviewing and updating the training materials to ensure they cover all of the regulatory requirements. For RIAs and ERAs with a *limited* number of AML/CFT measures in place, FinCEN estimates it will initially take 50 hours to develop an AML/CFT training program. For entities that have an existing AML/CFT training program (those entities with a *significant* or *moderate* number of AML/CFT measures in place), FinCEN estimates the one-time burden to review and update training materials will be 10 hours. Some RIAs and ERAs may choose to use a third-party consultant or external training event to conduct trainings, but this would not be required under the final rule.[359] FinCEN estimates the training will take approximately 1 hour for each employee, assuming such training occurs annually.[360] Table 5.5 reports the estimated average cost of developing and conducting AML/CFT program compliance training annually. The number of total hours is estimated based on the average number of employees for each type of RIA or ERA.

Table 5.5. Average Cost of AML/CFT Program Compliance Training[361]

Activity	Financial Manager		Compliance Officer		All Employees		Total Hours[1]	Total Cost per Entity[2]
	% Time	Hourly Cost	% Time	Hourly Cost	% Time	Hourly Cost		
Develop AML/CFT Program Training (one-time cost)	10%	$150.35	90%	$59.46			50	$3,428
Review and Update AML/CFT Program Training (one-time cost)	10%	$150.35	90%	$59.46			10	$686
Conduct Annual Training			100%	$59.46			1	$59
Costs for Employees to Attend Training								
RIA, Affiliated					100%	$71.14	100	$7,087
RIA, Other					100%	$71.14	13	$924
ERA, Affiliated					100%	$71.14	17	$1,209
ERA, Other					100%	$71.14	7	$522

In addition, all RIAs and ERAs will need to implement independent testing of their AML/CFT program. As described in the previous section, FinCEN estimates the average cost of such testing will be approximately $17,000.[362] This reflects a new recurring cost for all RIAs and ERAs affected by the final rule with the exception of dually registered entities, which are assumed to already use independent auditors.

Table 5.6 summarizes the average incremental costs per entity of developing or maintaining and updating an AML/CFT program by type and characteristics of each RIA or ERA.

[357] Employees of an investment adviser (and of any agent or third-party service provider that is charged with administering any portion of the AML/CFT program) have to be trained in AML/CFT requirements relevant to their functions and to recognize possible signs of money laundering, terrorist financing, or other illicit finance activity that could arise in the course of their duties.

[358] The frequency of the investment adviser's training program is determined by the responsibilities of the employees and the extent to which their functions bring them in contact with AML/CFT requirements or possible money laundering, terrorist financing, or other illicit finance activity.

[359] The 2020 GAO BSA Report estimated the average cost per employee trained ranged between $20 and $400 with a mean estimate of approximately $116 per employee (measured in 2022 dollars). For ''Large Community Bank B'' the average estimated cost per employee trained was approximately $130 (measured in 2022 dollars). *See* 2020 GAO BSA Report, *supra* note 349.

[360] *See id.* at p. 52.

[361] For annual training, total hours includes 1 hour per employee. FinCEN assumes approximately two-thirds of employees will require training each year, to include periodic updates and refresher training. Total cost may differ from hourly cost multiplied by total hours shown in table due to rounding.

[362] *See* 2020 GAO BSA Report, *supra* note 349, at Table 113.

Table 5.6. Average Cost of AML/CFT Program[363]

Investment Adviser Type	Upfront Cost (Year 1)	Recurring Cost (Year 2+)
Dual Registrant	$3,000	$0
RIA, Affiliated Adviser, with a *moderate* number of AML/CFT measures	$20,000	$17,000
RIA, Affiliated Adviser, with a *limited* number of AML/CFT measures	$37,000	$25,000
RIA, Other, with a *moderate* number of AML/CFT Measures	$20,000	$17,000
RIA, Other, with a *limited* number of AML/CFT Measures	$30,000	$18,000
ERA, Affiliated Adviser, with a *moderate* number of AML/CFT measures	$20,000	$17,000
ERA, Affiliated Adviser, with a *limited* number of AML/CFT measures	$31,000	$19,000
ERA, Other, with a *moderate* number of AML/CFT Measures	$20,000	$17,000
ERA, Other, with a *limited* number of AML/CFT Measures	$30,000	$18,000

ii. Customer Due Diligence Costs

The final rule requires RIAs and ERAs to implement appropriate risk-based procedures for conducting ongoing customer due diligence. Specifically, RIAs and ERAs are required to (1) understand the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and (2) conduct ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.

FinCEN assumes that all RIAs and ERAs have some existing information on their customers and processes to identify and conduct additional diligence on certain customers. For instance, in reviewing the data from the 2016 IMCT Survey, in addition to the 40 percent who had implemented a full AML/CFT program consistent with the requirements of the 2015 NPRM, an additional 36 percent of RIAs implemented some AML/CFT measures.[364] Based on this information as well as industry input about some of the voluntary AML/CFT measures firms have in place, it is more common for firms to develop voluntary CDD programs as part of their onboarding process as compared to other AML/CFT measures.[365] Therefore, FinCEN assumes that any covered RIAs and ERAs with a *moderate* number of AML/CFT measures in place will likely not need to modify their existing ongoing CDD measures, while covered RIAs and ERAs with a *limited* number of AML/CFT measures in place will need to perform additional customer review for existing customers and at the time of account opening for new customers. Since investment advisers generally already collect some of this information, the estimated cost burden is less than implementing a fully comprehensive customer review at the time of account opening, and accounts primarily for the costs of modifying existing procedures. FinCEN assumes the cost of modifying existing CDD procedures will be approximately 25 percent of the full cost for initial customer review and risk profiling.

Covered RIAs and ERAs with a *limited* number of AML/CFT measures in place will need to collect additional information to develop a customer risk profile. Table 5.7 documents key assumptions regarding the number of customer accounts at affiliated and other RIAs and ERAs. ERAs only have legal entity customers—therefore, they have no natural person customers. Based on an analysis of Form ADV Filings, as of July 31, 2023, RIAs had approximately 49.3 million natural

[363] Costs are rounded to the nearest thousand dollars.

[364] *See* 2016 IMCT Survey, *supra* note 303 at Question 15.

[365] *See, e.g.,* Managed Funds Association, Sound Practices for Hedge Fund Managers (2009), Ch. 6 (Anti-Money Laundering).

person customers, 2.5 million legal entity customers, and 96,000 PIV accounts. FinCEN estimates the average number of customer accounts will grow at an annual rate of 9.5 percent—and PIV accounts will grow at an annual rate of 6 percent—based on average industry growth in individual and PIV accounts from 2018 to 2023.[366]

Table 5.7 Average Number of Customer Relationships (as of July, 31 2023)[367]

	Registered Investment Advisers			Exempt Reporting Advisers		
	Dual Registrant	Affiliated	Other	Dual Registrant	Affiliated	Other
Avg. Number of Natural Person Relationships	46,198	11,444	701	0	0	0
Avg. Number of Legal Entity Relationships	933	224	143	4	63	5
Avg. Number of PIV Accounts	13	20	4	0	0	0

Affiliated and other covered RIAs and ERAs with a *limited* number of existing AML/CFT measures will also need to collect and review customer information to implement risk-based procedures for conducting ongoing CDD. As described above, FinCEN estimates the costs associated with modifying existing customer diligence information and procedures will be significantly less than the full cost for developing the initial customer risk profile. In this Impact Analysis, FinCEN estimates the average cost of collecting additional information for new accounts to develop a customer risk profile will be approximately 25 percent of the total estimated cost of this information collection (30 minutes per natural person or 1 hour per legal entity).[368] Thus, the estimated cost of information collection is approximately 7.5 minutes per natural person or 15 minutes per legal entity. For this activity, FinCEN uses an average hourly labor cost of $34.76 for a new account clerk. Therefore, the estimated labor cost to develop a risk profile is approximately $4.34 for per natural person and $8.68 per legal entity. In addition to new accounts, FinCEN anticipates that covered RIAs and ERAs will need to conduct this information collection for existing accounts. FinCEN estimates this information collection for existing accounts will be conducted over the first three years after the promulgation of the final rule.[369] The costs to build and maintain technology and information systems to house this customer information is not reflected here but is included in the annual costs of software licensing described elsewhere in this Impact Analysis. These costs are multiplied by the average number of natural persons, legal entities, and PIV accounts, respectively, for each covered RIA and ERA.

In addition to the costs to the adviser, this requirement likely represents an information collection burden for legal entities that hold accounts with investment advisers. FinCEN estimates it would take between approximately 15 and 30 minutes, or an average of 22.5 minutes, for legal entity customers to provide any additional data required for this information collection. Since these customers are not employees of the regulated entities, but rather other investment advisers in most cases, FinCEN uses an hourly burden estimate of $49.17 that is representative of the customer base.[370] Therefore, the average information collection cost is approximately $18.44 per customer. This average cost is multiplied by the number of legal entity customers for each covered RIA or ERA.

Table 5.8 summarizes the average ongoing CDD costs per entity by type and characteristics of each covered RIA or ERA. The relatively higher costs in the first three years reflects the compliance burden associated with data collection activities to develop a customer risk profile for existing customer accounts and new customer accounts, while the ongoing costs after 2026 reflect the burden associated with data collection for only new customer accounts.

[366] *See* Investment Adviser Association, *Investment Adviser Industry Snapshot 2023* (Jul. 2023), p.26, available at *https://investmentadviser.org/wp-content/uploads/2023/06/Snapshot2023_Final.pdf.*

[367] *See supra* note 25.

[368] *See* 81 FR at 29448.

[369] Current industry practices suggest customers are often re-rated for risk purposes. Industry input suggests high-risk customers, which make up a small portion of many RIAs customer base, are re-rated at least annually or when SARs are filed, while medium- or low-risk customers are re-rated less frequently.

[370] This estimate is based on a population-weighted average of $32.79, which represents the median salary for all employees in NAICS 522, 523, and 525, multiplied by an adjustment factor for fringe benefits of 1.50.

Table 5.8. Average Cost of Ongoing Customer Due Diligence[371]

Year	RIAs and ERAs with a *Significant* or *Moderate* Number of AML/CFT Measures[372]	RIAs, Affiliated, with a *Limited* Number of AML/CFT Measures	RIAs, Other, with a *Limited* Number of AML/CFT Measures	ERAs, Affiliated, with a *Limited* Number of AML/CFT Measures	ERAs, Other, with a *Limited* Number of AML/CFT Measures
2024	$0	$17,000	$2,000	$400	$300
2025	$0	$22,000	$2,000	$500	$300
2026	$0	$23,000	$2,000	$500	$300
2027	$0	$6,000	$1,000	$300	$200
2028	$0	$7,000	$1,000	$300	$200
2029	$0	$7,000	$1,000	$300	$200
2030	$0	$8,000	$1,000	$300	$200
2031	$0	$9,000	$1,000	$300	$200
2032	$0	$10,000	$1,000	$300	$200
2033	$0	$10,000	$1,000	$300	$200

iii. Suspicious Activity Report Filing Costs

As part of their AML/CFT program, RIAs and ERAs will be required to conduct ongoing monitoring of customers' transactions and file SARs when appropriate. FinCEN assumes that RIAs and ERAs that are dually registered as a broker-dealer or bank are already submitting SARs. The extent of SAR filing by affiliated or other advisers is uncertain. Therefore, FinCEN assumes that all RIAs and ERAs that are not dually registered as a broker-dealer or bank would have to begin filing SARs due to the final rule. To the extent that some RIAs and ERAs in this category are already filing SARs, this may overestimate the costs of the final rule.

Based on an analysis of dual registrant's SAR filings between 2018 and 2022, FinCEN estimates that RIAs will each file an average of approximately 60 SARs per year.[373] Since no information was available for ERAs, FinCEN applies the same estimate of 60 SARs per year. Several public comments on the draft Impact Analysis indicated this figure was too high, particularly for smaller investment advisers. Because the estimated costs include time spent reviewing alerts to determine whether a SAR is merited and documenting cases that do not become SARs, FinCEN chose to retain this estimate to avoid underestimating the burden associated with this review process and those cases that result in new SARs.

SARs can be submitted as initial or continuing, discrete or batch, and standard or extended in different combination, *e.g.,* initial/discrete/standard, initial/discrete/extended, initial/batch/standard. Without a more detailed breakdown available, FinCEN assumes that an average of 60 SARs per investment adviser will be proportionally distributed across each category as follows:[374]

- 51 (85 percent) would be initial SARs and 9 (15 percent) would be continuing SARs.
- 51 (85 percent) would be discrete SARs and 9 (15 percent) would be batch SARs.
- 55 (92 percent) would be standard SARs and 5 (8 percent) would be extended SARs.

Each type of filing is expected to have a different reporting burden because of differences in the cost per hour and/or the number of hours needed for completion.

In addition, the estimated costs of ongoing monitoring in (Table 5.8 above) include the review of alerts that do not result in a SAR being filed. FinCEN previously estimated that approximately 42 percent of suspicious activity alerts were turned into SARs.[375] Therefore, for each case filed as a SAR, approximately 1.4 cases were not filed. Table 5.9 reports the average cost of determining whether a SAR is needed and filing SARs. While the burden estimates are based on FinCEN's previous analysis,[376] in this Impact Analysis the burden is attributed primarily to a compliance officer rather than a financial clerk or teller due to the smaller size of RIAs and ERAs relative to banks and to avoid potentially underestimating the average hourly labor costs associated with these activities. To the extent that a portion of this work can be completed by clerical staff that report to a compliance officer, this may slightly overestimate certain costs. The licensing cost for transaction monitoring software is not reflected here but is included in the software costs described elsewhere in this Impact Analysis.

[371] Costs are rounded to the nearest thousand dollars for RIAs and to the nearest hundred dollars for ERAs.

[372] This category includes dual registrants that are applying a significant number of AML/CFT measures and affiliated advisers that are applying a moderate number of AML/CFT measures.

[373] Dual registrants were assessed to be the population of investment advisers most likely to file SARs and best represent an investment adviser subject to SAR filing obligations.

[374] Based on summary statistics of SAR filings by dual registrants from 2018 to 2022.

[375] *See* FinCEN, *Proposed Renewal: Reports by Financial Institutions of Suspicious Transactions,* 85 FR 31598, 31605 (May 26, 2020).

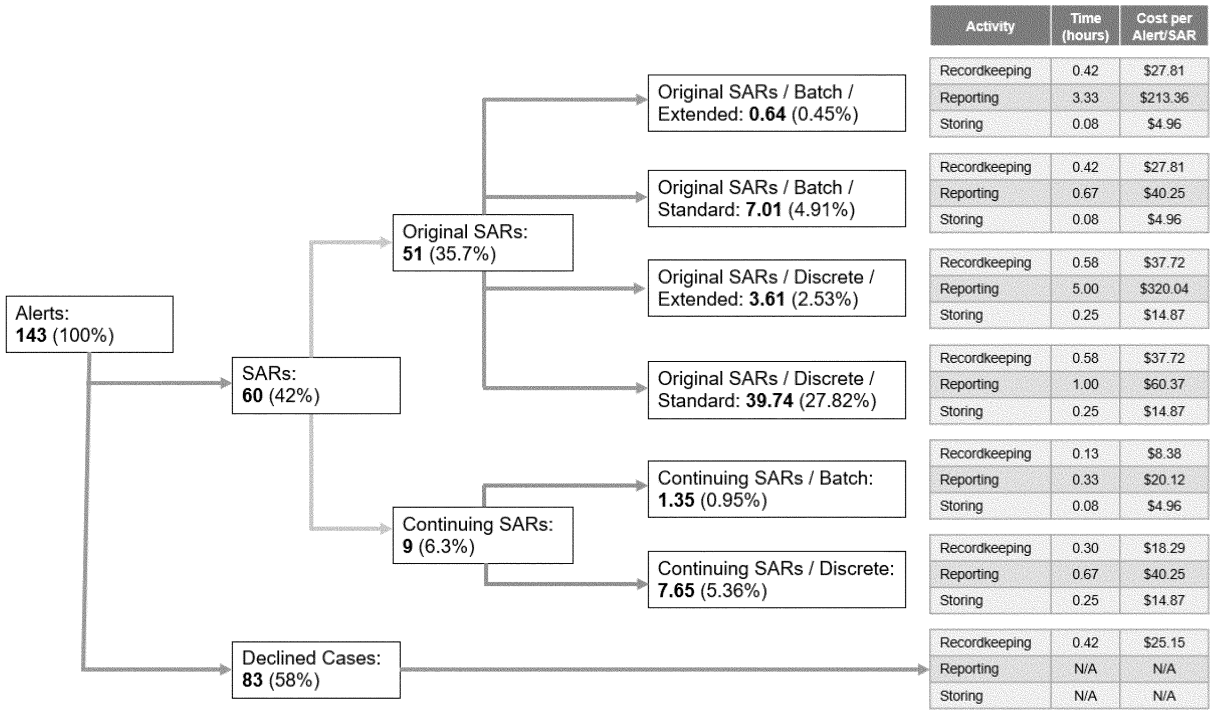
[376] *See id.*

Table 5.9. Weighted Average Hourly Cost of Reviewing Alerts and Drafting, Writing, and Submitting a Suspicious Activity Report

Activity	Financial Manager		Compliance Officer		Weighted Average Hourly Cost
	% Time	Hourly Cost	% Time	Hourly Cost	
Determining Whether a SAR is Merited	10%	$150.35	90%	$59.46	$68.55
Documenting Cases not Submitted as SARs	1%	$150.35	99%	$59.46	$60.37
Drafting, Writing, and Submitting SARs (standard content)	1%	$150.35	99%	$59.46	$60.37
Drafting, Writing, and Submitting SARs (extended content)	5%	$150.35	95%	$59.46	$64.01
Storing SARs and Supporting Documentation	0%	$150.35	100%	$59.46	$59.46

Figure 5.1 illustrates FinCEN's estimates regarding the average number and distribution of SARs, including for suspicious activity alerts that do not result in a SAR being filed, as well as the hourly recordkeeping, reporting, and storing burden estimates by type of filing. As an example, the average number of original/discrete/standard SARs is estimated as follows: (1) an average of 143 alerts results in 60 SARs (42% of alerts), (2) approximately 51 of 60 (or 85%) are original SARs, (3) approximately 43 of 51 (85%) are discrete SARs, and (4) approximately 40 of 43 (92%) are standard SARs. Therefore, of the 143 alerts, approximately 40 of 143 alerts (28%) are estimated to result in original/discrete/standard SARs compared with 83 of 143 (58%) estimated to result in a declined case. The remaining SAR categories comprise a smaller proportion of all suspicious activity alerts.

Figure 5.1. Average Number and Distribution of Suspicious Activity Alerts and Estimated Burden by Type of Filing per Investment Adviser[377]



Based on this information, the average annual cost of SAR filings is estimated to be approximately $10,000 per entity for any RIA or ERA that does not have a full AML/CFT program in place. No incremental costs are estimated for dual registrants because those entities are already submitting SARs in the baseline.

iv. Other Compliance Costs

As discussed above, there are certain costs associated with the final rule that may be spread across several of the regulatory requirements. It is challenging to allocate those expenditures to specific provisions of the final rule described above. These include software licensing and general recordkeeping costs.

Dual registrants, affiliated, and other RIAs and ERAs that already apply a *significant* or *moderate* number of AML/CFT measures are expected to already be using specialized AML/CFT software as part of their AML/CFT program. Affiliated or non-affiliated entities that have a *limited* number of AML/CFT measures in place will likely have to invest in this type of software to implement an AML/CFT program. FinCEN estimates that annual licensing fees for specialized AML/CFT software will be approximately $12,400.[378]

The final rule requires RIAs and ERAs to comply with certain recordkeeping obligations (under the Recordkeeping and Travel Rules),[379] including recording and maintaining originator and beneficiary information for certain transactions. FinCEN assumes that RIAs and ERAs that are dually registered as a broker-dealer or as a bank with a *significant* number of AML/CFT measures in place are already in compliance with the recordkeeping requirements, while other RIAs and ERAs would have to take additional steps to comply with these measures. FinCEN estimates the annual recordkeeping burden per RIA or ERA for these requirements is 50 hours.[380] Table 5.10 summarizes the average cost associated with these recordkeeping requirements.

[377] Information on the number and distribution of SARs by type of filing based on an analysis of SAR filings. Information on the number of alerts and burden estimates based on FinCEN, *Proposed Renewal: Reports by Financial Institutions of Suspicious Transactions.* 85 FR 31598 (May 26, 2020).

[378] *See* 2020 GAO BSA Report, *supra* note 349, at Table 113.

[379] *See* 31 CFR 1010.410(a), (e).

[380] FinCEN, *Proposed Renewal: Renewal Without Change of Regulations Requiring Records to be Made and Retained by Financial Institutions, Banks, and Providers and Sellers of Prepaid Access,* 85 FR 84105 (Dec. 23, 2020).

Table 5.10. Average Cost Associated with AML/CFT Recordkeeping Requirements

Activity	Financial Manager		Compliance Officer		Financial Clerk		Total Hours	Total Cost per Entity
	% Time	Hourly Cost	% Time	Hourly Cost	% Time	Hourly Cost		
Creating and Maintaining Records	5%	$150.35	15%	$59.46	80%	$34.63	50	$2,207

In addition, the final rule requires RIAs and ERAs to implement the information sharing procedures contained in section 314(a) of the USA PATRIOT Act.[381] Upon receiving an information request from FinCEN, an RIA or ERA will be required to search its records to determine whether it maintains or has maintained any account or engaged in any transaction with an individual, entity, or organization named in the request. Covered financial institutions are instructed not to reply to the 314(a) request if a search does not uncover any matching of accounts or transactions. Currently, all 314(a) responses are filed using automated technology.[382] FinCEN assumes that dually registered entities with a *significant* number of AML/CFT measures in place are already complying with these requirements, while most other RIAs and ERAs will likely incur additional reporting costs to comply with these measures. FinCEN estimates the average burden will be approximately 4 minutes per 314(a) request for 365 reports per year per investment adviser, an average of one request per calendar day.[383] Therefore, the estimated burden is approximately 24 hours (4 minutes × 365 reports = 1,460 minutes) per year per investment adviser. The information technology costs associated with 314(a) requests are assumed to be included within the overall software costs. Table 5.11 summarizes the information collection costs for 314(a) measures.

Table 5.11. Average Cost for Section 314(a) Measures

Activity	Financial Manager		Compliance Officer		Financial Clerk		Total Hours	Total Cost per Entity
	% Time	Hourly Cost	% Time	Hourly Cost	% Time	Hourly Cost		
Research and Respond to 314(a) Requests	10%	$150.35	60%	$59.46	30%	$34.63	24.33	$1,487

As ''covered financial institutions'' under FinCEN regulations, RIAs and ERAs will also be required to maintain due diligence measures that include policies, procedures, and controls that are reasonably designed to detect and report any known or suspected money laundering or other suspicious activity conducted through or involving any correspondent or private banking account that is established, maintained, administered, or managed in the United States for a foreign financial institution. FinCEN estimates the annual hourly burden of maintaining and updating the due diligence program for such correspondent or private banking accounts would be approximately two hours for each RIA and ERA—one hour to maintain and update the program and one hour to obtain the approval of senior management.[384] Information technology costs associated with this requirement are included within the overall software costs. Table 5.12 summarizes the cost burden associated with special due diligence measures.

[381] FinCEN, *Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity,* Final Rule, 67 FR 60579 (Sept. 26, 2002).

[382] FinCEN, *Proposed Renewal: Renewal Without Change on Information Sharing Between Government Agencies and Financial Institutions,* 87 FR 41186 (Jul. 11, 2022).

[383] *Id.*

[384] FinCEN, *Proposed Renewal: Due Diligence Programs for Correspondent Accounts for Foreign Financial Institutions and for Private Banking Accounts,* 85 FR 61104 (Sep. 9, 2020).

Table 5.12. Average Cost Associated With Updating and Maintaining Special Due Diligence Measures

Activity	Trustee or Director		Financial Manager		Compliance Officer		Total Hours	Total Cost per Entity
	% Time	Hourly Cost	% Time	Hourly Cost	% Time	Hourly Cost		
Maintain and Update Special Due Diligence Program			10%	$150.35	90%	$59.46	1	$68.55
Obtain Written Approval	100%	$172.42					1	$172.42

Under the final rule, RIAs and ERAs must also comply with special measures procedures and prohibitions contained in section 311 of the USA PATRIOT Act.[385] Section 9714 of the Combating Russian Money Laundering Act [386] allows for similar special measures in the context of illicit Russian finance, as does section 7213A of the Fentanyl Sanctions Act in connection with illicit opioid trafficking.[387] Generally, these special measures grant FinCEN the authority, upon finding that reasonable grounds exist for concluding that a foreign jurisdiction, financial institution, class of transactions, or type of account is of ''primary money laundering concern,'' to require domestic financial institutions and financial agencies to take one or more ''special measures,'' which impose additional recordkeeping, information collection, and reporting requirements on covered U.S. financial institutions. Among other authorities, these sections also authorize FinCEN to impose prohibitions or conditions on the opening or maintenance of certain correspondent accounts. Currently, such prohibitions are in place under section 311 for four foreign financial institutions and three foreign jurisdictions, and one foreign financial institution under section 9714.[388] The special measures under section 311 require financial institutions to provide notice to foreign account holders and document compliance with the statute. FinCEN assumes that dually registered RIAs and ERAs with a *significant* number of AML/CFT measures in place are already complying with these requirements, while most other RIAs and ERAs will likely incur additional costs to comply with these special measures. FinCEN estimates the average burden will be approximately 1 hour per special measure.[389] Therefore, the estimated burden is approximately 6 hours. Table 5.13 summarizes the average cost for implementation section 311 special measures.

Table 5.13. Average Cost for Section 311 Special Measures

Activity	Financial Manager		Compliance Officer		Financial Clerk		Total Hours	Total Cost per Entity
	% Time	Hourly Cost	% Time	Hourly Cost	% Time	Hourly Cost		
Section 311 Special Measures	10%	$150.35	60%	$59.46	30%	$34.63	6	$367

Finally, in addition to filing SARs, financial institutions must file CTRs under the BSA's reporting obligations. Currently, all investment advisers are required to report transactions in currency over $10,000 on Form 8300, which is being replaced by the CTR.[390] Therefore, FinCEN estimates that the

[385] 31 U.S.C. 5318A; FinCEN, *Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity,* Final Rule, 67 FR 60579 (Sept. 26, 2002).

[386] Section 9714 (as amended) can be found in a note to 31 U.S.C. 5318A.

[387] This provision, codified at 21 U.S.C. 2313a, was added to the Fentanyl Sanctions Act by the Fentanyl Eradication and Narcotics Deterrence Off Fentanyl Act, Public Law 118–50, 3201(a), 138 Stat 895, 940 (2024).

[388] These foreign financial institutions and jurisdictions subject to prohibitions under section 311 are: (1) Bank of Dandong, (2) Burma, (3) Commercial Bank of Syria, including Syrian Lebanese Commercial Bank, (4) FBME Bank Ltd., (5) Al-Huda Bank, (6) Islamic Republic of Iran, and (7) Democratic People's Republic of North Korea. *See* FinCEN, Special Measures for Jurisdictions, Financial Institutions, or International Transactions of Primary Money Laundering Concern, *https://www.fincen.gov/resources/statutes-and-regulations/311-and-9714-special-measures*. The foreign financial institution subject to prohibitions under section 9714 is Bitzlato Limited. *See* FinCEN, *Imposition of Special Measure Prohibiting the Transmittal of Funds Involving Bitzlato,* 88 FR 3919 (Jan. 23, 2023). While section 9714 allows for the imposition of similar prohibitions to section 311, it does include an explicit notification requirement, so FinCEN is not including an estimated burden for compliance with the section 9174 action for Bizlato Limited. Similarly, while Burma is subject to a section 311 prohibition, FinCEN granted exemption relief for U.S. financial institutions to maintain correspondent accounts for Burmese banks under certain conditions. *See* FIN–ADMINX–10–2016, *Exception to Prohibition Imposed by Section 311 Action against Burma* (Oct. 7, 2016).

[389] *See, e.g.,* FinCEN, *Proposed Renewal: Imposition of a Special Measure against Bank of Dandong as a Financial Institution of Primary Money Laundering Concern,* 88 FR 48285, 48286 (Jul. 26, 2023).

[390] FinCEN, Proposed Renewal: *Renewal Without Change of the Bank Secrecy Act Reports of Transactions in Currency Regulations at 31 CFR 1010.310 Through 1010.314, 31 CFR 1021.311, and 31 CFR 1021.313, and FinCEN Report 112-Currency Transaction Report,* 85 FR 29022 (Jul. 13, 2020).

incremental cost for RIAs and ERAs to use the CTR is *de minimis*.[391]

Based on this information, the average annual cost of other compliance measures not characterized elsewhere in this Impact Analysis are estimated to be approximately $4,000 for affiliated or other RIAs and ERAs with a *moderate* number of AML/CFT measures already in place and approximately $16,000 for affiliated or other RIAs and ERAs with a *limited* number of AML/CFT measures already in place.

(c) Costs to Government

This section describes the costs to Federal Government agencies to implement and enforce the final rule.

i. Costs to FinCEN

Administering the regulation is estimated to entail costs to FinCEN as well as other government agencies. In terms of technology and IT costs, the final rule does not create new kinds or requirements or new reporting forms, and instead applies existing SAR and CTR filing obligations to investment advisers. As a result, technology and IT costs are estimated to be small but are included in this analysis for comprehensiveness. The primary costs that FinCEN and other government agencies are expected to incur with respect to administering this final rule relate to personnel costs for enforcing compliance with the regulation, as well as providing guidance and engaging in outreach, training, investigations, and policy development in support of this regulation. FinCEN estimates the total annual personnel cost relating to administering this final rule to be $7.5 million, as reflected in Table 5.14, with continuing recurring annual costs of roughly the same magnitude for ongoing outreach, policy, and enforcement activities thereafter.

Table 5.14 Estimated Personnel Costs to FinCEN Related to Administering the Final Rule (in 2022 dollars)

Division	Grade	Number of Employees	Average Annual Salary[392]	Adjustment Factor for Fringe Benefits and Overhead for Federal Employees[393]	Fully Loaded Hourly Labor Cost
Policy (PD)	GS-12	1	$108,000	2.0	$217,000
	GS-13	1	$129,000	2.0	$258,000
Global Investigations (GID)	GS-13	2	$129,000	2.0	$258,000
	GS-14	1	$152,000	2.0	$304,000
Counsel (OCC)	GS-15	2	$184,000	2.0	$367,000
Strategic Operations (SOD)	GS-13	4	$129,000	2.0	$258,000
	GS-14	1	$152,000	2.0	$304,000
Enforcement and Compliance (ECD)	GS-12	10	$108,000	2.0	$217,000
	GS-13	4	$129,000	2.0	$258,000
	GS-14	2	$152,000	2.0	$304,000
	GS-15	1	$184,000	2.0	$367,000
Total		**29**	**$3,770,000**		**$7,540,000**

In addition, FinCEN estimates the average technology and IT costs associated with receiving SAR filings will be approximately $0.10 per SAR. Based on an average estimate of 60 SARs per entity per year, FinCEN anticipates it will receive approximately 1,245,420 SARs each year from RIAs and ERAs that do not currently have most AML/CFT measures in place. This estimate excludes SAR filings for dually registered entities because those entities are expected to be submitting SARs in the baseline. Therefore, the incremental technology and IT costs to FinCEN associated with the SAR filing requirement are estimated to be approximately $125,000 per year. Enforcement of this regulation will involve coordination with law enforcement agencies, which will incur costs (time and resources) while conducting investigations into non-compliance. FinCEN does not currently propose an estimate of these costs.

ii. Costs to SEC

The SEC is also estimated to incur costs, primarily relating to additional staff needed to examine for compliance with the requirements of the final rule, and to provide any needed regulatory guidance or analysis. Costs associated with implementing the final rule are expected to primarily affect the Division of Investment Management and the Division of Examinations, though certain potential costs may also be incurred by the Division of Enforcement. In addition, as the SEC

[391] In the 2015 NPRM, FinCEN estimated each investment adviser would file an average of one CTR per year, at a time cost of one hour per CTR. Incorporating these costs in the model would change the total hour and dollar burden by less than one percent.

[392] U.S. Office of Personnel Management, Salary Table 2023 Incorporating the 4.1 percent General Schedule Increase and a Locality Payment of 32.49 percent for the Washington-Baltimore-Arlington area, available at *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2023/DCB.pdf.* Rounded to three significant digits.

[393] The Department of Health and Human Services recommends using an adjustment factor of 2 to account for fringe benefits and overhead when agency-specific financial data are unavailable. *See* Department of Health and Human Services, Guidelines for Regulatory Impact Analysis (2016), p. 30, available at *https://www.aspe.hhs.gov/sites/default/files/migrated_legacy_files//171981/HHS_RIAGuidance.pdf.*

receives a significant portion of its revenue from fees on registrants and other market participants, many of these costs would ultimately be paid for through those fees.[394]

The SEC's Division of Investment Management administers the Advisers Act and develops regulatory policy for investment advisers, among other responsibilities. The Division of Investment Management may require two additional staff to provide regulatory guidance or analysis related to the final rule. The average salary for a GS–15 equivalent is approximately $203,500 based on the SEC's SK series adjusted for the locality pay area of Washington, DC.[395] Applying an adjustment factor of 2.0 for fringe benefits and overhead yields an estimated fully loaded labor cost of approximately $407,000. Therefore, FinCEN estimates the total annual personnel cost to the SEC relating to administering this final rule to be approximately $814,000.

RIAs are subject to examination by SEC staff in the SEC's Division of Examinations. Within the Division of Examinations, the Investment Adviser/Investment Company (IA/IC) Examination Program completed more than 2,300 examinations of SEC-registered investment advisers in FY22.[396] The SEC maintains authority to examine ERAs as well. While the Division of Examinations may conduct examinations for compliance with the requirements of the final rule within its existing examination program, this may require additional examination staff. FinCEN does not currently have an estimate of the additional costs the SEC's Division of Examinations may incur for these activities.

(d) Summary of Costs

This section reports the total costs of the final rule on a per entity basis and in aggregate, by type and characteristics of each RIA or ERA. As described in section 3, the regulated universe consists of RIAs and ERAs that vary in terms of business structure, number of employees, number of accounts, and the extent that existing AML/CFT measures are being applied (*e.g. significant, moderate, limited*). Table 5.15 summarizes the total number of entities by type and characteristics of each RIA and ERA.

Table 5.15. Number of Affected Investment Advisers by Type

Baseline AML/CFT Measures	Registered Investment Advisers			Exempt Reporting Advisers			Total
	Dual Registrant	Affiliated	Other	Dual Registrant	Affiliated	Other	
Significant	376	0	0	44	0	0	420
Moderate	0	1,562	3,692	0	216	1,753	7,223
Limited	0	521	7,922	0	72	3,761	12,276
Total	**376**	**2,083**	**11,614**	**44**	**288**	**5,514**	**19,919**

i. Average Cost per Private Entity and Total Costs by Category of Investment Adviser

This section describes the estimated average cost per entity and total costs by type and characteristics of each RIA and ERA. The average costs per RIA and ERA are multiplied by the number of impacted entities to estimate the aggregate cost burden of the final rule, by category of RIA and ERA. Table 5.16 summarizes the estimated costs for RIAs and ERAs that are dually registered as a broker-dealer or a bank with a *significant* number of AML/CFT measures in place. The estimated costs for dually registered entities are minimal because most firms are expected to have an existing AML/CFT program in place. The relatively small incremental costs are associated with RIAs and ERAs maintaining and updating a written AML/CFT program and reviewing and updating AML/CFT training to ensure they cover the activities of all RIAs and ERAs and meet the requirements of the BSA.

Table 5.16. Total Costs for Dually Registered Entities with a *Significant* Number of AML/CFT Measures in Place, by Year (in 2022 dollars)[397]

Year	Number of Entities	Average Cost per Entity	Total Costs ($M)
2024	420	$3,000	$1.2
2025-2033	420	$0	$0.0

Table 5.17 summarizes the estimated costs for affiliated RIAs with a *moderate* number of AML/CFT measures in place.

[394] *See* SEC, *FY 2023 Agency Financial Report,* p. 32, available at *https://www.sec.gov/files/sec-2023-agency-financial-report.pdf.*

[395] This estimate is based on the midpoint salary for a GS–15 equivalent of $153,600 multiplied by the locality pay rate of 32.49 percent for Washington, DC. *See* SEC, SEC Compensation Program (Apr. 9, 2024), available at *https://www.sec.gov/about/careers-securities-exchange-commission/sec-compensation-program.*

[396] *See* SEC, *FY 2024 Congressional Budget Justification,* p. 22, *https://www.sec.gov/files/fy-2024-congressional-budget-justification_final-3-10.pdf.*

[397] For Tables 5.16 to 5.37, costs are rounded to the nearest thousand dollars or two significant digits.

Table 5.17. Total Costs for RIAs, Affiliated, with a *Moderate* Number of AML/CFT Measures in Place, by Year (in 2022 dollars)

Year	Number of Entities	Average Cost per Entity	Total Costs ($M)
2024	1,562	$33,000	$52.1
2025-2033	1,562	$30,000	$47.3

Table 5.18 summarizes the estimated costs for affiliated RIAs with a *limited* number of AML/CFT measures in place.

Table 5.18. Costs for RIAs, Affiliated, with a Limited Number of AML/CFT Measures in Place, by Year (in 2022 dollars)

Year	Number of Entities	Average Cost per Entity	Total Costs ($M)
2024	521	$80,000	$41.5
2025	521	$73,000	$37.9
2026	521	$73,000	$38.1
2027	521	$56,000	$29.4
2028	521	$57,000	$29.7
2029	521	$58,000	$30.0
2030	521	$58,000	$30.4
2031	521	$59,000	$30.8
2032	521	$60,000	$31.2
2033	521	$61,000	$31.7

Table 5.19 summarizes the estimated costs for other RIAs with a *moderate* number of AML/CFT measures in place.

Table 5.19. Costs for RIAs, Other, with a *Moderate* Number of AML/CFT Measures in Place, by Year (in 2022 dollars)

Year	Number of Entities	Average Cost per Entity	Total Costs ($M)
2024	3,692	$33,000	$123.1
2025-2033	3,692	$30,000	$111.7

Table 5.20 summarizes the estimated costs for other RIAs with a *limited* number of AML/CFT measures in place.

Table 5.20. Costs for RIAs, Other, with a Limited Number of AML/CFT Measures in Place, by Year (in 2022 dollars)

Year	Number of Entities	Average Cost per Entity	Total Costs ($M)
2024	7,922	$58,000	$456.9
2025	7,922	$46,000	$365.7
2026	7,922	$46,000	$366.1
2027	7,922	$45,000	$355.1
2028	7,922	$45,000	$355.4
2029	7,922	$45,000	$355.8
2030	7,922	$45,000	$356.3
2031	7,922	$45,000	$356.8
2032	7,922	$45,000	$357.3
2033	7,922	$45,000	$357.9

Table 5.21 summarizes the estimated costs for ERAs, affiliated, with a *moderate* number of AML/CFT measures in place.

Table 5.21. Total Costs for ERAs, Affiliated, with a *Moderate* Number AML/CFT Measures in Place, by Year (in 2022 dollars)

Year	Number of Entities	Average Cost per Entity	Total Costs ($M)
2024	216	$33,000	$7.2
2025-2033	216	$30,000	$6.5

Table 5.22 summarizes the estimated costs for ERAs that are affiliated with a bank or broker-dealer with a *limited* number of AML/CFT measures in place.

Table 5.22. Costs for ERAs, Affiliated, with a *Limited* Number of AML/CFT Measures in Place, by Year (in 2022 dollars)

Year	Number of Entities	Average Cost per Entity	Total Costs ($M)
2024	72	$57,000	$4.1
2025-2033	72	$45,000	$3.2

Table 5.23 summarizes the estimated costs for other ERAs with a *moderate* number of AML/CFT measures in place.

Table 5.23. Costs for ERAs, Other, with a *Moderate* Number of AML/CFT Measures in Place, by Year (in 2022 dollars)

Year	Number of Entities	Average Cost per Entity	Total Costs ($M)
2024	1,753	$33,000	$58.5
2025-2033	1,753	$30,000	$53.0

Table 5.24 summarizes the estimated costs for other ERAs with a *limited* number of AML/CFT measures in place.

Table 5.24. Costs for ERAs, Other, with a *Limited* Number of AML/CFT Measures in Place, by Year (in 2022 dollars)

Year	Number of Entities	Average Cost per Entity	Total Costs ($M)
2024	3,761	$56,000	$210.0
2025-2033	3,761	$44,000	$165.2

ii. Estimated Burden of the Final Rule to Industry

Table 5.25 summarizes the total costs of the final rule on an undiscounted basis.

Table 5.25. Total Estimated Burden of the Final Rule by Entity Type, by Year ($ Millions, 2022)

Year	SEC-registered Investment Advisers	Exempt Reporting Advisers	Customers	Federal Agencies	Total
2024	$670	$280	$24.0	$8.5	$990
2025	$560	$230	$2.2	$8.5	$800
2026	$560	$230	$2.4	$8.5	$800
2027	$540	$230	$2.7	$8.5	$780
2028	$540	$230	$2.9	$8.5	$780
2029	$540	$230	$3.2	$8.5	$780
2030	$550	$230	$3.5	$8.5	$790
2031	$550	$230	$3.9	$8.5	$790
2032	$550	$230	$4.2	$8.5	$790
2033	$550	$230	$4.6	$8.5	$790

Table 5.26 summarizes the total costs of the final rule by entity and business structure for dual registrants, affiliated advisers, and other advisers on an undiscounted basis.

Table 5.26. Total Estimated Burden of the Final Rule by Entity and Business Structure, by Year ($ Millions, 2022)

Year	Dually Registered Entities	Affiliated Entities	Neither	Customers	Federal Agencies	Total
2024	$1.2	$100	$850	$24.0	$8.5	$990
2025	$0	$95	$700	$2.2	$8.5	$800
2026	$0	$95	$700	$2.4	$8.5	$800
2027	$0	$86	$680	$2.7	$8.5	$780
2028	$0	$87	$690	$2.9	$8.5	$780
2029	$0	$87	$690	$3.2	$8.5	$780
2030	$0	$87	$690	$3.5	$8.5	$790
2031	$0	$88	$690	$3.9	$8.5	$790
2032	$0	$88	$690	$4.2	$8.5	$790
2033	$0	$89	$690	$4.6	$8.5	$790

iii. Discounted Estimated Burden of the Final Rule

In regulatory impact analyses, discount rates are used to account for differences in the timing of the estimated benefits and costs. Benefits and costs that accrue further in the future are more heavily discounted than those impacts that occur today. Discounting reflects, among other things, individuals' general preference to receive benefits sooner rather than later (and defer costs) and recognizes that costs incurred today are more expensive than future costs because businesses must forgo an expected rate of return on investment of that capital.[398] OMB recommends using a discount rate of 2 percent.[399] This represents the real (inflation-adjusted) rate of return on long-term U.S. government debt over the last 30 years, calculated between 1993 and 2022, and is a reasonable approximation of the social rate of time preference.

Table 5.27 summarizes the total costs of the final rule using a 2 percent discount rate. As shown in the table, RIAs account for approximately 71 percent of the annualized costs to industry, while ERAs account for the remaining 29 percent.

[398] U.S. Office of Management and Budget, Circular A–4 (Nov. 9, 2023) at 75.

[399] *Id.* at 76–77.

Table 5.27. Total Estimated Burden of the Final Rule by Entity Type, by Year ($ Millions, 2022) using a 2 percent Discount Rate

Year	SEC-registered Investment Advisers	Exempt Reporting Advisers	Customers	Federal Agencies	Total
2024	$670	$280	$24.0	$8.5	$990
2025	$550	$220	$2.2	$8.3	$790
2026	$540	$220	$2.4	$8.1	$770
2027	$510	$210	$2.5	$8.0	$740
2028	$500	$210	$2.7	$7.8	$720
2029	$490	$210	$2.9	$7.7	$710
2030	$480	$200	$3.1	$7.5	$700
2031	$480	$200	$3.4	$7.4	$680
2032	$470	$190	$3.6	$7.2	$670
2033	$460	$190	$3.9	$7.1	$660
10-Year Undiscounted Cost	**$5,600**	**$2,300**	**$53.0**	**$85.0**	**$8,100**
10-Year Present Value	**$5,200**	**$2,100**	**$50.0**	**$78.0**	**$7,400**
Annualized Cost	**$560**	**$230**	**$5.5**	**$8.5**	**$810**

Table 5.28 summarizes the total costs of the final rule by entity and business structure for dual registrants, affiliated advisers, and other advisers using a 2 percent discount rate. As shown in the table, entities that are dual registrants account for less than 0.1 percent, affiliated advisers account for approximately 11 percent, and other advisers account for approximately 89 percent of the annualized costs to industry.

Table 5.28. Total Estimated Burden of the Final Rule by Entity and Business Structure, by Year ($ Millions, 2022) using a 2 percent Discount Rate

Year	Dually Registered Entities	Affiliated Entities	Neither	Customers	Federal Agencies	Total
2024	$1.2	$100	$850	$24.0	$8.5	$990
2025	$0	$93	$680	$2.2	$8.3	$790
2026	$0	$91	$670	$2.4	$8.1	$770
2027	$0	$81	$650	$2.5	$8.0	$740
2028	$0	$80	$630	$2.7	$7.8	$720
2029	$0	$79	$620	$2.9	$7.7	$710
2030	$0	$78	$610	$3.1	$7.5	$700
2031	$0	$76	$600	$3.4	$7.4	$680
2032	$0	$75	$590	$3.6	$7.2	$670
2033	$0	$74	$570	$3.9	$7.1	$660
10-Year Undiscounted Cost	**$1.2**	**$910**	**$7,000**	**$53.0**	**$85.0**	**$8,100**
10-Year Present Value	**$1.2**	**$830**	**$6,500**	**$50.0**	**$78.0**	**$7,400**
Annualized Cost	**$0.13**	**$91**	**$700**	**$5.5**	**$8.5**	**$810**

(e) Uncertainty Analysis

As described in section 3, the number of RIAs and ERAs is well-defined based on the number of Form ADV filings. However, there is uncertainty about the extent of existing AML/CFT measures within each group. While an uncertainty analysis could layer various assumptions about the percentage of RIAs and ERAs that have in place certain AML/CFT measures to address each individual requirement—and the degree to which those measures would have to be reviewed and modified to comply with the requirements of the final rule—such information is unavailable and the existing framework described in the section presents a simpler approach to account for this uncertainty by varying certain assumptions around the categorization of RIAs and ERAs. Specifically, this Impact Analysis estimates the impact of varying assumptions regarding the distribution of RIAs and ERAs into categories of significant, moderate, and limited AML/CFT measures in place. This provides a lower and upper bound estimate of the potential costs of the final rule. The costs presented earlier in this section represent FinCEN's primary estimate of the burden of the final rule.

i. Lower Bound Estimate

The lower bound estimate assumes that a greater proportion of RIAs and ERAs have a *significant* or *moderate* number of AML/CFT measures in place and will have to implement relatively *fewer* additional measures under the final rule. Table 5.29 summarizes the total number of entities according to the business type and characteristics of each RIA and ERA. This represents an optimistic, but not implausible, scenario based on self-reported assessments indicating that approximately 40 percent of RIAs already have AML/CFT policies and procedures consistent with the BSA.[400] For the lower bound estimate, FinCEN assumes the same proportion of affiliated ERAs and other ERAs have a *significant* number of AML/CFT measures as the corresponding RIA groups. Thus, this estimate is optimistic in that the number of ERAs with policies and procedures similar to those of RIAs is highly uncertain—although it is still likely to be less than the overall percentage of RIAs.

[400] *See* 2016 IMCT Survey, *supra* note 303.

Table 5.29. Number of Affected Investment Advisers by Type (Lower Bound)

Baseline AML/CFT Measures	Registered Investment Advisers			Exempt Reporting Advisers			Total
	Dual Registrant	Affiliated Advisers	Other	Dual Registrant	Affiliated Advisers	Other	
Significant	376	1,562	3,692	44	216	1,753	7,643
Moderate	0	521	4,546	0	72	2,158	7,297
Limited	0	0	3,376	0	0	1,603	4,979
Total	**376**	**2,083**	**11,614**	**44**	**288**	**5,514**	**19,919**

Table 5.30 summarizes the total costs of the final rule in the lower bound scenario using a 2 percent discount rate. As shown in the table, although the overall costs of the final rule are lower, the distribution of costs between RIAs and ERAs is similar to the primary estimate.

Table 5.30. Total Estimated Burden of the Final Rule by Entity Type, by Year ($ Millions, 2022) using a 2 percent Discount Rate (Lower Bound)

Year	SEC-registered Investment Advisers	Exempt Reporting Advisers	Customers	Federal Agencies	Total
2024	$380	$170	$9.1	$8.4	$570
2025	$300	$140	$0.9	$8.3	$450
2026	$300	$130	$0.9	$8.1	$440
2027	$290	$130	$1.0	$7.9	$430
2028	$280	$130	$1.0	$7.8	$420
2029	$280	$120	$1.1	$7.6	$410
2030	$270	$120	$1.2	$7.5	$400
2031	$270	$120	$1.3	$7.3	$390
2032	$260	$120	$1.4	$7.2	$390
2033	$260	$120	$1.5	$7.0	$380
10-Year Undiscounted Cost	**$3,100**	**$1,400**	**$21.0**	**$84.0**	**$4,600**
10-Year Present Value	**$2,900**	**$1,300**	**$19.0**	**$77.0**	**$4,300**
Annualized Cost	**$310**	**$140**	**$2.1**	**$8.4**	**$470**

Table 5.31 summarizes the total costs of the final rule by entity and business structure for dual registrants, affiliated advisers, and other advisers in the lower bound scenario using a 2 percent discount rate. As shown in the table, in the lower bound scenario a greater proportion of the costs (approximately 95 percent) are attributed to other advisers.

Table 5.31. Total Estimated Burden of the Final Rule by Entity and Business Structure, by Year ($ Millions, 2022) using a 2 percent Discount Rate (Lower Bound)

Year	Dually Registered Entities	Affiliated Entities	Neither	Customers	Federal Agencies	Total
2024	$1.2	$25	$520	$9.1	$8.4	$570
2025	$0	$18	$420	$0.9	$8.3	$450
2026	$0	$17	$410	$0.9	$8.1	$440
2027	$0	$17	$400	$1.0	$7.9	$430
2028	$0	$17	$390	$1.0	$7.8	$420
2029	$0	$16	$380	$1.1	$7.6	$410
2030	$0	$16	$380	$1.2	$7.5	$400
2031	$0	$16	$370	$1.3	$7.3	$390
2032	$0	$15	$360	$1.4	$7.2	$390
2033	$0	$15	$360	$1.5	$7.0	$380
10-Year Undiscounted Cost	**$1.2**	**$190**	**$4,300**	**$21.0**	**$84.0**	**$4,600**
10-Year Present Value	**$1.2**	**$170**	**$4,000**	**$19.0**	**$77.0**	**$4,300**
Annualized Cost	**$0.13**	**$19**	**$440**	**$2.1**	**$8.4**	**$470**

ii. Upper Bound Estimate

The upper bound estimate assumes that a greater proportion of RIAs and ERAs have *limited* number of AML/CFT measures in place and will have to implement relatively *greater* additional measures under the final rule. Table 5.32 summarizes the total number of entities by type and characteristics of each RIA and ERA.

Table 5.32. Number of Affected Entities by Type (Upper Bound)

Baseline AML/CFT Measures	Registered Investment Advisers			Exempt Reporting Advisers			Total
	Dual Registrant	Affiliated Advisers	Other	Dual Registrant	Affiliated Advisers	Other	
Significant	376	0	0	44	0	0	420
Moderate	0	0	0	0	0	0	0
Limited	0	2,083	11,614	0	288	5,514	19,499
Total	**376**	**2,083**	**11,614**	**44**	**288**	**5,514**	**19,919**

Table 5.33 summarizes the total costs of the final rule in the upper bound scenario using a 2 percent discount rate. As shown in the table, although the overall costs of the final rule are higher, the distribution of costs between RIAs and ERAs is similar to the primary estimate.

Table 5.33. Total Estimated Burden of the Final Rule by Business Type, by Year ($ Millions, 2022) using a 2 percent Discount Rate (Upper Bound)

Year	SEC-registered Investment Advisers	Exempt Reporting Advisers	Customers	Federal Agencies	Total
2024	$840	$320	$40.0	$8.5	$1,200
2025	$670	$250	$3.7	$8.3	$940
2026	$660	$250	$4.0	$8.1	$920
2027	$600	$240	$4.3	$8.0	$850
2028	$590	$240	$4.6	$7.8	$840
2029	$580	$230	$5.0	$7.7	$820
2030	$570	$230	$5.3	$7.5	$810
2031	$560	$220	$5.7	$7.4	$800
2032	$550	$220	$6.1	$7.2	$780
2033	$540	$210	$6.6	$7.1	$770
10-Year Undiscounted Cost	**$6,700**	**$2,600**	**$91.0**	**$85.0**	**$9,500**
10-Year Present Value	**$6,200**	**$2,400**	**$86.0**	**$78.0**	**$8,700**
Annualized Cost	**$670**	**$260**	**$9.3**	**$8.5**	**$950**

Table 5.34 summarizes the total costs of the final rule by entity and business structure for dual registrants, affiliated advisers, and other advisers in the upper bound scenario using a 2 percent discount rate. As shown in the table, although the overall costs of the final rule are higher, the distribution of costs between the different types of RIAs and ERAs is similar to the primary estimate.

Table 5.34. Total Estimated Burden of the Final Rule by Business Structure, by Year ($ Millions, 2022) using a 2 percent Discount Rate (Upper Bound)

Year	Dually Registered Entities	Affiliated Entities	Neither	Customers	Federal Agencies	Total
2024	$1.2	$180	$980	$40.0	$8.5	$1,200
2025	$0	$160	$760	$3.7	$8.3	$940
2026	$0	$160	$750	$4.0	$8.1	$920
2027	$0	$120	$720	$4.3	$8.0	$850
2028	$0	$120	$710	$4.6	$7.8	$840
2029	$0	$120	$690	$5.0	$7.7	$820
2030	$0	$120	$680	$5.3	$7.5	$810
2031	$0	$120	$670	$5.7	$7.4	$800
2032	$0	$120	$650	$6.1	$7.2	$780
2033	$0	$120	$640	$6.6	$7.1	$770
10-Year Undiscounted Cost	**$1.2**	**$1,500**	**$7,900**	**$91.0**	**$85.0**	**$9,500**
10-Year Present Value	**$1.2**	**$1,300**	**$7,200**	**$86.0**	**$78.0**	**$8,700**
Annualized Cost	**$0.13**	**$150**	**$790**	**$9.3**	**$8.5**	**$950**

iii. Comparison of Costs in the Lower and Upper Bound Estimates

As described in this section, FinCEN estimates the cost of the final rule to regulated entities will be approximately $810 million on an annualized basis. In comparison to alternative assumptions about the degree of existing AML/CFT measures among RIAs and ERAs subject to the final rule, FinCEN's primary estimate is relatively conservative in that it assumes a greater proportion of RIAs and ERAs have only a *moderate* or *limited* number of existing AML/CFT measures in place in comparison to input provided by industry suggesting that figure may be lower. Therefore, the primary estimate is closer to the upper bound than the lower bound. Under the most pessimistic assumptions regarding the degree of existing AML/CFT measures, the final rule is estimated to cost approximately $950 million on an annualized basis. This scenario is highly improbable because more than 520 RIAs (out of 690 surveyed) indicated that they already have a *significant* or *moderate* number of AML/CFT measures in place. Under more optimistic assumptions about the proportion of RIAs with a *significant* or *moderate* number of AML/CFT measures in place, FinCEN estimates the cost of the final rule will be approximately $470 million on an annualized basis. Table 5.35 provides a comparison of the estimated costs of the final rule under each of these scenarios.

Table 5.35. Comparison of Compliance Costs using Lower and Upper Bound Estimates Relative to the Primary Estimate ($ Millions, 2022) using a 2 percent Discount Rate

Year[1]	Lower Bound	Primary Estimate	Upper Bound
2024	$570	$990	$1,200
2025	$450	$790	$940
2026	$440	$770	$920
2027	$430	$740	$850
2028	$420	$720	$840
2029	$410	$710	$820
2030	$400	$700	$810
2031	$390	$680	$800
2032	$390	$670	$780
2033	$380	$660	$770
10-Year Undiscounted Cost	**$4,600**	**$8,100**	**$9,500**
10-Year Present Value	**$4,300**	**$7,400**	**$8,700**
Annualized Cost	**$470**	**$810**	**$950**

iv. Alternative Higher Third-Party Vendor Cost Scenario

While the estimated costs of the final rule are not highly sensitive to several of the unit cost assumptions described in this section—in part because most of the labor costs are generally estimated in hours rather than days or weeks—two of the major cost drivers are software licensing fees and independent testing. Therefore, FinCEN compared how the estimated costs changed if third-party vendor costs increased by 100 percent.[401] The estimated costs are relatively sensitive to assumptions regarding third-party fees for certain AML/CFT functions because these comprise a large share of the overall costs for RIAs and ERAs with a *moderate* or *limited* number of existing AML/CFT measures in place. Table 5.36 reports alternative cost assumptions for third-party vendor costs that are double the primary estimate.[402] FinCEN assessed that the average technology costs used in the primary estimate are more likely to be representative of the costs likely to be incurred by RIAs and ERAs, which are typically much smaller than the bank benchmark in the 2020 GAO BSA Report. Smaller banks generally reported lower technology costs. However, for direct comparison this regulatory impact analysis reports higher estimated technology costs as an alternative scenario.

[401] Independent testing under the final rule can be conducted by an adviser's employees and is not required to be conducted by a third-party vendor. The costs identified here could be less than estimated to the extent employees (and not third-party vendors) are used.

[402] The alternative third-party vendor costs are more in line with the cost estimates in the 2020 GAO BSA Report for ''Large Community Bank A'' ($501 million to $600 million in assets) and ''Large Credit Union A'' ($101 million to $201 million in assets). In comparison, the primary cost estimates are based on ''Large Community Bank B'' ($401 million to $500 million in assets) in the same report. *See* 2020 GAO BSA Report, *supra* note 349.

Table 5.36 Alternative Compliance Costs for Independent Testing, Software, and Other Third-Party Technology Vendors (in 2022 dollars)

Compliance Activity	Primary Estimate Cost Assumption	Alternative Cost Assumption
AML/CFT Software Costs	$12,400	$24,800
Independent Testing	$17,000	$34,000

Table 5.37 provides a comparison of the estimated costs of the final rule under the higher technology cost scenario. Overall, the estimated costs would be approximately 60 percent higher under this scenario relative to the primary estimate. FinCEN ascribes a low probability to the average technology/third-party vendor costs being this high given the typical size of RIAs and ERAs affected by the final rule.

Table 5.37. Comparison of Compliance Costs using Higher Technology Cost Relative to the Primary Estimate ($ Millions, 2022) using a 2 percent Discount Rate

Year[1]	Primary Estimate	High Technology Cost Estimate
2024	$990	$1,500
2025	$790	$1,300
2026	$770	$1,200
2027	$740	$1,200
2028	$720	$1,200
2029	$710	$1,100
2030	$700	$1,100
2031	$680	$1,100
2032	$670	$1,100
2033	$660	$1,100
10-Year Undiscounted Cost	**$8,100**	**$13,000**
10-Year Present Value	**$7,400**	**$12,000**
Annualized Cost	**$810**	**$1,300**

6. Regulatory Alternatives

This section evaluates the potential benefits and costs of regulatory alternatives in comparison to the final regulation. This regulatory impact analysis considers two alternatives as described below.

(a) Alternative 1: Inclusion of State-Registered Investment Advisers

In the first alternative, FinCEN considered including State-registered investment advisers in the final rule. This alternative would bring all investment advisers that file Form ADV and register with a Federal *or State* regulatory authority under the scope of the final rule. FinCEN estimates there are approximately 17,000 State-registered investment advisers, based on reports from the North American Security Administrators Association (NASAA).[403] Table 6.1 summarizes their characteristics.

[403] *NASAA Investment Adviser Section: 2023 Annual Report,* p.2, *https://www.nasaa.org/wp-content/uploads/2023/09/2023-IA-Section-Report-FINAL.pdf.*

Table 6.1: Characteristics of State-registered Investment Advisers[404]

Characteristic	Value
Number of Investment Advisers	17,063
Average No. Employees	2.9
Avg. No. Individual Clients	46
Avg. No. PIV Clients	0.1
Avg. No. Legal Entity Clients	1.1
Avg. AUM	$24.7 million

FinCEN assumed that the costs of the rule would apply to State-registered investment advisers in the same way as for RIAs that are ''other advisers.'' If State-registered investment advisers are less likely than RIAs to have any AML/CFT measures in the baseline, then this assumption would understate the costs of the rule for State-registered investment advisers. Under the assumptions of the cost model in section 3, Table 6.2 summarizes the total costs of Alternative 1 for State-registered investment advisers in addition to the other entities subject to regulation.

Table 6.2. Total Estimated Burden of Alternative 1 by Entity Type, by Year ($ Millions, 2022)

Year	Registered Investment Advisers	Exempt Reporting Advisers	State-registered Investment Advisers	Customers	Federal Agencies	Total
2024	$670	$280	$830	$24.0	$8.5	$1,800
2025	$560	$230	$690	$2.2	$8.5	$1,500
2026	$560	$230	$690	$2.4	$8.5	$1,500
2027	$540	$230	$690	$2.7	$8.5	$1,500
2028	$540	$230	$690	$2.9	$8.5	$1,500
2029	$540	$230	$690	$3.2	$8.5	$1,500
2030	$550	$230	$690	$3.5	$8.5	$1,500
2031	$550	$230	$690	$3.9	$8.5	$1,500
2032	$550	$230	$690	$4.2	$8.5	$1,500
2033	$550	$230	$690	$4.6	$8.5	$1,500

FinCEN assesses the potential benefits of including State-registered investment advisers in the definition of ''financial institution'' are significantly smaller relative to the likely benefits of including RIAs and ERAs. Although the overall benefits may exceed those of the final regulation because the requirements extend to a larger number of entities, the limited incremental benefits of applying the requirements to State-registered investment advisers suggest this would be a less cost-effective approach to regulation.

Specifically, including State-registered investment advisers nearly doubles the cost of the final rule, because of the large number of State-registered investment advisers. But such inclusion is less likely to achieve the same degree of benefits as for other investment advisers, partly because State-registered advisers are smaller, in terms of number of clients and AUM, and their customers tend to be localized. The Risk Assessment found few examples of State-registered investment advisers being used to move illicit proceeds or facilitate other illicit activity.[405] Further, the vast majority of their clients are natural persons who are not high net-worth customers and are U.S. persons.[406] Therefore, FinCEN

[404] *See id.* The average number of employees per investment adviser was calculated as a weighted average of the bins reported on page 5 of the report, using the following employees for each respective bin: 2 [0–2 employees], 6.5 [3–10 employees], 15 [11–20 employees], 25 [>20 employees].

[405] *See* Risk Assessment, *supra* note 2, at 33.

[406] A survey of select State securities regulators found that for State-registered investment advisers they supervised, on average, less than 3 percent of their customers were non-U.S. persons.

rejected this regulatory alternative in favor of the more cost-effective approach in the final regulation.

(b) Alternative 2: Requirements for Private Fund Advisers To Conduct Risk-Based Customer Due Diligence and Amendments to Form PF for Reporting Beneficial Ownership Information for the Private Funds Being Advised

In the second alternative, FinCEN considered whether to limit the rule requirements to only certain reporting requirements among private fund advisers. In particular, the alternative rule would require private fund advisers to conduct risk-based customer due diligence and to report beneficial ownership information.

Under Alternative 2, investment advisers would incur compliance costs associated with the following requirements: (1) identifying beneficial ownership for new legal entity and PIV accounts and (2) developing a customer risk profile for legal entities. Investment advisers would be exempt from other requirements of the BSA, including developing and maintaining an AML/CFT program, filing SARs, and other recordkeeping requirements. Investment advisers that do not advise private funds would also be exempt from any requirement. Alternative 2 would limit both the covered population and the number of requirements, relative to the final rule. FinCEN estimates there are approximately 8,800 RIAs advising private funds, as well as all ERAs. Some RIAs and ERAs already have measures in place that would meet the requirements of Alternative 2.

FinCEN estimated the cost of Alternative 2 based on the same cost methodology as in section 3, in this case only for investment advisers that report private funds in Form ADV. As described in sections 3 and 5, FinCEN's cost analysis assumed that RIAs and ERAs with a *significant* or *moderate* number of AML/CFT measures would already meet the requirements of Alternative 2; those RIAs and ERAs would have zero cost burden under this alternative. Therefore, the costs are borne only by RIAs and ERAs with a *limited* number of AML/CFT measures in the baseline. FinCEN used Form ADV data for those advisers that advise private funds, and Table 6.3 summarizes the total costs of Alternative 2. For Alternative 2, there are no estimated Federal agency costs attributed to the CDD requirement.

Table 6.3. Total Estimated Burden of Alternative 2 by Entity Type, by Year ($ Millions, 2022)

Year	Registered Investment Advisers	Exempt Reporting Advisers	Customers	Total
2024	$29.0	$1.4	$24.0	$54.0
2025	$7.9	$1.1	$2.2	$11.0
2026	$8.2	$1.1	$2.4	$12.0
2027	$4.9	$1.0	$2.7	$8.6
2028	$5.3	$1.0	$2.9	$9.2
2029	$5.7	$1.0	$3.2	$9.9
2030	$6.1	$1.0	$3.5	$11.0
2031	$6.6	$1.0	$3.9	$11.0
2032	$7.1	$1.0	$4.2	$12.0
2033	$7.7	$1.0	$4.6	$13.0

FinCEN rejected this regulatory alternative in favor of the final regulation because, although it is a less costly rule, it is less likely to provide a similar level of benefits and thus would not achieve FinCEN's objectives in addressing the illicit finance risk for investment advisers. The absence of mandatory SAR filing in this regulatory alternative would limit the potential benefits to law enforcement to investigate financial crimes and interagency cooperation on national security threats and their associated financial activity. Further, the lack of information sharing authorities would limit the ability of law enforcement and other agencies, as well as other financial institutions, to provide more specific information on illicit finance threats. This alternative would also not be sufficient for the U.S. to be in compliance with the international AML/CFT standards established by the FATF.

(c) Comparison

Table 6.4 reports the costs for each of the regulatory alternatives in comparison to the final regulation.

Table 6.4. Comparison of Costs of Regulatory Alternatives to the Final Rule ($ Millions, 2022) using a 2 percent Discount Rate

Year[1]	Alternative 1	Final Rule	Alternative 2
2024	$1,800	$990	$54.0
2025	$1,500	$790	$11.0
2026	$1,400	$770	$11.0
2027	$1,400	$740	$8.1
2028	$1,400	$720	$8.5
2029	$1,300	$710	$9.0
2030	$1,300	$700	$9.5
2031	$1,300	$680	$10.0
2032	$1,300	$670	$11.0
2033	$1,200	$660	$11.0
10-Year Undiscounted Cost	**$15,000**	**$8,100**	**$150.0**
10-Year Present Value	**$14,000**	**$7,400**	**$140.0**
Annualized Cost	**$1,500**	**$810**	**$16.0**

Table 6.5 provides a detailed summary of the costs and benefits associated with each regulatory alternative (annualized using a 2 percent discount rate over 10 years).

Table 6.5. Summary of Benefits and Costs of Regulatory Alternatives ($ Millions, 2022)

	Alternative 1	Final Rule	Alternative 2
Number of Covered Entities	36,982	19,919	13,628
Annualized Monetized Benefits (2%)	N/A	N/A	N/A
Unquantified Benefits	• Increase access for law enforcement to relevant information for complex financial crime investigations and asset forfeiture. • Enhance interagency understanding of priority national security threats and their associated financial activity. • Improve financial system transparency and integrity and align with international financial standards to strengthen the U.S. financial system from abuse by illicit actors.	• Increase access for law enforcement to relevant information for complex financial crime investigations and asset forfeiture. • Enhance the ability of law enforcement to identify and prosecute money laundering and other financial crimes. • Enhance interagency understanding of priority national security threats and their associated financial activity. • Enhance the ability of national security personnel to protect against priority national security threats. • Improve financial system transparency and integrity and align with international financial standards to strengthen the U.S. financial system from abuse by illicit actors.	• Improve financial system transparency and integrity for certain investment advisers.
Annualized Monetized Costs, millions (2%)	$1,500	$810	$16
Annualized monetized net benefits, millions (2%)	-$1,500	-$810	-$16
Change from the Final Rule	-$690	N/A	+$794

B. Final Regulatory Flexibility Analysis

The RFA [407] requires an agency either to provide a final regulatory flexibility analysis (FRFA) with a final rule or certify that the final rule would not have a significant economic impact on a substantial number of small entities. This section, VI.B, contains the FRFA prepared pursuant to the RFA.

1. Discussion of Comments to the Initial Regulatory Flexibility Analysis

Two commenters provided comments on the initial regulatory flexibility analysis. Both commenters objected to FinCEN's use of the SEC definition of small entity. One commenter noted that the definition was outdated, that most investment advisers are small businesses, and that FinCEN should use a different definition of small entity. The commenter noted that according to a recent report, approximately 92 percent of advisers reported having 100 or fewer non-clerical employees, and that the median number of employees was eight. The same commenter also requested that FinCEN delay the compliance date for an additional year for those investment advisers with less than 100 employees.

The second commenter, the Small Business Administration (SBA) Office of Advocacy, requested that FinCEN prepare a supplemental regulatory flexibility analysis that uses the SBA size standards to better assess the impact of the proposed rule on small entities. The SBA Office of Advocacy noted that the SBA size standards measure a firm's receipts, while the SEC size standards measures a firm's AUM, and that over 90 percent of investment advisers would be considered small entities using the SBA size standards. The SBA Office of Advocacy also requested that FinCEN consider other alternatives to reduce the impact on small entities, to include additional time for compliance, as well as to provide guidance to assist small entities in complying with the requirements of the rule.

As described in the IA AML NPRM, FinCEN determined to use the definition of ''small business'' or ''small organization'' under the Advisers Act rule adopted for purposes of the RFA, in lieu of using the SBA definition.[408] FinCEN continues to assess that using this standard is the most appropriate way to ensure regulatory harmonization and consistency in how the impacts of this and other AML/CFT regulations, including the IA CIP NPRM, are understood, providing the advisory industry with a uniform standard. Using the SEC standard also allows FinCEN to use information from Form ADV that is individualized to each investment adviser and updated annually. In contrast, information on business revenue is derived from the U.S. Economic Census, is not individualized, likely includes firms not covered by this rule, and is only updated every five years. Further, as noted in the IA AML NPRM, using a standard tied to AUM is consistent with how Congress (in the 2010 Dodd-Frank Act) and SEC regulations distinguish between small, mid-sized, and large investment advisers and how other regulatory requirements are applied to investment advisers.[409] In addition, FinCEN's use of the SEC's definition of small entity will have no material impact upon the application of this rule to the advisory industry. Given its intention to continue to use the SEC small entity standard, FinCEN also declines the SBA Office of Advocacy suggestion to issue a supplemental initial regulatory flexibility analysis.

Regarding alternatives that would lessen the impact on small entities, as described above, FinCEN has determined to exempt from the definition of ''investment adviser'' (and so from the scope of the final rule) mid-sized and multi-state advisers (among others). FinCEN has decided to exempt these entities in response to the concerns raised by SBA Office of Advocacy and other commenters, while also addressing the identified risk in the investment adviser sector and ensuring any exemption for smaller entities does not cause additional challenges in administering the AML/CFT requirements in the rule. These exemptions have reduced the number of small RIAs subject to the rule from 573 to 212, significantly reducing the impact of these small entities.

As noted above, FinCEN is not choosing to exempt advisers with fewer than 20 or 100 employees, as was suggested by two commenters.[410] To consider a threshold for application of AML/CFT requirements based on employee numbers alone would be inconsistent with Treasury's understanding of risk in the investment adviser sector. Regarding the suggestion to delay the compliance date for advisers with less than 100 employees, FinCEN declines to do so. FinCEN is concerned that applying a later compliance date for small advisers could incentivize illicit actors or others seeking to avoid compliance with AML/CFT measures to seek services from smaller advisers. In addition, as noted above, FinCEN is concerned that an employee threshold for application of the rule would lead to advisers hiring fewer compliance staff. FinCEN will consider if additional guidance targeted at small entities is necessary to facilitate compliance with the final rule.

2. Statement of the Need for, and Objectives of, the Final Rule

As described above in Sections II.C and III.A, FinCEN is finalizing this regulation to address identified illicit finance risks in the investment adviser industry. The final rule will apply AML/CFT program, recordkeeping, and reporting requirements to RIAs and ERAs.

3. Small Entities Affected by the Final Rule

FinCEN is defining the term small entity in accordance with the definition of ''small business'' or ''small organization'' under the Advisers Act rule adopted by the SEC for purposes of the RFA, in lieu of using the SBA's definition.[411]

Relying on the SEC's definition, which it has adopted by regulation, has the benefit of ensuring consistency in the categorization of small entities for the SEC's purposes,[412] as well as providing the advisory industry with a uniform standard. Using the SEC standard also allows FinCEN to use the most current and precise data about investment advisers. Investment advisers must update Form ADV, including whether they qualify as a ''small entity,'' at least annually. Because Form ADV information is individualized to each investment

[407] 5 U.S.C. 601 *et seq.*

[408] *See* 13 CFR 121.201.

[409] *See* SEC, *Rules Implementing Amendments to the Investment Advisers Act of 1940* (June 22, 2011) (implementing regulatory changes required by the Dodd-Frank Act)(. As described above, SEC registration is generally determined by AUM. *See supra* note 26. In addition, investment advisers filing Form PF are required to provide additional information if they have more than $1.5 billion in hedge fund assets under management or more than $2 billion in private equity fund assets under management. *See* Form PF Instructions on p. 2 and 3 at *https://www.sec.gov/files/formpf.pdf.*

[410] *See supra* Section III.B.2.

[411] *See* 13 CFR 121.201. FinCEN consulted with the SBA Office of Advocacy in determining to use this definition. In their comments to the proposed rule, the SBA Office of Advocacy asserted that it is inappropriate for FinCEN to use the SEC's small entity definition for this rule and urged FinCEN to use the SBA size standard in its analysis to have a more accurate reflection of the impact of this rulemaking on small entities. While taking into account the SBA Office of Advocacy's comment, for the reasons described in this FRFA, FinCEN is relying on the SEC's small entity definition.

[412] As noted above, FinCEN is amending section 1010.810 to include investment advisers within the list of financial institutions that the SEC would examine for compliance with the BSA's implementing regulations.

adviser, FinCEN can identify the specific entities qualifying as ''small entities'' under the SEC standard.

In contrast, information on business revenue is derived from the Economic Census, and the most recent Economic Census data reflect business information for 2017. These data are not individualized to specific firms and as detailed below, likely include other firms that are not covered by the final rule, requiring FinCEN to make additional assumptions. The data represent the average revenues of all firms, not just RIAs and ERAs, with less than $50 million in annual receipts rather than firms with AUM of less than $25 million. This is likely to be an underestimate because those firms that are required to register with the SEC tend to be larger and some of the firms reported in the SUSB, particularly State-registered investment advisers, would not be subject to the final rule. Given the data limitations, it is not feasible to directly estimate the average annual revenues of investment advisers that fall under the definition of ''small entity'' described above.

Further, using a standard tied to AUM is consistent with how Congress (in the 2010 Dodd-Frank Act) and SEC regulations distinguish between small, mid-sized, and large investment advisers and how other regulatory requirements are applied to investment advisers.[413] Using this standard would also be consistent with the standard applied by FinCEN in the 2015 NPRM and the SEC in recent rulemakings for investment advisers.[414] This is a well-known, common-sense understanding of investment adviser size based on AUM (*e.g.,* small advisers are those managing less than $25 million in customer assets). Further, FinCEN notes that over 80 percent of advisers covered by the final rule manage at least $110 million in customer assets and accordingly would not be understood to be small entities. In addition, FinCEN's use of the SEC's definition of small entity will have no material impact upon the application of the final rule to the advisory industry.

Under SEC rules under the Advisers Act, for the purposes of the RFA, an investment adviser generally is a small entity if it: (i) has, and reports on Form ADV, AUM of less than $25 million; (ii) has less than $5 million in total assets on the last day of its most recent fiscal year; and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that has AUM of $25 million or more, or any person (other than a natural person) that had total assets of $5 million or more on the last day of its most recent fiscal year.[415]

As of July 31, 2023, there are 573 RIAs who meet the SEC definition of small entity. These RIAs, have on average, $5.3 million in AUM and 4 employees. As of July 24, 2024, there were 8,126 state-registered investment advisers who report $25 million or less in AUM and 5,041 that did not report AUM—these entities account for more than 75 percent of all state-registered investment advisers. As noted above in Table 6.1, state-registered investment advisers have, on average, $24.7 million in AUM and 3 employees. Those that report $25 million or less in AUM have, on average, $7.6 million in AUM and 1.3 employees.

Generally, only large advisers, having $110 million or more in AUM, are required to register with the SEC.[416] The final rule would not affect most investment advisers that are small entities (''small advisers'') because they are generally registered with one or more State securities authorities and not with the SEC, and as noted above, the final rule does not apply to state-registered investment advisers. Under section 203A of the Advisers Act, most small advisers are prohibited from registering with the SEC and therefore most small advisers are regulated by State regulators.[417] Therefore, these small advisers are unlikely to be required to register with the SEC absent a statutory change to the SEC registration requirements, and so are being excluded from the small entity population for this FRFA.

Based on FinCEN's initial regulatory flexibility analysis and public comments submitted on the proposed rule, for the final rule FinCEN has exempted several additional classes of investment advisers to reduce the regulatory burden on small advisers. First, the final rule additionally exempts RIAs that report $0 in AUM. Second, the final rule additionally exempts RIAs that register with the SEC (as indicated on their Form ADV) solely because the RIA is for one or more of the following:

- a Mid-Sized Adviser [Item 2.A.(2)]
- a Pension Consultant [Item 2.A.(7)]; or
- a Multi-State Adviser [Item 2.A.(10)]

No ERAs are exempt from the final rule.

Based on data as of July 31, 2023, there would be 212 small RIAs subject to the final rule.[418] ERAs are not required to report regulatory AUM on Form ADV; therefore, it is not feasible to determine whether they meet the conditions above. Based on information in the IA CIP NPRM, FinCEN estimates that, due to SEC registration thresholds, the only small ERAs that would be subject to the final rule would be those that maintain their principal office and place of business outside the United States.[419] Thus, FinCEN estimates there are 173 small ERAs.[420] Therefore, approximately 385 investment advisers, or 1.9 percent of all investment advisers covered by the final rule, impacted by the final regulation are estimated to be small advisers. Assuming that all stated-registered investment advisers that reported $25 million or less in AUM and those that did not report AUM are small entities implies that approximately 13,430 or 36.3 percent of all investment advisers, including state-registered investment advisers, are small entities. However, the 385 small investment advisers noted above—the only small entities covered by the final rule—account for just 1.0 percent of all investment advisers (including state-registered investment advisers). Based

[413] *See* SEC, *Rules Implementing Amendments to the Investment Advisers Act of 1940* (June 22, 2011). As described above, SEC registration is generally determined by AUM. *See supra* note 26. In addition, investment advisers filing Form PF are required to provide additional information if they have more than $1.5 billion in hedge fund assets under management or more than $2 billion in private equity fund assets under management. *See* Form PF Instructions on p. 2 and 3 at *https://www.sec.gov/files/formpf.pdf.*

[414] *See* 80 FR at 52695; *see also* SEC, *Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews,* Final Rule, Investment Advisers Act Release No. 6383 (Aug. 23, 2023) 88 FR 63206, 63381–3, (Sep. 14, 2023).

[415] 17 CFR 275.0–7(a).

[416] *See* 17 CFR 275.203A–1.

[417] Based on Form ADV data as of July 31, 2023, *see supra* note 25. To determine the number of RIAs that were ''small entities,'' Treasury reviewed responses to Items 5.F. and 12 of Form ADV.

[418] As noted above, the exemptions for certain RIAs in the final rule have reduced the number of small RIAs subject to the rule from 573 to 212.

[419] 89 FR 44571, 44592 & n.131 (May 21, 2024).

[420] There are no direct data indicating which ERAs that maintain their principal office and place of business outside the United States are small entities because although ERAs are required to report in Part 1A, Schedule D the gross asset value of each private fund they manage, advisers with their principal office and place of business outside the United States may have additional AUM other than what they report in Schedule D. Therefore, to estimate how many of the ERAs that maintain their principal office and place of business outside the United States could be small entities, an analysis was conducted from a comparable data set: SEC-registered investment advisers. According to Form ADV data as of July 31, 2023, there are 67 small RIAs with their principal office and place of business outside the United States and 830 total RIAs with their principal office and place of business outside the United States (67 ÷ 830 = 8.1 percent). Based on Form ADV data, there are approximately 2,145 ERAs with their principal office and place of business outside the U.S. Applying the same percentage (8.1 percent) to ERAs, FinCEN estimates there are 173 ERAs that are small entities.

on a review of Form ADV data between 2018 and 2023, FinCEN calculates that the overall population of investment advisers has grown by about 1.6 percent per year. The population of investment advisers that are not dually registered or affiliated with a bank or broker-dealer—the group that is most likely to be a small entity—has grown by about 2.5 percent per year. Assuming that the population of small entities were to grow at the same rate as all non-affiliated investment advisers suggests that the population of small investment advisers could increase from 385 to approximately 500 over 10 years from 2024 to 2033. Based on this figure, FinCEN estimates that the final rule will not impact a substantial number of small entities.

Regarding the economic impact on small advisers, Form ADV does not collect revenue information. Therefore, additional information on investment advisers was obtained from the U.S. Economic Census. The Economic Census, conducted every five years by the U.S. Census Bureau, is the U.S. Government's official measure of American businesses, representing most industries and geographic areas of the United States and Island Areas.[421] It provides information on business locations, employees, payroll, and revenues. The most recent Economic Census data reflect business information for 2017. These data are reported in the U.S. Census Bureau's annual Statistics of U.S. Businesses (SUSB).

Based on data from the 2017 SUSB, the average firm in NAICS 523930 had approximately $2.7 million in annual revenue adjusted for inflation to 2022 dollars using the GDP price deflator.[422] According to that data, approximately 99 percent of firms had less than $50 million in annual receipts, with average revenues of approximately $850,000 measured in 2022 dollars. Table B.1 reports the distribution of firms by firm revenue size.

[421] U.S. Census Bureau, Economic Census, web page, last updated on Aug. 31, 2023, *https://www.census.gov/programs-surveys/economic-census.html.*

[422] Data accessed at *https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html.The* NAICS code for this industry changed between 2017 and 2022. The U.S. Small Business Administration's size standard for this industry applies to the 2022 NAICS code 523940. The SUSB firm revenue size data use the 2017 NAICS code 523930.

Table B.1. Average Annual Receipts and Employment by Firm Size in 2017 for NAICS 523930

Firm Size (based on 2017 receipts)	Percent of Firms	Average Annual Receipts ($2022)	Average Employment
<$100,000	24.3%	$58,000	1
$100,000-$499,999	46.7%	$300,000	2
$500,000-$999,999	14.6%	$830,000	3
$1,000,000-$2,499,999	8.5%	$1,800,000	5
$2,500,000-$4,999,999	2.3%	$4,000,000	10
$5,000,000-$7,499,999	0.7%	$6,500,000	12
$7,500,000-$9,999,999	0.4%	$9,400,000	18
$10,000,000-$14,999,999	0.4%	$13,000,000	28
$15,000,000-$19,999,999	0.3%	$16,000,000	32
$20,000,000-$24,999,999	0.2%	$22,000,000	35
$25,000,000-$29,999,999	0.1%	$26,000,000	50
$30,000,000-$34,999,999	0.1%	$33,000,000	65
$35,000,000-$39,999,999	0.1%	$19,000,000	62
$40,000,000-$49,999,999	0.1%	$41,000,000	47
$50,000,000-$74,999,999	0.2%	$38,000,000	82
$75,000,000-$99,999,999	0.1%	$18,000,000	53
$100,000,000+	1.0%	$180,000,000	245
All Firms <$50,000,000	**98.8%**	**$850,000**	**3**
All Firms $50,000,000+	**1.2%**	**$160,000,000**	**215**
Total	**100.0%**	**$2,700,000**	**5**

Importantly, as discussed above regarding the limitations with Economic Census data, the $850,000 figure is an imperfect proxy for the annual revenues of investment advisers subject to the final rule that meet the SEC's definition of a small entity.

As further detailed in the section below, using information from the SUSB for firms with revenues below $50 million, FinCEN estimates that the annualized cost burden of the final rule would be approximately 4.7 percent of revenues or 0.8 percent of AUM for a small investment adviser. FinCEN is unable to conclusively determine whether such a cost burden would be ''significant'' for purposes of the RFA, and so it is unable to certify that the final rule would not ''have a significant economic impact on a substantial number of small entities.'' Therefore, FinCEN is conducting this FRFA.

4. Compliance Costs

To examine the potential impact of the final rule on small entities, FinCEN estimates the average compliance costs for a small firm and compares those costs to small firms' average annual revenues and AUM. As described above, 212 RIAs and 173 ERAs would be considered small entities under the SEC definition. All small firms affected by the final rule will bear upfront costs to revise their internal policies, procedures, and controls to establish or update an existing AML/CFT program. Small firms that do not already have a *significant* or *moderate* number of AML/CFT measures in place would need to adopt additional measures, such as collecting additional information to develop a customer risk profile for new and existing clients and conducting ongoing CDD, filing SARs, acquiring AML/CFT software licenses, complying with other information collection requests, and general recordkeeping activities. To estimate these costs for small advisers, FinCEN relies on the methodology described in the Impact Analysis applied to the subset of small advisers and their relevant financial characteristics. Table B.2 reports the financial characteristics of small RIAs compared with all other RIAs impacted under the final rule based on information reported in their Form ADV filings.[423] Since information on small ERAs is not directly available, estimates of average AUM and number of legal entity clients for RIAs are also applied to ERAs to develop representative cost estimates for small advisers.

Table B.2: Characteristics of RIAs by Business Size

Characteristic	Small Entity RIAs	All Other RIAs
Avg. Assets Under Management	$5.3M	$8.6B
Avg. No. Employees	4	62
Percent that Advise Private Funds	34%	56%
Avg. No. Individual Clients	2,341	3,524
Avg. No. PIV Clients	0	7
Avg. No. Legal Entity Clients	1	179

Based on this information, the average cost of the final rule for a small investment adviser (*i.e.,* those managing up to $25 million in client assets) would be approximately $48,000 in the first year of the regulation and $39,000 in subsequent years. These costs vary slightly across the different categories of RIAs described in the Impact Analysis, with a small number of dual registrants likely to incur around $3,000 in compliance costs. Table B.3. reports the average costs per small entity by compliance activity in the first year and subsequent years of the final regulation.

Table B.3: Average Costs Per Small Entity (in 2022 dollars)[424]

Activity	Year 1	Years 2-10
AML/CFT Program	$26,000	$17,000
Customer Due Diligence	$1,300	$900
SAR Filings	$9,000	$9,000
Recordkeeping	$2,200	$2,200
314(a) Requests	$1,500	$1,500
Software Licensing	$7,700	$7,700
Section 311 Measures	$370	$370
Total	**$48,070**	**$39,070**

[423] This information is reported in Table 3.7 of the Impact Analysis.

[424] *See supra* Section IV.A.5, supra, for details on how costs of the rule were calculated.

Therefore, the average annualized cost of the final rule for a small investment adviser over the first 10 years would be approximately $40,000. This suggests the annualized cost burden of the final rule would be approximately 4.7 percent of revenues or 0.8 percent of AUM for a small investment adviser when using information from the SUSB for firms with revenues below $50 million. However, this estimate assumes that less than 1 percent of small investment advisers have a *significant number of* AML/CFT measures in place and more than 60 percent have a *limited* number of AML/CFT measures in place and would have to develop a full AML/CFT program and initial and ongoing CDD measures. If the assumed distribution was overly pessimistic and more small investment advisers had a *significant* or *moderate* number of existing AML/CFT measures in place in the baseline, the average cost burden would be lower. Based on the lower bound estimate discussed in section 3, the average annualized cost of the final rule for a small investment adviser would be approximately $24,000, suggesting the average cost burden would be approximately 2.8 percent of revenues or 0.4 percent of AUM. If fewer small investment advisers had a *significant* or *moderate* number of existing AML/CFT measures in place in the baseline, the average annualized cost of the final rule for a small investment adviser would be approximately $46,000, suggesting the average cost burden would be approximately 5.4 percent of revenues or 0.9 percent of AUM. Table B.4 reports the number of small entities, annualized cost, and compliance cost as a percentage of revenue and AUM for small advisers, broken down by adviser type.

Table B.4. Average Annualized Cost of the Final Rule for Small Entities

Investment Adviser Type	Number of Small Entities	Average Annualized Cost	Compliance Cost as Percentage of Annual Revenue	Compliance Cost as Percentage of Assets Under Management or Total Gross Assets
Dual Registrants	3	$3,000	<0.1%	<0.1%
Affiliated or Other Advisers with a *Moderate* Number of AML/CFT Measures	135	$30,000	3.6%	0.6%
Affiliated Advisers with a *Limited* Number of AML/CFT Measures	8	$49,000	5.8%	0.9%
Other Advisers with a *Limited* Number of AML/CFT Measures	239	$47,000	5.5%	0.9%
All Small Entities	**385**	**$40,000**	**4.7%**	**0.8%**

5. Duplicative, Overlapping, or Conflicting Federal Rules

As described above in section V.A.2, there are no Federal rules that directly and fully duplicate, overlap, or conflict with the final rule. While some investment advisers implement AML/CFT requirements because they are dually registered as broker-dealers, as a bank, or affiliated with a bank or broker-dealer, the majority of the investment adviser industry is not subject to any comprehensive AML/CFT requirements. FinCEN is aware that requirements within the Advisers Act and other Federal securities laws impose requirements upon investment advisers that in some instances are similar to the requirements within this rule and perform similar roles (*i.e.,* improving the integrity of the U.S. financial system and protecting customers). However, while these existing requirements may provide a supporting framework for implementing certain obligations in the final rule, they do not impose the specific AML/CFT measures in the final rule.

6. Significant Alternatives That Reduce Burden on Small Entities

FinCEN considered the burden this approach would have on investment advisers subject to the final rule. FinCEN is mindful of the effect of new regulations on small businesses, given their critical role in the U.S. economy and the special consideration that Congress and successive administrations have mandated that Federal agencies should give to small business concerns. FinCEN considered an alternative scenario in the Impact Analysis above (Alternative 2) that would apply a much more limited information collection requirement to only those RIAs that advise private funds and ERAs. In this scenario, advisers to private funds would be required to conduct risk-based customer due diligence and to report beneficial ownership information.

Table B.5: Average Cost of Information Collection for Ongoing CDD

Activity	New Account Clerk		Total Hours	Total Cost per Customer
	% Time	Hourly Cost		
Develop a Customer Risk Profile for a Legal Entity	100%	$34.74	0.25	$8.68
Collect Beneficial Ownership Information for a Legal Entity	100%	$34.74	0.5	$17.37
Collect Beneficial Ownership Information for a Pooled Investment Vehicle	100%	$34.74	3.0	$104.22

Based on the cost information in the table above and the number of legal entity and PIV customers of small entity RIAs identified in Table 3.7 of the Impact Analysis, FinCEN estimates that the cost of this alternative for each small entity would be less than $1,000 on average.

Despite the significantly lower cost of this alternative, FinCEN determined that this alternative would not accomplish the objectives of the final rule. As noted above, the absence of a SAR filing requirement would limit the potential benefits to law enforcement to investigate financial crimes and the potential benefits to interagency cooperation on national security threats and their associated financial activity. Further, without being defined as financial institutions and thereby being able to receive and share information under sections 314(a) and 314(b), investment advisers would be unable to access useful information to help mitigate illicit finance risks.

As another alternative to reduce the burden on small entities, FinCEN considered limiting the applicability of the final rule to investment advisers with AUM above a certain threshold, as reported on Form ADV. Investment advisers with AUM below the threshold would be exempt from the requirements of the final rule.

FinCEN decided not to pursue this alternative because doing so would not apply a risk-based approach to the industry. AUM by itself, without considering the attributes of a particular customer (such as legal entity v. natural person, or U.S. v. foreign-located person), is not a useful indicator of potential risk.[425] Such an exemption could also create a subset of ''smaller'' investment advisers who may actually be *more* vulnerable to illicit finance because they can offer the same services as other advisers, but without any AML/CFT requirements. Electing instead to use a risk-based approach, for the final rule FinCEN has exempted RIAs that report $0 in AUM, or are mid-sized advisers, pension consultants, and multi-state advisers, as indicated by their reporting on Form ADV.

FinCEN also notes that the AML/CFT requirements in the final rule are designed to be risk-based and their cost is largely based on factors unrelated to AUM, such as the number of customers and transactions, along with the risk level of its advisory activities and customers. For instance, according to the 2020 GAO BSA Report, the two most costly requirements for banks as a percentage of total AML/CFT compliance costs were the customer due diligence and SAR filing requirements, accounting for approximately 60 percent of total costs.[426] The cost of other requirements in the final rule, such as employee training and designating an AML/CFT officer, are also likely to vary with the size of the business. The requirements of the final rule therefore have some inherent flexibility whereby small entities serving a smaller number of customers are likely to have lower costs.

C. Paperwork Reduction Act

The reporting requirements in the final rule have been approved by OMB in accordance with the Paperwork Reduction Act of 1995 (PRA) and assigned control number 1506–0081.[427] Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. In accordance with requirements of the PRA, 44 U.S.C. 3506(c)(2), and its implementing regulations, 5 CFR part 1320, the following information concerns the collection of information as it relates to the final rule.

The PRA analysis included herein is for the sections of the final rule requiring RIAs and ERAs to (a) establish AML/CFT programs, to include risk-based procedures for conducting ongoing customer due diligence; (b) report suspicious activity and file CTRs; (c) maintain records of originator and beneficiary information for certain transactions; (d) apply information sharing provisions with the government and between financial institutions; and (e) implement special due diligence requirements for correspondent and private banking accounts and special measures under section 311 of the USA PATRIOT Act.

Reporting and Recordkeeping Requirements: The final rule would require RIAs and ERAs to develop and implement AML/CFT programs, file SARs and CTRs, record originator and beneficiary information for transactions, respond to section 314(a) requests, and implement special due diligence measures for correspondent and private banking accounts. The AML/CFT programs must be written (first year

[425] *See supra* note 98 and accompanying text.

[426] 2020 GAO BSA Report, *supra* note 347, at 3.

[427] 44 U.S.C. 3506(c)(2).

only), and updated, stored, and made available for inspection by FinCEN and the SEC. The AML/CFT program must also be approved by the investment adviser's board of directors or trustees.

OMB Control Numbers: 1506–0081.

Frequency: As required; varies depending on the requirement.

Description of Affected Public: investment advisers, as defined in the final rule.

Estimated Number of Respondents: 19,919 investment advisers. Of these, there are an estimated 14,073 SEC-registered investment advisers and 5,846 exempt reporting advisers. 1,275,990 clients of investment advisers in the first year and up to 250,544 new clients in each subsequent year, although this figure will vary from year to year.

Estimated Total Annual Reporting and Recordkeeping Burden: FinCEN estimates that during Year 1 the annual burden will be 6,851,861 hours for investment advisers and 478,496 hours for their clients. That burden will decrease after the first year because several information collection activities will only result in costs for these entities in Year 1. Specifically, investment advisers that do not already have a written AML/CFT program will have to develop one in the first year. In addition, entities that do not already conduct customer due diligence activities consistent with the requirements under the BSA will have to implement those information collection activities in the first year. FinCEN estimates that several of these costs will be incurred only in the first year of the regulation, but information collection activities related to understanding the nature and purpose of all existing customer accounts will likely be incurred over the first few years due to the large number of accounts—in this case, FinCEN assumes these costs will be spread over the first three years of the final rule.

Furthermore, FinCEN assesses that the information collection burden associated with customer due diligence will increase over time because the total number of clients is expected to grow each year. The number of clients and therefore the total costs associated with due diligence measures are expected to grow over time. Thus, there will be stepwise decrease in burden hours in Year 2 and Year 4, but a gradual increase in burden hours in Year 3 and Years 5 through 10 due to growth in the number of clients. In Year 10, FinCEN estimates the annual burden of the final rule will be 4,883,961 hours for investment advisers and 93,954 hours for new clients, with no additional burden for existing clients.

Estimated Total Annual Reporting and Recordkeeping Cost: As described in section 3, FinCEN calculated a weighted fully loaded hourly labor cost based on the roles, hourly wage rates, and burden distribution of staff involved in each information collection activity. FinCEN estimates that during Year 1 the annual cost will be $409,508,089 for investment advisers and $23,526,799 for their clients. In Year 10, FinCEN estimates the total cost of the final rule will be $278,696,966 for investment advisers and $4,619,547 for their clients.

Table C.1 reports the total number of investment advisers, burden hours, and costs by information collection activity. Burden hours and costs are calculated by multiplying the number of entities by the hours/costs per entity for each information collection activity. Burden hours and costs are summarized for Year 1 and Year 10.

Table C.2 reports the total number of clients, burden hours, and costs by information collection activity. Burden hours and costs are calculated by multiplying the number of clients by the hours per entity. Burden hours and costs are summarized for Year 1 and Year 10.

Table C.3 reports the total cost of information collection by year.

Tables C.4 through C.10 report additional detail for each subset of entities, including information on the distribution of the information collection burden across different groups. These tables summarize the number of entities, burden hours per entity, total burden hours, average cost per entity, and total cost.

Table C.11 reports the total cost of information collection for the customers of investment advisers. This table summarizes the number of customers, burden hours per customer, total burden hours, average cost per customer, and total cost.

Table C.1. Total Burden and Cost for Investment Advisers (in 2022 dollars)

Number of Entities	Year 1		Year 10	
	19,919		19,919	
Information Collection	**Burden Hours**	**Cost**	**Burden Hours**	**Cost**
Develop AML/CFT Program	1,473,120	$100,984,944	0	$0
Maintain and Update Written AML/CFT Program	229,290	$15,718,229	12,276	$841,541
Store the Written AML/CFT Program	0	$0	1,023	$70,128
Produce Written AML/CFT Program Upon Request	0	$0	1,023	$70,128
Obtain Written Approval of AML/CFT Program	63,550	$10,957,379	24,552	$4,233,290
Customer Identification and Verification	586,003	$20,357,258	345,190	$11,991,599
SAR Case Review and Filing (1010.320)	2,908,926	$179,352,883	2,908,926	$179,352,883
CTR Recordkeeping and Reporting (1010.315)	0	$0	0	$0
Recordkeeping and Travel Requirements (1010.410(a) through (c) and 1010.410(f))	974,950	$43,038,556	974,950	$43,038,556
Information Sharing Arrangements (1010.510)	474,476	$28,991,953	474,476	$28,991,953
Special Due Diligence and Special Measures (1010.610 and 1010.620)	24,552	$2,958,186	24,552	$2,958,186
Section 311 Special Measures	116,994	$7,148,701	116,994	$7,148,701
TOTAL	**6,851,861**	**$409,508,089**	**4,883,961**	**$278,696,966**

Table C.2. Total Burden and Cost for Clients (in 2022 dollars)

Number of Entities	Year 1		Year 10	
	1,275,990		250,544	
Information Collection	**Burden Hours**	**Cost**	**Burden Hours**	**Cost**
Provide Customer Information	478,496	$23,526,799	93,954	$4,619,547
TOTAL	478,496	$23,526,799	93,954	$4,619,547

Table C.3. Total Information Collection Cost by Year (in 2022 dollars)

Year	Information Collection Burden (Hours)	Information Collection Cost ($M)
2024	7,330,357	$433.0
2025	5,337,243	$295.1
2026	5,357,427	$295.9
2027	4,793,526	$276.3
2028	4,817,728	$277.3
2029	4,844,228	$278.3
2030	4,873,247	$279.4
2031	4,905,022	$280.6
2032	4,939,816	$281.9
2033	4,977,915	$283.3
TOTAL	**52,176,509**	**$2,981.0**

Table C.4. Total Burden and Cost for Dual Registrants

Number of Entities	**420**							
Information Collection	**Year 1**				**Year 10**			
	Hours Per Entity	**Burden Hours**	**Cost Per Entity**	**Cost**	**Hours Per Entity**	**Burden Hours**	**Cost Per Entity**	**Cost**
Develop and Implement Written AML/CFT Program	0	0	$0	$0	0	0	$0	$0
Maintain and Update Written AML/CFT Program	30	12,600	$2,056.55	$863,752	0	0	$0	$0
Store the Written AML/CFT Program	0	0	$0	$0	0	0	$0	$0
Produce Written AML/CFT Program Upon Request	0	0	$0	$0	0	0	$0	$0
Obtain Written Approval of AML/CFT Program	0	0	$0	$0	0	0	$0	$0
Customer Identification, Verification, and Recordkeeping	0	0	$0	$0	0	0	$0	$0
SAR Case Review and Filing (1010.320)	0	0	$0	$0	0	0	$0	$0
CTR Recordkeeping and Reporting (1010.315)	0	0	$0	$0	0	0	$0	$0
Recordkeeping and Travel Requirements (1010.410(a) through (c) and 1010.410(f))	0	0	$0	$0	0	0	$0	$0
Information Sharing Arrangements (1010.510)	0	0	$0	$0	0	0	$0	$0
Special Due Diligence and Special Measures (1010.610 and 1010.620)	0	0	$0	$0	0	0	$0	$0
Section 311 Special Measures	0	0	$0	$0	0	0	$0	$0
TOTAL	**30.00**	**12,600**	**$2,056.55**	**$863,752**	**0**	**0**	**$0**	**$0**

Table C.5. Total Burden and Cost for Affiliated and Other RIAs

Number of Entities	5,254							
Information Collection	Year 1				Year 10			
	Hours Per Entity	Burden Hours	Cost Per Entity	Cost	Hours Per Entity	Burden Hours	Cost Per Entity	Cost
Develop and Implement Written AML/CFT Program	0	0	$0	$0	0	0	$0	$0
Maintain and Update Written AML/CFT Program	30	157,620	$2,056.55	$10,805,126	0	0	$0	$0
Store the Written AML/CFT Program	0.000	0	$0.00	$0	0	0	$0	$0
Produce Written AML/CFT Program Upon Request	0.000	0	$0.00	$0	0	0	$0	$0
Obtain Written Approval of AML/CFT Program	2	10,508	$344.84	$1,811,804	0	0	$0	$0
Customer Identification, Verification, and Recordkeeping	0	0	$0	$0	0	0	$0	$0

SAR Case Review and Filing (1010.320)	149.18	783,809	$9,198.06	$48,326,583	149.18	783,809	$9,198.06	$48,326,583
CTR Recordkeeping and Reporting (1010.315)	0	0	$0	$0	0	0	$0	$0
Recordkeeping and Travel Requirements (1010.410(a) through (c) and 1010.410(f))	50	262,700	$2,207.22	$11,596,727	50	262,700	$2,207.22	$11,596,727
Information Sharing Arrangements (1010.510)	24.33	127,847	$1,486.84	$7,811,873	24.33	127,847	$1,486.84	$7,811,873
Special Due Diligence and Special Measures (1010.610 and 1010.620)	0	0	$0	$0	0	0	$0	$0
Section 311 Special Measures	6	31,524	$366.62	$1,926,215	6	31,524	$366.62	$1,926,215
TOTAL	**261.52**	**1,374,009**	**$15,660.13**	**$82,278,328**	**229.52**	**1,205,881**	**$13,258.74**	**$69,661,399**

Table C.6. Total Burden and Cost for Affiliated RIAs with a *Limited* Number of AML/CFT Measures in Place

Number of Entities	**521**							
Information Collection	**Year 1**				**Year 10**			
	Hours Per Entity	**Burden Hours**	**Cost Per Entity**	**Cost**	**Hours Per Entity**	**Burden Hours**	**Cost Per Entity**	**Cost**
Develop Written AML/CFT Program	120	62,520	$8,226.21	$4,285,855	0	0	$0	$0
Maintain and Update Written AML/CFT Program	0	0	$0.00	$0	1	521	$68.55	$35,715
Store the Written AML/CFT Program	0	0	$0.00	$0	0.083	43	$5.71	$2,976
Produce Written AML/CFT Program Upon Request	0	0	$0.00	$0	0.083	43	$5.71	$2,976
Obtain Written Approval of AML/CFT Program	4	2,084	$689.69	$359,326	2	1,042	$344.84	$179,663
Customer Identification, Verification, and Recordkeeping	495.51	258,158	$17,213.44	$8,968,204	291.88	152,070	$10,139.71	$5,282,789
SAR Case Review and Filing (1010.320)	149.18	77,725	$9,198.06	$4,792,187	149.18	77,725	$9,198.06	$4,792,187
CTR Recordkeeping and Reporting (1010.315)	0	0	$0	$0	0	0	$0	$0
Recordkeeping and Travel Requirements (1010.410(a) through (c) and 1010.410(f))	50	26,050	$2,207.22	$1,149,961	50	26,050	$2,207.22	$1,149,961
Information Sharing Arrangements (1010.510)	24.33	12,678	$1,486.84	$774,645	24.33	12,678	$1,486.84	$774,645
Special Due Diligence and Special Measures (1010.610 and 1010.620)	2	1,042	$240.97	$125,547	2	1,042	$240.97	$125,547
Section 311 Special Measures	6	3,126	$366.62	$191,008	6	3,126	$366.62	$191,008
TOTAL	**851.02**	**443,383**	**$39,629.05**	**$20,646,733**	**526.56**	**274,340**	**$24,064.24**	**$12,537,469**

Table C.7. Total Burden and Cost for Other RIAs with a *Limited* Number of AML/CFT Measures in Place

Number of Entities	7,922							
Information Collection	Year 1				Year 10			
	Hours Per Entity	Burden Hours	Cost Per Entity	Cost	Hours Per Entity	Burden Hours	Cost Per Entity	Cost
Develop Written AML/CFT Program	120	950,640	$8,226.21	$65,168,029	0	0	$0	$0
Maintain and Update Written AML/CFT Program	0	0	$0	$0	1	7,922	$68.55	$543,067
Store the Written AML/CFT Program	0	0	$0	$0	0.083	660	$5.71	$45,256
Produce Written AML/CFT Program Upon Request	0	0	$0	$0	0.083	660	$5.71	$45,256
Obtain Written Approval of AML/CFT Program	4	31,688	$689.69	$5,463,689	2	15,844	$344.84	$2,731,844
Customer Identification, Verification, and Recordkeeping	41.13	325,867	$1,428.98	$11,320,354	24.23	191,955	$841.75	$6,668,341
SAR Case Review and Filing (1010.320)	149.18	1,181,830	$9,198.06	$72,866,995	149.18	1,181,830	$9,198.06	$72,866,995
CTR Recordkeeping and Reporting (1010.315)	0	0	$0	$0	0	0	$0	$0
Recordkeeping and Travel Requirements (1010.410(a) through (c) and 1010.410(f))	50	396,100	$2,207.22	$17,485,586	50	396,100	$2,207.22	$17,485,586
Information Sharing Arrangements (1010.510)	24.33	192,769	$1,486.84	$11,778,771	24.33	192,769	$1,486.84	$11,778,771

Special Due Diligence and Special Measures (1010.610 and 1010.620)	2	15,844	$240.97	$1,908,989	2	15,844	$240.97	$1,908,989
Section 311 Special Measures	6	47,532	$366.62	$2,904,354	6	47,532	$366.62	$2,904,354
TOTAL	**396.65**	**3,142,270**	**$23,844.58**	**$188,896,767**	**258.91**	**2,051,116**	**$14,766.28**	**$116,978,459**

Table C.8. Total Burden and Cost for Affiliated and Other ERAs

Number of Entities	**1,969**							
Information Collection	**Year 1**				**Year 10**			
	Hours Per Entity	**Burden Hours**	**Cost Per Entity**	**Cost**	**Hours Per Entity**	**Burden Hours**	**Cost Per Entity**	**Cost**
Develop Written AML/CFT Program	0	0	$0	$0	0	0	$0	$0
Maintain and Update Written AML/CFT Program	30	59,070	$2,056.55	$4,049,351	0	0	$0	$0
Store the Written AML/CFT Program	0	0	$0	$0	0	0	$0	$0
Produce Written AML/CFT Program Upon Request	0	0	$0	$0	0	0	$0	$0
Obtain Written Approval of AML/CFT Program	2	3,938	$344.84	$678,995	0	0	$0	$0
Customer Identification, Verification, and Recordkeeping	0	0	$0	$0	0	0	$0	$0
SAR Case Review and Filing (1010.320)	149.18	293,742	$9,198.06	$18,110,971	149.18	293,742	$9,198.06	$18,110,971
CTR Recordkeeping and Reporting (1010.315)	0	0	$0	$0	0	0	$0	$0
Recordkeeping and Travel Requirements (1010.410(a) through (c) and 1010.410(f))	50	98,450	$2,207.22	$4,346,013	50	98,450	$2,207.22	$4,346,013
Information Sharing Arrangements (1010.510)	24.33	47,912	$1,486.84	$2,927,594	24.33	47,912	$1,486.84	$2,927,594
Special Due Diligence and Special Measures (1010.610 and 1010.620)	0	0	$0	$0	0	0	$0	$0
Section 311 Special Measures	6	11,814	$366.62	$721,872	6	11,814	$366.62	$721,872
TOTAL	**261.52**	**514,926**	**$15,660.13**	**$30,834,798**	**229.52**	**451,918**	**$13,258.74**	**$26,106,451**

Table C.9. Total Burden and Cost for Affiliated ERAs with a *Limited* Number of AML/CFT Measures in Place

Number of Entities	**72**							
Information Collection	**Year 1**				**Year 10**			
	Hours Per Entity	**Burden Hours**	**Cost Per Entity**	**Cost**	**Hours Per Entity**	**Burden Hours**	**Cost Per Entity**	**Cost**
Develop Written AML/CFT Program	120	8,640	$8,226.21	$592,287	0	0	$0	$0
Maintain and Update Written AML/CFT Program	0	0	$0	$0	1	72	$68.55	$4,936
Store the Written AML/CFT Program	0	0	$0	$0	0.083	6	$5.71	$411
Produce Written AML/CFT Program Upon Request	0	0	$0	$0	0.083	6	$5.71	$411
Obtain Written Approval of AML/CFT Program	4	288	$689.69	$49,657	2	144	$344.84	$24,829
Customer Identification, Verification, and Recordkeeping	5.27	379	$182.96	$13,173	3.10	223	$107.78	$7,760
SAR Case Review and Filing (1010.320)	149.18	10,741	$9,198.06	$662,260	149.18	10,741	$9,198.06	$662,260
CTR Recordkeeping and Reporting (1010.315)	0	0	$0	$0	0	0	$0	$0
Recordkeeping and Travel Requirements (1010.410(a) through (c) and 1010.410(f))	50	3,600	$2,207.22	$158,920	50	3,600	$2,207.22	$158,920
Information Sharing Arrangements (1010.510)	24.33	1,752	$1,486.84	$107,053	24.33	1,752	$1,486.84	$107,053
Special Due Diligence and Special Measures (1010.610 and 1010.620)	2	144	$240.97	$17,350	2	144	$240.97	$17,350
Section 311 Special Measures	6	432	$366.62	$26,397	6	432	$366.62	$26,397
TOTAL	**360.78**	**25,976**	**$22,598.57**	**$1,627,097**	**237.79**	**17,121**	**$14,032.31**	**$1,010,326**

Table C.10. Total Burden and Cost for Other RIAs with a *Limited* Number of AML/CFT Measures in Place

Number of Entities	**3,761**							
Information Collection	**Year 1**				**Year 10**			
	Hours Per Entity	**Burden Hours**	**Cost Per Entity**	**Cost**	**Hours Per Entity**	**Burden Hours**	**Cost Per Entity**	**Cost**
Develop Written AML/CFT Program	120	451,320	$8,226.21	$30,938,773	0	0	$0	$0
Maintain and Update Written AML/CFT Program	0	0	$0	$0	1	3,761	$68.55	$257,823
Store the Written AML/CFT Program	0	0	$0	$0	0.083	313	$5.71	$21,485
Produce Written AML/CFT Program Upon Request	0	0	$0	$0	0.083	313	$5.71	$21,485
Obtain Written Approval of AML/CFT Program	4	15,044	$689.69	$2,593,907	2	7,522	$344.84	$1,296,954
Customer Identification, Verification, and Recordkeeping	0.42	1,598	$14.76	$55,527	0.25	942	$8.70	$32,709
SAR Case Review and Filing (1010.320)	149.18	561,079	$9,198.06	$34,593,887	149.18	561,079	$9,198.06	$34,593,887
CTR Recordkeeping and Reporting (1010.315)	0	0	$0	$0	0	0	$0	$0
Recordkeeping and Travel Requirements (1010.410(a) through (c) and 1010.410(f))	50	188,050	$2,207.22	$8,301,349	50	188,050	$2,207.22	$8,301,349
Information Sharing Arrangements (1010.510)	24.33	91,518	$1,486.84	$5,592,017	24.33	91,518	$1,486.84	$5,592,017
Special Due Diligence and Special Measures (1010.610 and 1010.620)	2	7,522	$240.97	$906,300	2	7,522	$240.97	$906,300
Section 311 Special Measures	6	22,566	$366.62	$1,378,853	6	22,566	$366.62	$1,378,853
TOTAL	**355.94**	**1,338,697**	**$22,430.37**	**$84,360,613**	**234.93**	**883,586**	**$13,933.23**	**$52,402,862**

Table C.11. Total Burden and Cost for Clients

Number of Entities	Year 1				Year 10			
	1,275,990				250,544			
Information Collection	Hours Per Entity	Burden Hours	Cost Per Entity	Cost	Hours Per Entity	Burden Hours	Cost Per Entity	Cost
Provide Customer Information	0.375	478,496	$18.44	$23,526,799	0.375	93,954	$18.44	$4,619,547
Total	**0.375**	**478,496**	**$18.44**	**$23,526,799**	**0.375**	**93,954**	**$18.44**	**$4,619,547**

D. Unfunded Mandates Reform Act

UMRA (section 202(a)) requires Federal agencies to prepare a written statement, which includes an assessment of anticipated costs and benefits, before issuing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $177 million, using the 2022 GDP price deflator.[428] The final rule would result in an expenditure in at least one year that meets or exceeds this amount.

The total annualized cost of the final rule is estimated to be approximately $980 million to the private sector in the first year. The annualized cost of the final rule after the first year is estimated to be approximately $710 million to the private sector. The final rule does not foreseeably impose costs or other compliance burden that would impact any State, local, or Tribal government. FinCEN believes that the Impact Analysis provides the analysis required by UMRA.

E. Congressional Review Act

Pursuant to the Congressional Review Act (CRA), OMB's Office of Information and Regulatory Affairs has determined that this rule meets the requirements of 5 U.S.C. 804(2).

List of Subjects

31 CFR Part 1010

Administrative practice and procedure, Anti-money laundering, Banks, Banking, Brokers, Brokerage, Investment advisers, Money laundering, Mutual funds, Reporting and recordkeeping requirements, Securities, Suspicious transactions, Terrorist financing.

[428] U.S. Bureau of Economic Analysis, National Income and Product Accounts Tables, Table 1.1.9. Implicit Price Deflators for Gross Domestic Product.

31 CFR Part 1032

Administrative practice and procedure, Anti-money laundering, Banks, Banking, Brokers, Brokerage, Investment advisers, Money laundering, Mutual funds, Reporting and recordkeeping requirements, Securities, Small business, Suspicious transactions, Terrorist financing.

For the reason set forth in the preamble, FinCEN amends 31 CFR chapter X as follows:

PART 1010—GENERAL PROVISIONS

■ 1. The authority citation for part 1010 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5336; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307; sec. 701, Pub. L. 114–74, 129 Stat. 599; sec. 6403, Pub. L. 116–283, 134 Stat. 3388.

■ 2. Section 1010.100 is amended by:
■ a. Removing the word ''or'' at the end of paragraph (t)(9);
■ b. Removing the period at the end of paragraph (t)(10), and adding in its place ''; or''; and
■ c. Adding paragraphs (t)(11) and (nnn).

The additions read as follows:

§ 1010.100 General definitions.

* * * * *

(t) * * *

(11) An investment adviser.

* * * * *

(nnn) *Investment adviser.* (1) Any person, other than a person identified in (ii), wherever located, who is registered or required to register with the SEC under section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(a)), or any person who is exempt from SEC registration under section 203(l) or 203(m) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(l), (m)).

(2) For the purposes of this subpart, investment adviser does not include:

(i) any person who is registered or required to register with the SEC under section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(a)) only because such person is an investment adviser that meets the conditions of (a) mid-sized adviser, as set forth in Section 203A(a)(2)(B) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3a(a)(2)(B)), (b) a pension consultant, as defined under 17 CFR 275–203A–2(a), or (c) multi-state adviser, as defined under 17 CFR 275–203A–2(d).

(ii) any person who is registered or required to register with the SEC under section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(a)) and does not report any assets under management, as defined under Section 203A(a)(3) of the Act (15 U.S.C. 80b–3a(a)(3)), on its most recently filed initial Form ADV or annual updating amendment to Form ADV (17 CFR 279.1).

■ 3. Section 1010.410 is amended by:
■ a. Removing the word ''or'' at the end of paragraph (e)(6)(i)(I);
■ b. Removing the word ''and'' at the end of paragraph (e)(6)(i)(J) and adding in its place ''or''; and
■ c. Adding paragraph (e)(6)(i)(K).

The addition reads as follows:

§ 1010.410 Records to be made and retained by financial institutions.

* * * * *

(e) * * *

(6) * * *

(i) * * *

(K) An investment adviser; and

* * * * *

■ 4. Section 1010.605 is amended by:
■ a. Removing the word ''and'' at the end of paragraph (c)(2)(iii);
■ b. Removing the period at the end of paragraph (c)(2)(iv) and adding in its place ''; and'';
■ c. Adding paragraph (c)(2)(v);
■ d. Removing the word ''and'' at the end of paragraph (e)(1)(iii);
■ e. Adding the word ''and'' at the end of paragraph (e)(1)(iv); and
■ f. Adding paragraph (e)(1)(v).

The additions read as follows:

§ 1010.605 Definitions.

* * * * *

(c) * * *

(2) * * *

(v) As applied to investment advisers (as set forth in paragraph (e)(1)(v) of this section) means any contractual or other business relationship established

between a person and an investment adviser to provide advisory services.

* * * * *

(e) * * *

(1) * * *

(v) An investment adviser except that an investment adviser shall not be considered a covered financial institution for the purposes of § 1010.230.

* * * * *

■ 5. Section 1010.810 is amended by revising paragraph (b)(6) to read as follows:

§ 1010.810 Enforcement.

* * * * *

(b) * * *

(6) To the Securities and Exchange Commission with respect to brokers and dealers in securities, investment advisers, and investment companies as that term is defined in the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*);

* * * * *

■ 6. Add part 1032 to read as follows:

PART 1032—RULES FOR INVESTMENT ADVISERS

Sec.

Subpart A—General Provisions

1032.100 Definitions.
1032.110 Foreign-located investment adviser.
1032.111 Scope of application to foreign-located investment advisers.
1032.112 Severability

Subpart B—Programs

1032.200 General.
1032.210 Anti-money laundering/countering the financing of terrorism programs for investment advisers.
1032.220 [Reserved]

Subpart C—Reports Required To Be Made by Investment Advisers

1032.300 General.
1032.310 Reports of transactions in currency.
1032.311 Filing obligations.
1032.312 Identification required.
1032.313 Aggregation.
1032.314 Structured transactions.
1032.315 Exemptions.
1032.320 Reports by investment advisers of suspicious transactions.

Subpart D—Records Required To Be Maintained by Investment Advisers

1032.400 General.
1032.410 Recordkeeping.

Subpart E—Special Information-Sharing Procedures To Deter Money Laundering and Terrorist Activity

1032.500 General.
1032.520 Special information-sharing procedures to deter money laundering and terrorist activity for investment advisers.
1032.530 [Reserved]
1032.540 Voluntary information-sharing among financial institutions.

Subpart F—Special Standards of Diligence, and Special Measures for Investment Advisers

1032.600 General.
1032.610 Due diligence programs for correspondent accounts for foreign financial institutions.
1032.620 Due diligence programs for private banking accounts.

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5336; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307.

Subpart A—General Provisions

§ 1032.100 Definitions.

Refer to § 1010.100 of this chapter for general definitions not noted in this part.

§ 1032.110 Foreign-located investment adviser.

A foreign-located investment adviser is an investment adviser whose principal office and place of business is outside the United States.

§ 1032.111 Scope of application to foreign-located investment advisers.

(a) The requirements of this part 1032 apply to a foreign-located investment adviser only with respect to its advisory activities that:

(1) Take place within the United States, including through involvement of U.S. personnel of the investment adviser, such as the involvement of an agency, branch, or office within the United States, or

(2) Provide advisory services to a U.S. person or a foreign-located private fund with an investor that is a U.S. person.

(3) For purposes of this § 1032.111,

(i) ''Foreign-located private fund'' means any foreign-located issuer that is a private fund as that term is defined under 15 U.S.C. 80b–2(a)(29);

(ii) ''Investor'' means any investor as that term is defined at 17 CFR 275.202(a)(30)–1(c)(2); and

(iii) ''U.S. person'' means any U.S. person as that term is defined in 17 CFR 230.902(k).

(b) For avoidance of doubt, upon request, a foreign-located investment adviser shall make records and reports required under this part, and any other records it has retained regarding the scope of its activities covered by this part, available for inspection by FinCEN or the Securities and Exchange Commission.

§ 1032.112 Severability

If any provision of this part, or any provision of §§ 1010.100, 1010.410, 1010.605, or 1010.810 of this chapter referencing investment advisers, is held to be invalid, or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions, or application of such provisions to other persons or circumstances, that can be given effect without the invalid provision or application.

Subpart B—Programs

§ 1032.200 General.

Investment advisers are subject to the program requirements set forth and cross-referenced in this subpart. Investment advisers should also refer to subpart B of part 1010 of this chapter for program requirements contained in that subpart that apply to investment advisers.

§ 1032.210 Anti-money laundering/countering the financing of terrorism programs for investment advisers.

(a) *Anti-money laundering/countering the financing of terrorism program requirements for investment advisers.* (1) Each investment adviser shall develop and implement a written anti-money laundering/countering the financing of terrorism (AML/CFT) program that is risk-based and reasonably designed to prevent the investment adviser from being used for money laundering, terrorist financing, or other illicit finance activities and to achieve and monitor compliance with the applicable provisions of the Bank Secrecy Act (as defined in 31 CFR 1010.100(e)) and the implementing regulations promulgated thereunder by the Department of the Treasury. The investment adviser may deem the requirements in this subpart satisfied for any:

(i) Mutual fund (as defined in 31 CFR 1010.100(gg)),

(ii) Collective investment fund that is subject to the requirements of 12 CFR 9.18 (or other applicable law that incorporates the requirements of 12 CFR 9.18), or

(iii) Any other investment adviser (as defined in 31 CFR 1010.100(nnn)), provided that such mutual fund, collective investment fund, or other investment adviser is advised by the investment adviser and subject to an AML/CFT program requirement under this chapter.

(2) Each investment adviser's AML/CFT program must be approved in writing by its board of directors or trustees, or if it does not have one, by its sole proprietor, general partner, trustee, or other persons that have functions similar to a board of directors.

An investment adviser shall make its anti-money laundering/countering the financing of terrorism program available for inspection by FinCEN or the Securities and Exchange Commission.

(b) *Minimum requirements.* The AML/CFT program shall at a minimum:

(1) Establish and implement internal policies, procedures, and controls reasonably designed to prevent the investment adviser from being used for money laundering, terrorist financing, or other illicit finance activities and to achieve compliance with the applicable provisions of the Bank Secrecy Act and implementing regulations in this chapter;

(2) Provide for independent testing for compliance to be conducted by the investment adviser's personnel or by a qualified outside party;

(3) Designate a person or persons responsible for implementing and monitoring the operations and internal controls of the program;

(4) Provide ongoing training for appropriate persons; and

(5) Implement appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to:

(i) Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and

(ii) Conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.

(c) *Effective date.* An investment adviser must develop and implement an AML/CFT program that complies with the requirements of this section on or before January 1, 2026.

§ 1032.220 [Reserved]

Subpart C—Reports Required To Be Made by Investment Advisers

§ 1032.300 General.

(a) Investment advisers are subject to the reporting requirements set forth and cross-referenced in this subpart. Investment advisers should also refer to subpart C of part 1010 of this chapter for reporting requirements contained in that subpart that apply to investment advisers. The investment adviser may deem the requirements in this subpart satisfied for any: (i) mutual fund (as defined in 31 CFR 1010.100(gg)), (ii) collective investment fund that is subject to the requirements of 12 CFR 9.18 (or other applicable law that incorporates the requirements of 12 CFR 9.18), or (iii) any other investment adviser (as defined in 31 CFR 1010.100(nnn)), provided that such mutual fund, collective investment fund, or other investment adviser is advised by the investment adviser and subject to reporting requirements under this chapter.

§ 1032.310 Reports of transactions in currency.

The reports of transactions in currency requirements for investment advisers are located in subpart C of part 1010 of this chapter and this subpart.

§ 1032.311 Filing obligations.

Refer to § 1010.311 of this chapter for reports of transactions in currency filing obligations for investment advisers.

§ 1032.312 Identification required.

Refer to § 1010.312 of this chapter for identification requirements for reports of transactions in currency filed by investment advisers.

§ 1032.313 Aggregation.

Refer to § 1010.313 of this chapter for reports of transactions in currency aggregation requirements for investment advisers.

§ 1032.314 Structured transactions.

Refer to § 1010.314 of this chapter for rules regarding structured transactions for investment advisers.

§ 1032.315 Exemptions.

Refer to § 1010.315 of this chapter for exemptions from the obligation to file reports of transactions in currency for investment advisers.

§ 1032.320 Reports by investment advisers of suspicious transactions.

(a) *General.* (1) Every investment adviser shall file with FinCEN, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. An investment adviser may also file with FinCEN a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation, but whose reporting is not required by this section. Filing a report of a suspicious transaction does not relieve an investment adviser from the responsibility of complying with any other reporting requirements imposed by the Advisers Act or the Securities and Exchange Commission.

(2) A transaction requires reporting under this section if it is conducted or attempted by, at, or through an investment adviser; it involves or aggregates funds or other assets of at least $5,000; and the investment adviser knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any Federal law or regulation or to avoid any transaction reporting requirement under Federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this chapter or any other regulations promulgated under the Bank Secrecy Act;

(iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the investment adviser knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or

(iv) Involves use of the investment adviser to facilitate criminal activity.

(3) More than one investment adviser may have an obligation to report the same transaction under this section, and other financial institutions may have separate obligations to report suspicious activity with respect to the same transaction pursuant to other provisions of this chapter. In those instances, no more than one report is required to be filed by the investment adviser(s) and other financial institution(s) involved in the transaction, provided that the report filed contains all relevant facts, including the name of each financial institution and the words ''joint filing'' in the narrative section, and each institution maintains a copy of the report filed, along with any supporting documentation.

(b) *Filing and notification procedures*—(1) *What to file.* A suspicious transaction shall be reported by completing a Suspicious Activity Report (''SAR'') and collecting and maintaining supporting documentation as required by paragraph (c) of this section.

(2) *Where to file.* The SAR shall be filed with FinCEN in accordance with the instructions to the SAR.

(3) *When to file.* A SAR shall be filed no later than 30 calendar days after the date of the initial detection by the reporting investment adviser of facts that may constitute a basis for filing a SAR under this section. If no suspect is identified on the date of such initial detection, an investment adviser may delay filing a SAR for an additional 30 calendar days to identify a suspect, but

in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection.

(4) *Mandatory notification to law enforcement.* In situations involving violations that require immediate attention, such as suspected terrorist financing or ongoing money laundering schemes, an investment adviser shall immediately notify by telephone an appropriate law enforcement authority in addition to filing timely a SAR.

(5) *Voluntary notification to the Financial Crimes Enforcement Network or the Securities and Exchange Commission.* Investment advisers wishing to voluntarily report suspicious transactions that may relate to terrorist activity may call the Financial Crimes Enforcement Network's Financial Institutions Hotline at 1–866–556–3974 in addition to filing timely a SAR if required by this section. The investment adviser may also, but is not required to, contact the Securities and Exchange Commission to report in such situations.

(c) *Retention of records.* An investment adviser shall maintain a copy of any SAR filed by the investment adviser or on its behalf (including joint reports), and the original (or business record equivalent) of any supporting documentation concerning any SAR that it files (or that is filed on its behalf) for a period of five years from the date of filing the SAR. Supporting documentation shall be identified as such and maintained by the investment adviser, and shall be deemed to have been filed with the SAR. An investment adviser shall make all supporting documentation available to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the investment adviser for compliance with the Bank Secrecy Act, upon request.

(d) *Confidentiality of SARs.* A SAR, and any information that would reveal the existence of a SAR, are confidential and shall not be disclosed except as authorized in this paragraph (d). For purposes of this paragraph (d) only, a SAR shall include any suspicious activity report filed with FinCEN pursuant to any regulation in this chapter.

(1) *Prohibition on disclosures by investment advisers*—(i) *General rule.* No investment adviser, and no current or former director, officer, employee, or agent of any investment adviser, shall disclose a SAR or any information that would reveal the existence of a SAR. Any investment adviser, and any current or former director, officer, employee, or agent of any investment adviser that is subpoenaed or otherwise requested to disclose a SAR or any information that would reveal the existence of a SAR shall decline to produce the SAR or such information, citing this section and 31 U.S.C. 5318(g)(2)(A)(i), and shall notify FinCEN of any such request and the response thereto.

(ii) *Rules of construction.* Provided that no person involved in any reported suspicious transaction is notified that the transaction has been reported, this paragraph (d)(1) shall not be construed as prohibiting:

(A) The disclosure by an investment adviser, or any current or former director, officer, employee, or agent of an investment adviser of:

(*1*) A SAR, or any information that would reveal the existence of a SAR, to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the investment adviser for compliance with the Bank Secrecy Act; or

(*2*) The underlying facts, transactions, and documents upon which a SAR is based, including but not limited to, disclosures:

(*i*) To another financial institution, or any current or former director, officer, employee, or agent of a financial institution, for the preparation of a joint SAR; or

(*ii*) In connection with certain employment references or termination notices, to the full extent authorized in 31 U.S.C. 5318(g)(2)(B); or

(B) The sharing by an investment adviser, or any current or former director, officer, employee, or agent of the investment adviser, of a SAR, or any information that would reveal the existence of a SAR, within the investment adviser's corporate organizational structure for purposes consistent with Title II of the Bank Secrecy Act as determined by regulation or in guidance.

(2) *Prohibition on disclosures by government authorities.* A Federal, State, local, territorial, or Tribal government authority, or any current or former director, officer, employee, or agent of any of the foregoing, shall not disclose a SAR, or any information that would reveal the existence of a SAR, except as necessary to fulfill official duties consistent with Title II of the Bank Secrecy Act. For purposes of this section, ''official duties'' shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, in response to a request for disclosure of non-public information or a request for use in a private legal proceeding, including a request pursuant to 31 CFR 1.11.

(e) *Limitation on liability.* An investment adviser, and any current or former director, officer, employee, or agent of any investment adviser, that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this section or any other authority, including a disclosure made jointly with another institution, shall be protected from liability to any person for any such disclosure, or for failure to provide notice of such disclosure to any person identified in the disclosure, or both, to the full extent provided by 31 U.S.C. 5318(g)(3).

(f) *Compliance.* Investment advisers shall be examined by FinCEN or its delegates for compliance with this section. Failure to satisfy the requirements of this section may be a violation of the Bank Secrecy Act and of this chapter.

Subpart D—Records Required To Be Maintained by Investment Advisers

§ 1032.400 General.

Investment advisers are subject to the recordkeeping requirements set forth and cross referenced in this subpart. Investment advisers should also refer to subpart D of part 1010 of this chapter for recordkeeping requirements contained in that subpart which apply to investment advisers. The investment adviser may deem the requirements in this subpart satisfied for any: (i) mutual fund (as defined in 31 CFR 1010.100(gg)), (ii) collective investment fund that is subject to the requirements of 12 CFR 9.18 (or other applicable law that incorporates the requirements of 12 CFR 9.18), or (iii) any other investment adviser (as defined in 31 CFR 1010.100(nnn)), provided that such mutual fund, collective investment fund, or other investment adviser is advised by the investment adviser and subject to recordkeeping requirements under this chapter.

§ 1032.410 Recordkeeping.

For regulations regarding recordkeeping, refer to § 1010.410 of this chapter.

Subpart E—Special Information-Sharing Procedures To Deter Money Laundering and Terrorist Activity

§ 1032.500 General.

Investment advisers are subject to the special information-sharing procedures to deter money laundering and terrorist activity requirements set forth and cross-referenced in this subpart. Investment advisers should also refer to subpart E of part 1010 of this chapter for special information-sharing procedures to deter money laundering and terrorist

activity contained in that subpart which apply to investment advisers. The investment adviser may deem the requirements in this subpart satisfied for any: (i) mutual fund (as defined in 31 CFR 1010.100(gg)), (ii) collective investment fund that is subject to the requirements of 12 CFR 9.18 (or other applicable law that incorporates the requirements of 12 CFR 9.18), or (iii) any other investment adviser (as defined in 31 CFR 1010.100(nnn)), provided that such mutual fund, collective investment fund, or other investment adviser is advised by the investment adviser and subject to special information sharing procedures under this chapter.

§ 1032.520 Special information-sharing procedures to deter money laundering and terrorist activity for investment advisers.

For regulations regarding special information-sharing procedures to deter money laundering and terrorist activity for investment advisers, refer to § 1010.520 of this chapter.

§ 1032.530 [Reserved]

§ 1032.540 Voluntary information-sharing among financial institutions.

For regulations regarding voluntary information-sharing among financial institutions, refer to § 1010.540 of this chapter.

Subpart F—Special Standards of Diligence, and Special Measures for Investment Advisers

§ 1032.600 General.

Investment advisers are subject to the special standards of diligence, prohibitions, and special measures requirements set forth and cross referenced in this subpart. Investment advisers should also refer to subpart F of part 1010 of this chapter for special standards of diligence, prohibitions, and special measures contained in that subpart, all of which apply to investment advisers. The investment adviser may deem the requirements in this subpart satisfied for any: (i) mutual fund (as defined in 31 CFR 1010.100(gg)), (ii) collective investment fund that is subject to the requirements of 12 CFR 9.18 (or other applicable law that incorporates the requirements of 12 CFR 9.18), or (iii) any other investment adviser (as defined in 31 CFR 1010.100(nnn)), provided that such mutual fund, collective investment fund, or other investment adviser is advised by the investment adviser and subject to special standards of diligence and special measures under this chapter.

§1032.610 Due diligence programs for correspondent accounts for foreign financial institutions.

For regulations regarding due diligence programs for correspondent accounts for foreign financial institutions, refer to § 1010.610 of this chapter.

§ 1032.620 Due diligence programs for private banking accounts.

For regulations regarding due diligence programs for private banking accounts, refer to § 1010.620 of this chapter.

Andrea M. Gacki,

Director, Financial Crimes Enforcement Network.

[FR Doc. 2024–19260 Filed 8–28–24; 8:45 am]

BILLING CODE 4810–02–P

Reader Aids

Federal Register

Vol. 89, No. 171

Wednesday, September 4, 2024

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**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.govinfo.gov.**

Federal Register information and research tools, including Public Inspection List and electronic text are located at: **www.federalregister.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**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, SEPTEMBER

71153–71794 3
71795–72278 4

CFR PARTS AFFECTED DURING SEPTEMBER

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

Administrative Orders:
Memorandums:
Memorandum of August 9, 2024 71795
Memorandum of August 16, 2024 71799
Memorandum of August 23, 2024 71801
Presidential Determinations:
No. 2024–10 of August 9, 2024 71797

14 CFR

Proposed Rules:
71 ..... 71189, 71191, 71863

15 CFR

734 71803
740 71803
744 71803
746 71803
774 71803

17 CFR

1 71803
3 71803
5 71803
9 71803
10 71803
11 71803
12 71803
13 71803
14 71803
15 71803
16 71803
17 71803
18 71803
20 71803
23 71803
30 71803
31 71803
37 71803
41 71803
43 71803
45 71803
46 71803
49 71803
140 71803
142 71803
144 71803
145 71803
146 71803
147 71803
148 71803
149 71803
150 71803
155 71803
160 71803
162 71803
165 71803
170 71803
171 71803

21 CFR

872 71153
882 71155
888 71157
890 71159

26 CFR

Proposed Rules:
1 ..... 71193, 71214, 71864
301 71214

30 CFR

550 71160

31 CFR

1010 72156
1032 72156

32 CFR

Proposed Rules:
3 71865

33 CFR

100 ..... 71821, 71823, 71824
117 71184
165 71824

36 CFR

Proposed Rules:
1191 71215

40 CFR

52 ..... 71185, 71826, 71830
81 71830
98 71838

Proposed Rules:
52 ..... 71230, 71237, 71872

46 CFR

Proposed Rules:
401 71877

47 CFR

64 71848

50 CFR

622 71860
679 71861

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 August 1, 2024

Public Laws Electronic Notification Service (PENS)

PENS is a free email notification service of newly enacted public laws. To subscribe, go to *https://portalguard.gsa.gov/__layouts/PG/register.aspx*.

Note: This service is strictly for email notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.